

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, for damage to the unit, site or property, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants for the cost of this application.

The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The Respondent also had an interpreter who was affirmed to well and truly interpret the evidence and what was said from the English language to the Chinese language and from the Chinese language to the English language to the best of her ability. Witnesses also gave affirmed testimony for both the applicant and the respondent, and were subject to cross examination by the parties.

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 unit, site or property?

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

Background and Evidence

This month-to-month tenancy began on February 1, 2009 and ended on September 28, 2009. Rent in the amount of \$840.00 per month was payable on the 1st day of each month. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$420.00.

The landlord's agent testified that a letter dated September 20, 2009 was received by the landlord on September 23, 2009, which was left in the mail box where tenants

usually leave their rent cheques. A copy of that note was provided as evidence in advance of the hearing which states that the tenant intended to move out on September 27, 2009.

The landlord is claiming unpaid rent for the month of October, 2009 as well as \$63.00 for carpet cleaning and general cleaning charges in the amount of \$240.00. The landlord provided a receipt from Easy Care Restoration Ltd. in the amount of \$63.00 for carpet cleaning. The invoice provided for the general cleaning was also received prior to the hearing, which shows payment via payroll to the witness in the amount of \$240.00.

The tenant testified that after giving her notice, the manager would not accept back the key for the unit until she paid the rent for the month of October, 2009. She stated that she had complained about noise coming from the heating system, but it didn't get fixed, so she moved out. She agrees with the \$63.00 bill for carpet cleaning and \$30.00 for drapery cleaning, but does not agree with the remaining claims because she cleaned the apartment before she left.

The landlord's agent argues that the key was never refused, and provided a witness, the resident manager, who testified that after he received the notice from the tenant, he had a conversation with her during which he gave her an Acknowledgment of Notice to Vacate. He stated that she did not fill out the form or return it. She did, however, keep in touch with him; she was cooperative to showing the unit. The witness also testified that he had explained to the tenant that because a full month notice was not given she would be charged for rent for October. They also spoke about cleaning the unit upon vacating; that she could leave and have it cleaned and deducted from the security deposit or clean it herself and he gave her a checklist to follow for cleaning.

The witness further testified that on September 28, 2009 the unit was shown to prospective tenants, and at that time some of the tenant's belongings were still in the unit. He called the tenant about the condition inspection report, told her there was still cleaning to do and wanted to book the inspection. The tenant replied that she would call back to book the inspection. On September 30, 2009 the witness called again and

left a message on the tenant's voice mail. He did not hear from her, so he called again later that day, spoke to the tenant, and she again promised to call back to book the inspection. He had offered to do it at 12:00, but the tenant stated she was unavailable. The landlord replied that he did not have renters yet, so another day would be fine. On October 2, 2009, the witness called the tenant again to book the inspection and return the key. She replied that she would show up to give back the keys but didn't know when. Later that day the keys were found in the mail box. On October 4, 2009, the tenant left a message on the landlord's voice mail box stating that she was not going to return to do the condition inspection. The landlord completed the inspection without the tenant present.

The landlord's agent testified that the following items required attention:

- Windows and mirrors were not cleaned
- Light fixtures were not cleaned
- Appliances were very greasy and elements were not wiped
- Counters were stained and not wiped
- The balcony had not been swept
- Bathroom counter and toilet were not cleaned
- Floors were not mopped or swept
- Carpets had not been vacuumed
- Pots, pans, food wrap, utensils, laundry detergent and a table were left in the unit
- A blanket and towel were left in the closet
- Cleaner and rags were left in the bathroom

The tenant testified that she and friends cleaned the apartment, and she does not recall using a storage space and feels the damages claimed by the landlord for cleaning is inflated. The witness for the tenant also testified that he and his wife helped with the cleaning. The landlord's witness testified that it took him and his mother about 13 hours, and they kept the table in storage.

The landlord's agent also testified that they attempted to re-rent the unit as soon as they knew the tenant was moving out. A sign was placed in the lawn and the unit was shown to perspective renters. The unit was re-rented on November 7, 2009.

Analysis

Firstly, dealing with the claim for rent for the month of October, 2009, I refer to Section 26 (1) of the *Residential Tenancy Act*:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant did not have a right under the *Act* to deduct any portion of the rent.

Further, Section 45 (1) of the *Residential Tenancy Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I must therefore find that the tenant did not give an appropriate notice to the landlord of her intention to vacate the unit as required under the *Act*. The landlord is entitled to rent in the amount of \$840.00 for the month of October, 2009.

As for the damage claims, I find that the landlord attempted to mitigate the damages by contacting the tenant on numerous occasions to complete the condition inspection. Had the tenant attended to do that condition inspection, any concerns of the landlord may have been rectified by the tenant and no dispute for damages would exist. However, I

must also apply the 4 part test for damages, in which the burden of proof lies on the landlord to prove:

- a) that the damage or loss exists;
- b) that the damage or loss resulted from a breach of the Act or tenancy agreement;
- c) the amount;
- d) the attempts that were made by the claiming party to mitigate, or reduce the loss or damage claimed.

The landlord provided the move-in/move-out condition inspection report, and in that report, which the tenant chose not to be a party to, the landlord has satisfied all of the elements except the amount. The invoice provided by the landlord seems quite inflated for a vacant suite. It shows that 5 hours were spent cleaning the stove, fridge and kitchen. It also shows that 2 hours were spent cleaning closets in which a blanket and towel had been left, and 2 hours for cleaning a storage area. The landlord testified that the bathroom required cleaning the toilet, light fixtures and wiping the counter, and the invoice shows 3 hours. I cannot find that 3 hours was required for such cleaning. Each hour shows a price of \$15.00. I also note that the invoice shows payment to the resident manager, who is also the son of the landlord's agent.

I find that 3 hours cleaning the kitchen and appliances is fair in the circumstances. I also find that 1 hour for cleaning closets and a storage area, if one was used by the tenant, is fair in the circumstances. One half hour should have been sufficient to do the remaining cleaning in the bathroom. I find that 6.5 hours should have been ample time to do the cleaning that the landlord's agent and her son testified was done. The landlord's agents may have spent 14 hours cleaning, and they may have wanted to do extra cleaning for new tenants, but the *Act* requires that the tenant is required to leave the unit in a reasonable condition, and the tenant testified that the unit was left reasonably clean.

Conclusion

For the reasons stated above, I find that the landlord has established a claim for \$840.00 in unpaid rent for the month of October, 2009. The landlord has also established a claim for \$97.50 in general damages for cleaning, \$30.00 for drapery cleaning and \$63.00 for carpet cleaning. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$420.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$660.50. 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 17, 2010.

Dispute Resolution Officer