

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities and for damage to the unit, for an order permitting the landlord to keep all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this application.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy began on October 1, 2009, and the parties disagree as to the date the tenancy ended. The landlord stated that the tenants moved out on February 7, 2010, and the tenants testified that they moved out on February 5, 2010.

The tenancy agreement was a fixed term to expire on September 30, 2010. The tenants paid a security deposit in the amount of \$412.50 on September 10, 2009.

The landlord testified that he had obtained an Order of Possession from dispute resolution on January 22, 2010 and served it on the tenants on January 23, 2010. He had originally placed one under the door of the rental unit, and a copy in the mailbox of the tenants on that date. He further testified that he served the tenant personally with a

copy of that Order of Possession on February 5, 2010. The landlord's claim for unpaid rent is \$235.68 for 7 days of rent for over-holding.

The landlord called his wife to testify who stated that she was with the landlord on the 8th of February, and that she witnessed the female tenant speaking with the landlord and hand the landlord the keys on the surveillance camera. Later in evidence, the landlord changed the date to the 9th of February, which was not disputed by the witness.

The landlord is also claiming \$135.45 for carpet cleaning, \$20.00 each for 3 sets of drapery cleaning for the living room and 2 bedrooms; \$40.00 for 2 hours of cleaning cupboards, windows, under the fridge and stove; \$40.00 to repairing and painting a closet door; and another \$40.00 to repair burn marks in the carpet. The landlord also stated that there was a bad cigarette smell in the unit after the tenants had vacated the unit. When asked why he didn't paint the unit, the landlord replied that he used 2 cans of deodorizer and baking soda on the carpet.

Both parties provided photographs of the unit in advance of the hearing. The photographs provided by the landlords show a close-up of cigarette burns in a carpet, but the tenants provided photographs that were not a close-up and show no burns in the carpet. When questioned about where exactly the burns were, the landlord and witnesses described the area close to the hallway in the living room. The tenants testified that they did not smoke in the unit at all, and questioned which unit the landlord's photographs were taken in.

The landlord also called another witness who testified that he had lived in that unit prior to these tenants. He testified that he did not smoke, he is allergic, and none of his guests were permitted to smoke inside the unit. He also testified that there were no cigarette burns in the carpet when he lived there, and he saw 4 or 5 burns in the carpet close to the hall after these tenants had moved out. When questioned about whether or not he was a friend of the landlord, the witness refused to answer the question.

The landlord testified that the building is about 25 or 27 years old, and the carpets are the original carpets.

The tenants testified that they cleaned the unit thoroughly, and then took photographs. They both testified that they did not smoke inside the unit; they followed the rules, and only smoked on the balcony. They left the apartment spotless.

They also testified that they were harassed by the landlord, and were stressed in the tenancy. They were only there for 3 months, and the curtains were in the same condition when they moved out as they were when they moved in. They also testified that they hired a professional cleaner and paid \$75.00 to assist with cleaning, including sweeping the balcony. When they were finished cleaning, they took the photographs that were provided in advance of the hearing. The tenants also provided a copy of the receipt for that cleaning in advance of the hearing.

The landlord testified that he offered one opportunity for a move-out condition inspection report, and provided a Notice of Final Opportunity to Schedule a Condition Inspection in advance of the hearing. That document proposes that the inspection be conducted at 6:00 p.m. on February 8, 2010.

Analysis

The evidence of both parties is that the landlord/tenant relationship was somewhat tumultuous. The tenants were not tenants for a long period of time, and I find that the landlord has failed to sufficiently prove his claim. Firstly, there is no evidence before me that the fridge and stove were pulled out to view the condition or cleanliness when the tenants were moving in, and I therefore decline to make a monetary order for cleaning under and behind those appliances now.

Further, Section 35 of the *Residential Tenancy Act* requires that the landlord offer at least 2 opportunities for the move-out inspection. The legislation is intended to provide the tenants an opportunity to correct any situation, whether it be damage or cleanliness. An inspection must be done contemporaneously with the vacating of the unit as required by the *Act* and by engaging in an alternate procedure not sanctioned by the legislation, the evidentiary weight of the move-out inspection report was negated. The landlord's methodology also created a credibility problem in that the landlord was

seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act*. I find serious flaws in the Landlord's evidence regarding both of the condition inspection reports. Section 24 of the *Residential Tenancy Act* states that a landlord's right to claim against a security deposit is extinguished if the landlord does not comply with section 23 (3) by providing 2 opportunities for inspection.

With respect to the carpets, I rely on Residential Policy Guideline #37, which provides that the useful life of carpets is 10 years. Evidence before me is that the carpets are 25 to 27 years old. Further, I am not convinced that the burn holes in the carpets are from the dispute address, or that they were caused by these tenants. Without the move-out condition inspection done by both parties, it is possible that the photos provided by the landlord belonged to another unit. All witnesses for the landlord testified where the burn marks are, however, the landlord has failed to provide opportunities as required by law to inspect the unit with the tenants present.

With respect to the cigarette smoke smell in the unit, the landlord testified that he used deodorizers and baking soda to remove the smell. I question whether or not that would be sufficient, and if so, it must be sufficient for the drapes as well.

Conclusion

The landlord's application to claim against the security deposit is hereby dismissed without leave to reapply.

The landlord's application for damage to the unit is hereby dismissed without leave to reapply.

The landlord's application for rent for over-holding is hereby allowed at 5 days, or \$137.50.

I order that the landlord return the security deposit to the tenants, to be offset by \$137.50, for a total return to the tenants of \$275.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 30, 2010.

Dispute Resolution Officer