

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts: the tenancy began on or about May 15, 2009 and ended on December 15, 2009. Rent was set at \$1,400.00 per month. The tenant paid a \$700.00 security deposit and a \$200.00 key deposit. The tenancy was originally set to run for 6 ½ months, ending on November 30, 2009 after which it could continue on a month to month basis. In mid-November the tenant gave the landlord notice that he would be vacating the unit on December 15 and paid the landlord \$700.00 in rent for the month of December. During the tenancy the clothes dryer in the rental unit required repair and the landlord conducted the repair at a cost of \$201.60. At the end of the tenancy the parties completed a condition inspection report on which it was reported that there was no damage to the unit. The tenant signed the condition inspection report indicating that he agreed that the landlord could retain his \$900.00 security deposit. On or about December 18 the tenant gave the landlord his forwarding address and requested the return of the security deposit.

The landlord testified that she began to advertise the rental unit after the tenant moved out and was unable to re-rent the unit until February. The landlord claims \$700.00 in loss of income for the month of December. The tenant argued that he gave his notice

more than 30 days before December 15 and therefore the notice should have been effective on that date.

The landlord testified that the tenant was given specific instructions about the use of the dryer, which was just 3 years old at the start of the tenancy, and that his disregard for those instructions caused the dryer to malfunction, requiring repair. The tenant denied having been given any instructions regarding the use of the dryer but maintained that he did not misuse the dryer and faithfully cleaned the lint filter.

Analysis

First addressing the tenant's signature on the condition inspection report, I am satisfied that the tenant was unaware that he was signing the report in a spot that indicated that he was agreeing to deductions from his security deposit. There was no damage noted on the condition inspection report, nor were additional charges noted. I accept that there was no reason for the tenant to believe at that time that he owed anything to the landlord or that the landlord had cause to make a claim against the security deposit. The fact that three days later the tenant wrote to the landlord requesting the return of the deposit reinforces the position that he was unaware that he had permitted the landlord to keep the deposit. Further, there is no indication that the landlord was under the impression that she could keep the deposit as she made a claim for its return. I find that the tenant is not bound by his signature on the condition inspection report.

The tenant was obligated not to give 30 days notice to end the tenancy, but one full calendar month's notice. In other words, a notice to end the tenancy that was given to the landlord in the month of November could not have been effective earlier than December 31. However, even though the tenant gave inadequate notice, the landlord had an obligation to act reasonably to minimize her losses. The landlord was aware in mid-November that the tenant was vacating the rental unit on December 15 but chose not to begin advertising the unit until after he had vacated. I find that the landlord failed to act reasonably to minimize her losses as is required by section 7(2) of the Act and accordingly find that the landlord is barred from claiming lost income for December 16-31. I dismiss the landlord's claim for loss of income for that period.

The landlord bears the burden of proving that the actions of the tenant caused the dryer to malfunction. The landlord did not submit a copy of the invoice and there is no evidence to show that the repairman indicated that a misuse of the machine caused the malfunction rather than reasonable wear and tear. I find that the landlord has not met her burden of proof and accordingly I dismiss her claim for the cost of the dryer repair.

The landlord must also bear the cost of the filing fee paid to bring her application.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit
- unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that the tenant has not extinguished his right to the return of the deposit as he participated in the condition inspection of the unit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$900.00 security and key deposit. I grant the tenant a monetary order under section 67 for \$451.70. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed. The landlord is ordered to return the \$900.00 security and key deposit to the tenant forthwith.

Dated: June 01, 2010
