

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was convened by way of conference call on this date to deal with the landlord's application for a monetary order for unpaid rent or utilities, for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 26, 2010, the respondent did not attend the hearing.

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?

Background and Evidence

This fixed term tenancy began on May 1, 2009 in this unit however the tenant did reside in another unit in the building prior, and the fixed term was to expire on April 30, 2010. A copy of the tenancy agreement was provided in advance of the hearing. Rent in the amount of \$1,200.00 was due on the 1st day of each month. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$600.00.

The landlord's agent testified that the tenant got married in August, 2009. He further testified that the tenancy agreement was with this tenant alone, who left the unit in early October, 2009 after a physical altercation with his wife. The police were called, and the tenant did not return to the unit. The tenant's wife left a message on the landlord's message machine in early October, 2009 stating that she would not have the money to continue to pay rent, and she moved out on or about October 31, 2009 after dropping off the keys and garage door opener to the office. The agent testified that he was not at the office at the time, or he would have given her an opportunity to complete a move-out

condition inspection report. She left no forwarding address, and the landlord had no forwarding address for the tenant named in the tenancy agreement. He further testified that the tenant had abandoned the unit as well as his wife and children, and no notice was given by the tenant to end the tenancy.

When questioned about service of the notice of hearing documents, the landlord's agent testified that the tenant used to work for the same company, and had given the address to the company as an address to send his T-4 slip to, and he further stated that he used that address in Kelowna, but also had an address for the tenant's mother, and he is not sure which address is for his mother.

The landlord is claiming rental arrears for the month of November, 2009, and he testified that the unit was re-rented on December 1, 2009 for the same amount of rent.

He further testified that the tenants had placed hot glue from a glue gun on the walls in the shape of the sun, with lines going out from the circle, and the children's names glued in the centre of the sun. The glue caused excessive time to repair the drywall and repaint. Further, he stated that many posters were attached to the walls with thumb tacks, which caused excessive amounts of time filling in the holes before repainting the unit. The tenants had also left reflective stars on the ceilings of the children's bedrooms, but the landlord did not remove them or make any repairs with respect to those reflectors. The landlord is claiming \$200.00 for drywall repair, \$900.00 for repainting and \$125.00 for paint and supplies.

The landlord's agent also testified that the carpet had been cleaned before this tenant moved in, and he had to hire another carpet cleaner after the tenant left, for which he paid \$160.00. Also, he hired a cleaner to clean the stove, kitchen and bathrooms, which had not been cleaned by the tenants, and paid the cleaners \$100.00.

After serving the notice of hearing documents, the landlord's agent testified that the tenant left a message on the landlord's machine stating that the landlord "would not get one red cent out of him."

The landlord provided a Condition Inspection Report in advance of the hearing that shows that both parties signed the report in May, 2009, and that the move-out portion was completed and signed by the landlord alone in November, 2009.

At the conclusion of the hearing, the landlord was given the opportunity to provide receipts for his claims, but he declined to do that.

Analysis

The *Residential Tenancy Act* states that the landlord may make the report and sign it without the tenant if the tenant has abandoned the rental unit. I find that the tenancy was for a fixed term to expire on April 30, 2010, and that the tenant moved out early, without notice, and had abandoned the unit. Because the landlord was able to re-rent the unit for December 1, 2009, I find that the tenant is responsible for a loss in revenue for the landlord, and the tenant owes \$1,200.00 for rent for the month of November, 2009.

The move-out condition inspection report shows that some cleaning was required. The report also shows that the glue gun damage did not exist when the tenants moved in and did exist after the tenants had moved out. However, the landlord has not provided sufficient evidence to substantiate the claim, in that he has failed to provide the receipts.

In order to be successful with a claim for damages, the burden of proof lies on the person claiming to prove:

1. That the damage exists;
2. That the damage claim is a result of a breach of the *Act* or the tenancy agreement by the other party;
3. The amount;
4. What efforts the claiming party made to mitigate the damages.

Conclusion

I find that the landlord has established a claim for \$1,200.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$600.00 in partial satisfaction of the claim and I grant

the landlord an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The application by the landlord for damages is hereby dismissed without leave to reapply.

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: June 4, 2010.

Dispute Resolution Officer