

## **DECISION**

Dispute Codes      MNR, MNSD, OPR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been personally served with the application for dispute resolution and notice of hearing on April 19, the tenant did not participate in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed testimony is as follows. The tenant took and retained possession under a series of tenancy agreements in which the tenant and one other party were named as co-tenants. The terms of each tenancy agreement always included rent in the amount of \$800.00 per month and a \$400.00 security deposit. The tenancy began on October 1, 2009 under a tenancy agreement with the tenant and her roommate C.R. The landlord collected \$200.00 from each of these parties as a security deposit and collected \$400.00 in rent from each of the parties. During the time C.R. occupied the unit, a window was broken and the tenant and C.R. agreed that the cost of repairing the window would be deducted from their security deposits. C.R. vacated the unit at some point and her portion of the security deposit less a \$67.61 charge for the window was returned to her. On January 1 the tenant acquired a new roommate, H.H. and on January 12 the parties formalized the tenancy by drawing up a new tenancy agreement with the same terms as the first agreement. H.H. paid a \$200.00 security

deposit to the landlord and began paying \$400.00 to the landlord as his part of the rent. H.H. vacated the unit on March 31 and his \$200.00 security deposit was repaid to him.

The tenant paid \$400.00 for rent in April and on April 7 the landlord served the tenant with a notice to end tenancy for unpaid rent (the "Notice"), claiming that the tenant owed \$492.61. At the hearing the landlord testified that \$400.00 of the amount listed on the Notice was for H.H.'s portion of the rent and the remaining \$92.61 was for the tenant's part of the window which was broken under the first tenancy agreement in which C.R. was her roommate. The landlord could not explain why \$92.61 was charged for the window rather than the \$67.61 that C.R. had been charged and represented exactly one half of the replacement cost of the window.

On April 15 the landlord entered into a new tenancy agreement with the tenant alone named as the sole tenant. Again, the terms of the tenancy agreement required \$800.00 in rent and a \$400.00 security deposit. In May the tenant again paid \$400.00 in rent. In the landlord's application which was served on the tenant, the landlord claims \$825.00 which is itemized as \$425.00 for April's rent, \$267.61 for a security deposit and a further \$132.39 for a security deposit. The landlord also seeks an order of possession.

### Analysis

First addressing the claim for an order of possession, the landlord chose to enter into another tenancy agreement with the tenant just 8 days after having issued the Notice. I find that the new tenancy agreement supersedes the Notice and find that by establishing a new tenancy, the landlord lost the ability to end the old tenancy. Accordingly I dismiss the claim for an order of possession. The Notice is set aside and of no force or effect. I note that the landlord also alleged that the tenant was disturbing other tenants. The landlord has not issued a notice to end the tenancy for this disturbance and for this reason I declined to hear any evidence, either from the landlord or from the witness, on this issue.

As for the monetary claim, although the landlord claimed that the tenant was a co-tenant with her roommates and that they were jointly and severally liable, the actions of the

landlord indicate that the tenants were not jointly responsible for each other's debts. The landlord collected rent separately from the tenants, collected separate security deposits from each of the tenants and returned security deposits to tenants as they left. If the tenant were truly a co-tenant with the other parties named on the various tenancy agreements, no security deposits would have been returned to the parties who vacated the unit until the tenant had also vacated. The landlord testified that she returned H.H.'s security deposit because she did not want to make him responsible for the tenant's failure to pay rent or for any damage the tenant may cause. However, the landlord seeks to make the tenant responsible for the portion of rent that H.H. was supposed to pay. I find that even though the tenancy agreements appear to create a co-tenancy between the parties named on the agreements, the landlord did not expect the tenants to be jointly and severally liable and therefore the tenancies are severable. I find that up until April 15, the tenant was only responsible to pay \$400.00 per month in rent. The tenant paid \$400.00 for the month of April. The tenancy agreement established on April 15 creates an obligation for the tenant to pay \$800.00 per month in rent. I find that because the tenant paid \$400.00 in rent for the month of April under the previous agreement, she cannot be held responsible for more than \$400.00 for that month. I find that beginning on May 1, the tenant was obligated to pay \$800.00 per month in rent. In her application for dispute resolution, the landlord did not make a claim for unpaid rent in May, so no award is given for any portion of the rent that was unpaid for that month.

The landlord seeks an award for the amount of the security deposit she claims that the tenant owes. In her application for dispute resolution the landlord claimed that the \$67.61 cost of the window was deducted from the \$200.00 security deposit that the tenant originally paid but at the hearing the landlord testified that the deduction was not made. The landlord seeks an award for the price of the window as well as for an additional security deposit that the tenant was required to pay under the tenancy agreement dated April 15. The landlord's testimony at the hearing was contradictory and unclear and several times during the hearing the landlord stated that she was confused. Because of the inconsistencies and contradictions in the landlord's testimony, I am uncertain as to whether the tenant had given the landlord written permission to deduct the cost of the window from her security deposit or whether the

landlord had arbitrarily decided to do this. Because I am concerned that the landlord may have written permission for a deduction from the security deposit and because the landlord appears to have taken this position up until the time the hearing commenced, I find it appropriate to permit the landlord to retain \$67.61 from the security deposit held on behalf of the tenant. I decline to grant the landlord an award for the amount of the security deposit which they claim the tenant is obligated to pay. The landlord is responsible to collect the full amount of the security deposit prior to the time the tenant takes occupancy of the rental unit. If the landlord fails to do so, the Act permits the landlord to issue a one month notice to end tenancy for failure to pay the security deposit within 30 days of the date it is due under the terms of the tenancy agreement.

### Conclusion

The claim is dismissed in its entirety.

Dated: May 05, 2010

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