

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, OPR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for unpaid rent or utilities; and for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, 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.

At the outset of the hearing, the agent for the landlord stated that the tenants vacated the unit on or about February 5, 2010, and therefore the application for an Order of Possession is withdrawn. As a result, I hereby dismiss that portion of the landlords' claim without leave to reapply.

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

Issues(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for damage to the unit, site or property?

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

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy began on November 15, 2009 as a fixed term tenancy with an expiry date of November 30, 2010. Rent in the amount of \$4,000.00 was due on the 1st day of each month. A security deposit in the amount of \$2,000.00 was paid on November 15, 2009.

The landlord's agent further testified that she went to the unit on February 5, 2010 with the intention of serving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the tenants' rent cheque for the month of February, 2010 had been returned N.S.F. At that time she discovered a moving truck at the residence but the tenants were no longer there. She left the notice and a letter requesting that the tenants contact the landlords to schedule the move-out condition inspection report, as well as a notice to enter the unit. On February 11, 2010, the tenants had still not contacted the landlords, so she entered the suite to conduct the inspection. She stated that she found personal belongings of the tenants and garbage in the unit, damage, and the unit required cleaning before it could again be rented. She took photographs of the unit, which were provided as evidence in advance of the hearing.

The landlord's agent testified that the unit was re-rented on April 29, 2010 however she was not able to re-rent it for the same amount. She provided copies of advertisements on the company's own website as well as Craig's List. The evidence shows that the rental price was reduced from \$4,000.00 per month to \$3,800.00 per month. The landlord's agent also provided toured accommodation advertisements for February and April, 2010, which all show that the rental price was \$3,800.00 per month however the other advertisements clearly show \$4,000.00.

The landlord is claiming a total of \$14,651.22 in damages and provided a break-down of that claim, \$1,400.00 of which is the rent difference between what the tenant was obligated to pay under the fixed term tenancy agreement and the amount they were able to rent the unit for once the suite was re-rented. The claim also includes \$12,000.00 in unpaid rent for February, March and April. A credit shows in the written break-down in the amount of \$253.34 for April 29 and 30.

The other items claimed by the landlord are:

- \$378.00 for removal of personal belongings and garbage
- \$341.68 for repairs to damage
- \$168.00 for carpet cleaning
- \$336.00 for deep cleaning
- \$155.88 for replacement of fobs and keys
- \$25.00 for an NSF Cheque charge
- \$100.00 for the cost of filing this application

The landlord's agent provided invoices and receipts for work that she testified had been done in the unit:

- \$341.68 invoice describes replacing the toilet tank cover, bulbs and halogen heat lamp, toilet paper holder and patching and sanding a bedroom wall;
- \$168.00 invoice for carpet cleaning;, another for
- \$336.00 for cleaning,
- \$5.88 for replacement keys,
- \$150.00 for purchase of 2 fobs
- \$378.00 invoice for removal of personal items and garbage

A copy of the returned cheque for February's rent was also provided.

The landlord provided a copy of the move-in/move-out condition inspection report which shows scuffs on the walls, lights out, cracked toilet top, toilet paper holder and towel bar damaged and removed from the wall, stains in the carpets and personal belongings and 4 pieces of furniture left behind at the end of the tenancy.

The tenant testified that she lives in Calgary, Alberta and she never lived in the unit. She and her estranged husband parted ways in May, 2009. They had previously rented a suite from this company, and she stated that her husband forged her signature on this tenancy agreement, presumably because her credit rating was better than his, and he would be more successful with his application to rent this unit if her name was on the tenancy agreement. She also provided, in advance of the hearing, a letter from her estranged husband admitting that he had forged her signature on the tenancy agreement, that she had never lived in the unit and that they had been divorced for a year. A copy of the tenancy agreement from the previous rental was provided in advance of the hearing by the landlord, which the tenant testified does contain her

signature, but submits that the 2 signatures are not the same. The landlord argues that the signatures are close in appearance, and that each time a person signs a document, their signature varies slightly in appearance.

Analysis

I have compared the signatures of the named female tenant on the tenancy agreements and must agree with the tenant that they do not appear to be the same. I agree that there is more than a slight difference as suggested by the landlord. Further, in the emails provided, the husband tenant admits to forging his estranged wife's signature on the tenancy agreement.

I find that the landlord has established a claim against the male tenant only for \$12,000.00 in unpaid rent under the fixed term tenancy agreement, less \$253.34 for the 2 days of rental collected by the new tenants. I further find that the \$1,400.00 claim for loss of revenue, being the rent difference between what the tenant was obligated to pay under the fixed term tenancy agreement and the amount they were able to rent the unit for once the suite was re-rented, has been established.

I also accept the landlord's evidence with respect to the damage claims. The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The application as against the female tenant is dismissed in its entirety without leave to reapply. The application as against the male tenant is hereby allowed.

I order that the landlord retain the deposit and interest of \$2,000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$12,651.22. 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 21, 2010.

Dispute Resolution Officer