

DECISION

Dispute Codes MND, MNDC, MNSD, RPP, FF, O

Introduction

This hearing dealt with cross applications. The tenant had applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; return of the tenant's personal property and recovery of the filing fee. The landlord had applied for a Monetary Order for damage to the rental unit, damage or loss under the Act, regulation or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee.

The hearing commenced at 9:00 a.m. and last approximately 20 minutes. The tenant did not appear at the hearing during that time. The landlord confirmed that he had received the tenant's application and was prepared to proceed with the tenant's application. Since the tenant did not appear at the hearing and the landlord was prepared to proceed with the tenant's application, I dismissed the tenant's application without leave to reapply.

The landlord provided a registered mail receipt as evidence the tenant was notified of the landlord's application by registered mail sent to the forwarding address provided by the tenant in writing on February 24, 2010, which is also the same address that appears on the tenant's application. I was satisfied the tenant was notified of the landlord's application in a manner that complies with the Act and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order against the tenant?
2. Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

I was provided undisputed evidence that the tenancy agreement was formed October 18, 2009 for a tenancy set to commence November 1, 2009. The tenant was required to pay rent of \$550.00 on the 1st day of every month and had paid a \$275.00 security deposit on October 18, 2009. In January 2010 the landlord discovered the tenant was keeping a pet in the rental unit. Initially, the tenant agreed to remove the cat from the rental unit; however, on January 15, 2010 the tenant refused to part with the cat and the parties reached a mutual agreement to end the tenancy as of January 31, 2010.

In the early evening of January 31, 2010 the landlord discovered that the tenant had not yet vacated rental unit. The tenant promised to be out by midnight; however, at 11:00 p.m. the tenant was still not moved from the rental unit. The tenant gave the landlord the keys to the rental unit and left with an agreement to return the next day to remove his possessions. The tenant also left the cat in the rental unit. On February 1, 6 and 8, 2010 the tenant returned to remove some possessions. On February 11, 2010 the landlord packed up the remaining possessions and cleaned the room.

The landlord's wife testified that she had arranged three showings of the rental unit for early February 2010 but had to cancel them due to the condition of the rental unit. The landlord's wife described how she had to clean cat feces from the carpet, melted wax from the carpet and window sill, mud from the window sill and repair large holes in the walls and ceiling.

In making this application on March 11, 2010 the landlord sought recovery of cleaning costs in the amount of \$220.00, wall repairs of \$60.00, photograph costs of \$11.50 and

loss of rent for February 2010 in the amount of \$550.00 for a total claim of \$891.50 including the filing fee.

As evidence for the hearing, the landlord submitted photographs of the rental unit taken February 2, 2010, the tenancy agreement and a chronological account of events.

In light of the tenant's application being dismissed and the landlord's apprehension that the tenant will be able to pay a Monetary Order, the landlord stated he would be willing to settle the landlord's claims for the amount of the security deposit.

Analysis

Upon hearing undisputed testimony of the landlord, I am satisfied that the parties had reached a mutual agreement to end the tenancy as of January 31, 2010 and that on January 31, 2010 the tenant had abandoned the rental unit by returning the keys to the landlord and leaving the rental unit.

The Act requires the landlord to make an application to retain a security deposit or return a security deposit to a tenant within 15 days of the later of the date the tenancy ends or the landlord receives the tenant's forwarding address. In this case, I am satisfied the landlord made this application within 15 days of receiving the tenant's forwarding address in writing and that section 38(6) of the Act, which provides for doubling of the security deposit, does not apply.

The Act requires that at the end of a tenancy, the tenant must vacate the rental unit, return the keys to the landlord and leave the rental unit reasonably clean and undamaged, except for normal wear and tear. Upon review of the photographs of the rental unit I am satisfied the tenant failed to leave the rental unit reasonably clean, failed to repair holes in the wall and damage to the window sill and failed to remove his all of his possessions. I am satisfied the landlord had to clean and repair the rental unit and deal with the tenant's possessions which caused the landlord to incur a loss greater

than the amount of the security deposit. Therefore, I grant the landlord's request to resolve this dispute for the amount of the security deposit.

In light of the above findings, the landlord is hereby authorized to retain the tenant's security deposit.

Conclusion

The tenant's application against the landlord was dismissed without leave to reapply. The landlord has been awarded the security deposit in satisfaction of the landlord's claims against the tenant.

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 07, 2010.

Dispute Resolution Officer