

DECISION

Dispute Codes: MNR, MNDC, MND, MNSD and FF

Introduction

This application was brought by the landlord seeking a Monetary Order unpaid rent, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

At the commencement of the hearing, the tenant's advocate requested that the hearing be adjourned as the tenant was writing an examination at an intensive five-week trade school program. The landlord preferred to proceed.

On considering the criteria for granting adjournment under section 6.4 of the Rules of Procedure, I declined to adjourn on the grounds that the tenant had not sought the prior consent of the landlord, the tenant was competently represented by his advocate, the matters in dispute were not sufficiently complex to warrant adjournment, and adjournment would have created greater unfairness to the landlord than proceeding would have caused to the tenant.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order for the claims presented including consideration of whether the damage or losses are proven, whether they are attributable to the tenant, whether the amounts claimed are fair and substantiated and whether the landlord has taken reasonable steps to minimize the loss.

Background and Evidence and Analysis

This tenancy began on December 1, 2007 and ended on November 30, 2009. Rent was \$750 per month for most of the tenancy but reduced to \$500 for the final two months. The landlord claims a security deposit of \$300. The tenant, in his letter giving notice to the tenancy on November 10, 2009 demands return of \$375 on which his advocate said he had erred and wished to amend to \$400. In whatever amount, the deposit was paid on or about December 1, 2007.

During the hearing, the landlord submitted into evidence a cheque issued by the tenant for \$300 dated November 11, 2009 and bearing a “stop payment” stamp. By previous arrangement, the landlord had permitted to pay the rent in two instalments. Therefore, the landlord claims unpaid rent of \$300 for November.

The tenant’s advocate stated that the tenant had stopped payment on the cheque because he wanted assurance that he would recover his security deposit.

The landlord submitted photographic evidence of the need for cleaning and repairs to the rental unit and claims \$300 in compensation.

The landlord further claims \$600 for work he stated was done unnecessarily on reports from the tenant of continuing water leaks. The landlord's claim is for compensation for removing and replacing drywall to check for leaks which apparently were not there.

The landlord concurred with the tenant's advocate that he had advised the tenant prior to the end of the tenancy that he would soon need the tenant to vacate in order to conduct substantial renovations. In fact, the landlord stated he undertook renovations for the four months following the end of the tenancy.

Analysis

On the amount of the security deposit, I accept the evidence of the landlord that his entries on the tenant's ledger were made contemporaneously and that his notation was, on the balance of probabilities, much more likely to be correct after two years than the memory of the tenant.

On the matter of the cancelled rent cheque, I find that the tenant owes the \$300 balance of the rent for November 2009 and I hereby authorize and order that the landlord may retain the full security deposit in set off against the rent owed to him.

As to the claims for cleaning and repairs, including the removal of the drywall, in the absence of move-in and move-out condition inspection reports and claims to the contrary from the tenant's advocate, I have no definitive comparison of the rental unit before and after the tenancy. In addition, in the absence of documentation or itemization of the amount claimed, I am unable to verify an appropriate award.

Moreover, given the landlord's stated intention and execution of his plan to conduct extensive renovations, I must find that these claims are relatively inconsequential. Therefore, both claims are dismissed.

I find that the tenant's unilateral decision to cancel his rent payment cheque for the latter part of November, with no right to do so under the *Act*, was the initiating cause leading to the present hearing. Therefore, I find that the landlord is entitled to recover the filing fee for this proceeding. However, the landlord advised that he waived his right to a Monetary Order for the small amount of \$50 for reasons of practicality. Therefore, the landlord is hereby authorized to retain the \$4.89 interest accrued on the security deposit in partial satisfaction of the filing fee.

Conclusion

The landlord is authorized to retain the tenant's security deposit plus interest in satisfaction of the total award for the landlord.

April 29, 2010