

DECISION

Dispute Codes MND, MNR, 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 in partial satisfaction of the claim. The landlord testified that she served with tenant with the application for dispute resolution and notice of hearing by registered mail on March 29. I accepted that the tenant had been served with these documents and the hearing proceeded in his absence.

The landlord submitted no documentary evidence in support of her claim. At the outset of the hearing I advised the landlord that in the absence of evidence to corroborate her oral testimony it may be difficult to prove some aspects of her claim. I gave the landlord the option of withdrawing her claim and bringing it again at a later date when she had documentary evidence in support. The landlord stated that she wished to proceed with the hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on October 1, 2008 at which time a \$500.00 security deposit was paid. Rent was set at \$1,000.00 per month. On or about December 5, 2009 the landlord discovered that the tenant's rent cheque for the month of December had been returned by the bank. The landlord went to the rental unit and discovered that the unit had been vacated. The tenant had left a few belongings in the unit as well as food in the refrigerator and had not cleaned the unit. The landlord cleaned the rental unit and testified that she was unable to advertise the unit for rent until cleaning had been completed. The landlord began advertising the unit in late December but not was able to find a new tenant until February 1. The tenant

had kept Terasen Gas and Shaw Cable utilities in his own name and had not paid those bills in addition to not paying a \$400.00 city utility bill. The landlord contacted each of these service providers and was told by Terasen Gas and Shaw Cable that she would not be held responsible for those bills. However, the city advised that the \$400.00 utility bill would be added to her taxes. Although the landlord originally made a claim to recover the cost of the Terasen Gas and Shaw Cable bills, she withdrew this claim at the hearing.

The landlord seeks an award for \$1,000.00 in unpaid rent for December, \$1,000.00 in loss of income for January, an order permitting her to retain the security deposit, \$500.00 for damage to the unit and the \$400.00 city utility bill.

Analysis

The landlord bears the burden of proving her claim on the balance of probabilities. Where the landlord testified to objective facts, I accept her undisputed testimony. I accept that the tenant's cheque for the month of December was returned to the landlord and that the tenant left some of his belongings behind and his food in the refrigerator. I find that the landlord is entitled to recover unpaid rent for December and I award the landlord \$1,000.00. The landlord provided her subjective opinion that the rental unit was not adequately cleaned, but provided no corroborating evidence to prove that additional cleaning was required. I find that the landlord has not proven on the balance of probabilities that the cleaning was required. I am not satisfied that the removal of a few of the tenant's belongings and the food from the refrigerator warrants a \$500.00 award. I dismiss the claim for damage to the rental unit.

The landlord provided her subjective opinion that the rental unit could not be advertised until it had been thoroughly cleaned. I am not satisfied that this is the case as I have not been given opportunity to view the rental unit and its state of uncleanness. The landlord had an obligation to act reasonably to minimize her losses. I find that the landlord has not proven that the rental unit was so unclean that advertising could not take place and find that the landlord made a choice to delay advertising which may have resulted in the delay in re-renting the unit. I find that the landlord has not proven that

she acted reasonably to minimize her losses and therefore dismiss her claim for loss of income for January.

I accept that the tenant failed to pay the utility bill for the rental unit, but I am not satisfied on the balance of probabilities that the bill in question is for the period ending December 31 or that the amount of the bill as claimed by the landlord is the actual amount that was invoiced by the city. I find that the landlord has not proven this claim and I dismiss the claim.

I find that the landlord is entitled to recover the \$50.00 paid to bring her application and I award the landlord \$50.00.

Conclusion

The landlord is awarded \$1,050.00 which represents \$1,000.00 in unpaid rent and \$50.00 for the filing fee. I order the landlord to retain the \$500.00 security deposit and the \$1.89 in interest which has accrued to the date of this judgment and I grant the landlord a monetary order under section 67 for the balance owing of \$548.11. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 21, 2010
