

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, for damages to the rental unit, site or property and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulation or tenancy agreement and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenant on or about February 24, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on June 01, 2009. The tenant disputes this and testifies the tenancy started on June 28, 2009. No written tenancy agreement is in place to confirm the exact start date of the tenancy.

The landlord states the tenant shared the trailer with her son and rent for the trailer was \$400.00 per month which the two tenants shared equally. The landlord states that her son moved out at the end of September, 2009 and the tenant reverted to paying the \$400.00 rent himself.

The landlord claims that on January 31, 2010 she saw a moving van at the trailer. She claims she went over with her husband to see what was going on. The landlord testifies that the tenants' friend and his girlfriend were loading stuff into the moving van. She states she spoke to the tenant, who told her that it was his friend, who had been staying with him, that was moving out and that he would be staying until the end of February, 2010. The landlord testifies that she wrote up a document dated January 31, 2010 that states that the tenant gave the landlord notice to end the tenancy on March 01, 2010. This document also states that the landlords observed "them" moving out and rent is to be paid of \$400.00 on or before February 01, 2010. The landlord claims that this document was signed by herself and the tenant. The landlord states she did not receive any prior notice to end the tenancy on January 31, 2010 from the tenant.

The landlord claims the tenant did not pay rent for February, 2010 and moved from the rental unit.

The landlord testifies that the rental unit was spotless before the tenant and her son moved in. After the tenant moved out she found a hole in the bedroom wall which had been taped over. The landlord claims she repaired this hole at a cost of \$150.00. The landlord claims she found a hole in one of the doors. She states she purchased a second hand door to replace the damaged door at a cost of \$100.00. The landlord claims the laminated flooring in the kitchen was damaged because the fridge leaked onto the floor and rotted the laminate flooring. The landlord claims the tenant damaged the flushing system in the toilet which was replaced at a cost of \$65.00. This system was replaced at a cost of \$60.00. The landlord also found holes in the ceiling tiles but has not yet replaced these.

The landlord also claims that the trailer was left in a filthy condition. She claims she had to clean the walls, floors, stove and fridge and clear wood from the basement. This work took 16 hours at \$10.00 per hour to a total of \$160.00.

The tenant disputes the landlords' claims. The tenant states that his share of the rent for the trailer was \$200.00 but when the landlords' son left the trailer around September 30, 2009 he started to pay the whole amount of the rent out of consideration to the landlord. The tenant claims the landlords son never really moved out as all his belongings were left in the trailer and

he did not give notice to the landlord to end the tenancy. The tenant claims that on December 30, 2009 he left a note tacked to the landlords' door giving notice to end the tenancy at the end of January, 2010, along with this he left an envelope with \$400.00 in cash for the rent for January, 2010. The tenant claims he moved from the trailer on January 31, 2010. The tenant disputes the landlords' evidence concerning the note the landlord has produced which she testifies was signed by the tenant. The tenant testifies that he did not sign this note and it is not his signature. The tenant has provided a copy of his driving licence to show his signature is different from the one on the landlords' letter.

The tenant also disputes the landlords' claims for damages. The tenant testifies that the trailer was fairly clean when he moved in one month after the landlords' son. He claims the hole in the wall was in the landlords' son bedroom and to his knowledge it was already there when he moved in. The tenant claims he found the door with a hole in it in the basement the door already had a hole in it. He cleaned it up and put it back on its hinges as he needed a door in the hall. The tenant claims that he had no knowledge that the fridge was leaking. He claims the fridge belonged to the landlord and there were no visible signs of leaking on the laminate flooring. The tenant claims the flushing lever on the toilet broke off and as this is just a piece of plastic it could be repaired for \$10.00.

The tenant claims that before he moved out he cleaned the trailer and removed all his belongings. The remaining belongings are the landlords' sons. The tenant claims that there was a wood burning stove in the basement which created smoke in the trailer and made the walls dirty it also turned the blinds yellow upstairs. The tenant claims that the wood that was left was for the landlord to use for the stove.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regard to the landlords claim for unpaid rent for February, 2010, I find the note the landlord has produced which states the tenant will end the tenancy on March 01, 2010 has a different signature to the tenants signature on his driving license and the tenant testifies that it is not his signature. When a landlords evidence is contradicted by the tenants the burden of proof falls on the landlord to prove that the tenant did sign this document. In this instance the landlord

has not provided any corroborating evidence to show that the tenant did sign this document and therefore I find the landlord has not met the burden of proof in this matter.

The tenant was given the opportunity to provide me with a copy of the one month's notice he alleges to have given the landlord on December 30, 2009 with his rent for January, 2010. It is my decision that it is likely that the tenant did give the landlord one months notice to end the tenancy as the landlord does not dispute that rent was paid for January, 2010. Consequently, I find the landlord is not entitled to recover rent for February, 2010 of \$400.00.

With regard to the landlords claim for damages to the rental unit and for money owed or compensation for damage or loss under the Act; I have applied a test used for damage or loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this matter the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages and compensation does not meet all of the components of the above test. The landlord did not do a move in or move out condition inspection at the start and end of the tenancy. Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether

the tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. In this instance the tenant disputes all the landlords' claims for damages; the landlord has provided some photographic evidence of damage to a wall, door and toilet and of logs stored on the property but nothing to prove that this was caused by the tenant. Consequently, I find the landlord has not submitted sufficient evidence to support her claim of \$635.00 for damages and cleaning.

As the landlord has been unsuccessful with her claim I find she must bear the cost of filing her own application.

Conclusion

The landlords' application is dismissed in its entirety, 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 03, 2010.

Dispute Resolution Officer