

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for damage to the unit, site or property, for an order to retain the security deposit, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

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

The landlord was very hard of hearing, and was likely not able to hear all of the evidence of the tenant. The landlord would be well advised to have an interpreter present for future hearings.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Is the tenant entitled to the return of the security deposit?

Background and Evidence

This month-to-month tenancy began on May 1, 2009. Rent in the amount of \$875.00 is due on the 1st day of each month and there are no rental arrears. The tenant vacated the unit on January 31, 2010.

The tenant testified that he had had 2 roommates when he moved in; they moved out on August 1, 2009 and 2 others moved in. The first roommate received back part of his security deposit, and then this tenant paid a security deposit in the amount of \$450.00 on July 2, 2009, but a new tenancy agreement was not written up at that time.

The landlord testified that after the tenant moved out, he discovered a missing shelf rail in the freezer door, and the door handle was cracked. The fridge was also missing a crisper and the door inside was also cracked. He stated that the fridge is about 10 years old, and repairing the appliance is not possible.

The landlord further testified that 3 burners on the stove were not working, and the drawer needed repair. The drawer can't be replaced, and the burners cost about \$30.00 each.

He further testified that he had finished the hardwood floor 4 or 5 years ago with 7 coats, or 2 large pails of urethane. He stated that the scratches in the floor cannot be patched, or the finish would not be even. The cost to re-surface the hardwood is about \$70.00 or \$75.00 for 2 pails of urethane, 5 sponges at about \$7.00 each, a pole for spreading the urethane at a cost of about \$30.00 and about \$10.00 for sandpaper. The landlord also stated that he paid \$100.00 to the Carpet Doctor for carpet cleaning.

The landlord submitted a sheet of claimed items from this tenant, dated February 15, 2010 and February 17, 2010. That list shows a column for "total cost" and a column for "claim." The amounts are very different for each item listed under the 2 columns, and the totals are \$761.00 under total cost, and \$416.00 for the claim amount. He testified that the items and amounts in the "total cost" column are what it would cost to repair or replace items, and the amounts under the "claim" column is what he'd be happy to receive back from the security deposit. The list also claims a porch sofa chair removal at \$15.00 and a missing trellis at \$40.00, and those amounts appear in both columns.

The tenant provided photographs dated February 2, 2010, which show that the trellis is behind the sofa, which the tenant testified did not belong to him; he assumed the sofa belonged to the landlord so he left it there. He moved the trellis from the porch because it was falling off, being only held with one nail.

The tenant testified that there never was a bar in the door of the freezer, and the fridge and stove were older than 10 years, were in very poor condition, and there never was a crisper in the fridge. He further testified that the burners on the stove were not tested when he moved in, and at least one burner didn't work throughout the tenancy. He further testified that the drawer under the stove was off its tracks when he moved in and he didn't use that drawer.

The tenant testified that he hired a cleaner before he moved out, who provided a letter regarding the condition of the unit. That letter states that the carpets were vacuumed thoroughly but not steam cleaned; they would not stand up to steam cleaning as they are thread bare. The landlord testified that the carpets are over 15 years old.

The tenant further testified that the hardwood floor was not in perfect condition when he moved in. He also feels that it could have been patched.

The tenant testified that the bathtub was very dirty, and had no surface left on it when he moved in. Mould had gathered in the caulking, which was not the fault of the tenant.

The landlord testified that a move-in condition inspection report had been completed, and submitted a copy prior to the hearing. He also provided a copy of the condition inspection report that was completed for the previous tenant who had resided there until August 1, 2009. The tenant also provided a list of damage to the unit, which he prepared on lined, carbon paper, and both parties signed it on May 1, 2009. That list shows cracks on the inside of the fridge and a bent handle, among numerous other issues.

The tenant did agree with the landlord that a door handle was missing on one of the bedrooms, and he lost the sink stopper. The tenant disagrees with all other claims made by the landlord. The photographs provided by the tenant depict an old unit in very

bad need of repair to the walls, windows, ceilings, countertops, and carpets. The tiles in the kitchen of the unit are partially missing, and the ones remaining are cracked and stained.

The tenant also provided a 6 page letter signed by himself and 2 other people. The landlord stated that one of those people is the tenant's mother and he disagrees with the contents of that letter. Since the tenant's mother and the other signatory were not in attendance to be subject to cross-examination by the landlord, I have not read that letter, nor have I considered it as any form of evidence.

Analysis

In order to award damages, I must apply the 4 part test:

- The applicant must prove the damage;
- The applicant must prove that the respondent violated the *Residential Tenancy Act* or tenancy agreement which resulted in the loss or damage;
- The applicant must prove the value of the loss or damage; and
- The applicant must prove what steps had been taken to mitigate the loss or damage.

Due to the condition of the unit, I decline to make any award with respect to the hard-wood floors. I accept the evidence of the tenant that the floor was not in perfect condition when he moved in, whether or not it is contained in either inspection report. The 2 condition inspection reports, the one for this tenant and the one for the previous tenant both have move-out comments beside the living room floor. The comments are not readable, however, it is clear from the evidence that the landlord did not return all of the security deposit to the previous tenant, and that the landlord did claim damages from that tenant.

I also find that the move-in condition inspection report that was prepared by the landlord was not thorough, and by the actions of the tenant, additional damages were noted in another condition inspection report, for which the landlord agreed by signing the report.

Further, the landlord has failed to prove the amounts he is claiming. No receipts were provided to prove the amounts. His own estimates on a list are not proof.

Conclusion

The landlord's application is hereby dismissed in its entirety without leave to reapply. I find that the landlord does have a forwarding address for the tenant, and I order the landlord comply with Section 38 of the *Residential Tenancy Act* as it relates to the security deposit paid by the tenant.

The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 04, 2010.

Dispute Resolution Officer