

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and his agent and the female tenant.

The landlord had provided confirmation of service of hearing documents to both tenants, who now live at separate addresses, via registered mail. In the tracking documentation submitted by the landlord, the landlord has confirmed the mail tenant received the documents under his signature.

I am satisfied that both tenants were sufficiently served in accordance with the *Residential Tenancy Act (Act)*.

At the outset of the hearing the landlord noted he wished to amend the monetary claim by \$111.74 from \$1,792.85 to \$1,681.11 resulting from a review of the tenant's account and finding the a rent increase was issued one month early in 2008 and receipt of a hydro credit for the tenant's account. As this amendment is in the tenant's favour, I find the tenant is not prejudiced by this amendment and therefore accept the amendment.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for to a mutually agreed upon tenant liability based on the move out inspection report; for additional repairs not noted in the condition inspection report and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 35, 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a residential tenancy agreement signed by the parties on June 5, 2007 for a 1 year fixed term tenancy beginning on July 1, 2007 and converted to a month to month tenancy on July 1, 2009 for monthly rent at the end of the tenancy of \$1,340.00 due on the 1st of each month, a security deposit of \$647.50 and a pet damage deposit of \$100.00 were both paid on June 5, 2007;
- A copy of a condition inspection report completed both at move in (June 28, 2007) and at move out (November 29, 2010) noting the tenants agreed the landlord was owed \$2,262.38 for unpaid rent; water utilities; carpet cleaning; damage repair/replacement; heating oil and heating oil top up and that the tenants agreed to deduct the security and pet damage deposits and interest held in the amount of \$764.53 against this debt leaving a balance owing of \$1,497.85;
- Copies of receipts from the landlord confirming the oil tank was full and the carpets had been cleaned at the start of the tenancy;
- A copy of a notice of rent increase for June 1, 2008 increasing the rent to \$1,340.00;
- A copy of the tenants' Notice to End Tenancy dated November 1, 2009 with an effective date of December 31, 2009;
- A copy of the landlord's posting advertising the rental unit beginning on November 2, 2009 showing an availability date of January 1, 2010 for a rent of \$1,495.00;
- A copy of an undated letter from the landlord to the tenants requesting settlement of the amount agreed to and providing the tenants with the notice of hearing documents;
- A copy of the water utility bill; invoice and negotiated cheque from the landlord showing payment of the heating oil account; invoice and negotiated cheque from the landlord showing payment of the heating oil top up;
- A copy of a receipt for carpet cleaning dated November 29, 2009 in the amount of \$315.00; and
- Copies of receipts from various suppliers for door hardware for repairs to closet, interior and entry doors as well as light bulbs and batteries for the smoke alarms; and other supplies.

The landlord testified that the amount of the monetary claim on his Application differed from the amount agreed to by the tenant on the move out condition inspection report because after it had been completed they noted that they needed to get some additional supplies to make repairs to the closet, interior and entry doors that the tenants had removed.

The difference noted was \$295.00 and included charges for a new bedroom door; closet door hardware; labour for repair and hanging 4 closet doors on 2 closets; rehangng two interior doors and one exterior door; and the cost of filing an application for this dispute.

The tenant contends that these issues were not noted at the time of the move out inspection report or at the time she came back later to sign the section of the inspection report agreeing to the amount owed to the landlord on December 8, 2010. The tenant also noted that she felt the labour to complete in 8 hours was excessive.

The tenant also contends that despite her agreement that they owed rent for the month of December, 2009 she felt the landlord did not take sufficient steps to mitigate lost rent for the month of December 2009. The tenant testified that she advised the landlord by mid November that she would be moving out on November 20, 2009, allowing the landlord to modify their advertisement to show availability for December, 2009.

The landlord testified that they did modify their advertisement but did not submit a copy into evidence. The landlord also stated that they felt they could not rent earlier to a new tenant because they still had a tenancy with these tenants and the male tenant had left some belongings behind that they could not dispose of.

Analysis

In relation to the landlord's request for a monetary order for the agreed to amount owing from the tenant's to the landlord, I am satisfied the tenant agreed to this amount and therefore I grant this portion of the landlord's application, less the amended reduction of \$117.74 as noted above.

While the tenant has provided sufficient testimony to consider the landlord may have failed to sufficiently mitigate any lost income by stepping up their advertising when the tenant informed the landlord of her leaving early, the parties had already entered into an agreement for that payment and I cannot interfere with the parties right to make independent and mutual agreements between themselves.

While I find the landlord costs for the door repairs and re-hanging to be reasonable, I am persuaded by the tenant's argument that the landlord had sufficient time to determine these costs prior to her signing the Security Deposit Statement on the move out inspection report and that this amount should have been included as part of that settlement. I therefore dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,435.38** comprised of \$2,262.38 previously mutually agreed debt from the tenant to the landlord less \$111.74 less \$765.26 security and pet damage deposit and interest held plus the \$50.00 fee paid by the landlord for this application.

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: June 02, 2010.

Dispute Resolution Officer