

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, two witnesses and the landlord.

Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for repairs completed in the rental unit, pursuant to sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted the following documents into evidence:

- An invoice addressed to the landlord from the tenant for cleaning and painting of the rental unit dated December 17, 2009 for a total amount of \$1,300.00 and includes \$160.00 for 8 hours cleaning; \$720.00 for 24 hours of painting; and \$420.00 for 14 days of unsuitable living compensation for rent and hydro;
- A summary of events dated December 17, 2009 outlining the tenants account for the viewing of the rental property; her understanding of the agreement she had with the landlord regarding painting and cleaning and the security deposit; confirming that she did not go through the conditions with the landlord; and additional items during the first couple of weeks during the tenancy;
- A letter from the tenant's friend dated December 16, 2009 confirming the condition of the rental unit and her understanding of the tenant's explanation of the agreement with the landlord;
- A letter dated November 27, 2009 from the tenant to the landlord where the tenant states that the purpose of the letter is to substitute for a condition inspection report and to signal her objectives regarding the end of her tenancy;
- A copy of a Condition Inspection Report completed and signed by both parties for both move in and move out. Despite the tenant's signature stating she agrees with the Condition Report of the rental unit at the start of the tenancy, she has hand written in the section for the end of the tenancy that she does not agree with the condition of the rental unit at the time of move in; and
- 5 photographs of the ceiling of the rental unit at the start of the tenancy.

The landlord has submitted into evidence the following documents:

- A summary of events outlining the landlord's understanding of the agreement the parties had relating to the painting, cleaning and security deposit; including commenting that the tenant did not raise any of the issues or other compensation during the tenancy; noting the tenant provided verbal notice to vacate on November 3, 2010 effective November 30, 2010; and an offer to settle for \$150.00;
- A copy of a tenancy agreement signed by the parties on March 1, 2009 for a month to month tenancy beginning on March 1, 2009 for a monthly rent in the amount of \$800.00 due on the 31st of the month, and noting that no security deposit was paid by the tenant. The tenancy ended on November 30, 2009; and
- A copy of an agreement signed by the parties outlining that the tenant did not provide a "damage" deposit; confirming the rental unit was painted by the landlord and the tenant between March 1, 2009 and March 6, 2009; and that the "damage" deposit will not be returned to the tenant at the end of the tenancy and that the tenant gives up any and all claims against the landlord and for return of the security deposit.

The parties did not dispute that there was an odour of cigarette smoke in the rental unit at the start of the tenancy and both agreed that painting the rental unit would eliminated the odour. The parties disagreed about how strong the odour was and the rest of the condition of the rental unit.

The landlord testified that the previous tenants had cleaned up the rental unit somewhat but that they had just moved out and this tenant moved in. Although the landlord was unclear in his testimony on whether the tenants left at 12:00 noon the day before or the day this tenant moved in.

The tenant testified that the fridge and stove required immediate replacement as the fridge froze all of her fresh food and the stove did not work. The landlord testified the fridge and stove were fine but that he just updated them. Both agreed that these appliances were replaced shortly after the painting was complete in the rental unit.

Both of the tenant's witnesses were able to confirm that they felt the odour of cigarette smoke was extreme. One of the witnesses testified that on her first visit to the rental unit was after the odour reducing primer had been applied and noted that the smell was still very strong. Neither of the witnesses was able to provide much insight into the condition of the rest of the rental unit.

The tenant contended that the Condition Inspection Report submitted does not reflect the condition of the rental unit at the time she took possession and that she did not complete an inspection with the landlord but that he had her sign the last page of the report only. She further stated that she was unable to live in the rental unit for 4-5 nights during the start of the tenancy.

The landlord testified that a move in inspection was completed and that regardless, the tenant did sign the Condition Inspection Report and cannot now state that she

disagreed with the report. In addition the landlord noted that regardless of whether the tenant agrees or not that she did sign the document and he should not be held responsible if she did not read or understand what she was signing.

While the tenant confirms that she did sign the agreement with the landlord that states he would waive a security deposit and that the tenant waives her right to claim a return of security deposit in consideration for her painting the rental unit, she testified that she understood the agreement to be that he would return to her the equivalent of a security deposit in the amount of \$400.00 at the end of her tenancy.

The landlord testified that this why he specifically made a written agreement so that there would be no dispute as to the terms of their agreement. He noted that he made no subsequent agreement with the tenant. Both parties acknowledged the landlord had offered the tenant \$150.00 at the end of the tenancy when the dispute arose at the end of the tenancy and the tenant declined the offer.

Analysis

In order to substantiate a monetary claim for compensation for damage or loss under the Act, an applicant must establish:

1. A loss or damage exists;
2. The loss or damage results from a violation of the Act;
3. The value of the damage or loss; and
4. The applicant has taken steps to mitigate the damage or loss.

Neither witness was able to confirm the condition of the rental unit other than the smoke odour and in light of a signed Condition Inspection Report indicating the rental unit was in good condition, I find the tenant has failed to establish that a loss or damage exists for cleaning the rental unit. I dismiss this portion of the tenant's application.

In relation to the painting, as the landlord and tenant signed an agreement stipulating that the landlord would forego collecting a security deposit and the tenant agreed to not claim a security deposit, I find the landlord and tenant had a contract under the *Act* and subsequently there has been no violation of the *Act*. I dismiss this portion of the tenant's claim.

Section 32 of the Act states a landlord must provide a maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In relation to the tenant's claim for living outside of the rental unit at the start of the tenancy, I am satisfied that by his own acknowledgement regarding the rental unit having a cigarette smoke odour and agreeing to the completion of painting including using an odour reducing primer, the landlord failed to comply with Section 32.

As a result, I find the tenant is entitled a per diem reduction in the value of the tenancy for 5 days that she was unable to stay in the rental unit, in the amount of \$26.67 per day or a total of \$133.35.

Conclusion

Based on the findings above, I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$133.35**.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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 19, 2010.

Dispute Resolution Officer