DECISION

Dispute Codes 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 and a cross-application by the tenants for the return of their security deposit. Both parties participated in the hearing.

The hearing was conducted by conference call. After the hearing had concluded I received a request from the landlord dated June 18 in which he requested an in person hearing. At the hearing the landlord did not request an in person hearing and his written request was made just one business day prior to the hearing despite the Rules of Procedure requiring that requests regarding rescheduling of a hearing to be made no later than 3 business days prior to a hearing. The landlord appeared to have no difficulty communicating during the hearing and I am satisfied that no miscarriage of justice has taken place.

At the hearing the landlord asked me to hear from his witness who he said would testify that the landlord had been in the hospital for 3 months in 2009. As the issue before me was with respect to unpaid rent, I determined that the witness' testimony was irrelevant and I denied the landlord's request to have his witness heard.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to the return of their security deposit?

Background and Evidence

The parties agreed that the tenancy began in 2007 at which time the tenant A.C. paid a $525.00 security deposit. Rent was set at $1,050.00 per month. A.C. moved out of the

rental unit in 2008 and the security deposit was returned to her in full but the tenant C.B. remained in the unit. Another tenant who was identified only as Kelly moved into the rental unit. C.B. testified that after A.C. moved out, he and Kelly each paid the landlord $263.00 to make up a $526.00 security deposit. The landlord acknowledged having received $263.00 from Kelly but denied having received any monies from C.B. At some point, Kelly vacated the rental unit and the landlord returned $263.00 to her. In or about March 2009, A.C. moved back into the rental unit. In his written submissions the landlord denied having received any security deposit from A.C. However, A.C. provided proof that she paid a $263.0 security deposit and at the hearing the landlord acknowledged that she had paid $263.00.

The tenants testified that at the beginning of February they gave the landlord verbal notice that they would be vacating the rental unit at the end of February and the parties agreed that on February 15 they gave the landlord written notice that they would be vacating the rental unit on March 15. The parties further agreed that the tenants posted advertisements and passed on responses to the landlord. The landlord testified that he was unable to re-rent the unit until April 1 and seeks to recover the income lost for the month of March. The tenants claimed that the landlord acted in a discriminatory manner and failed to consider prospective tenants who would have been qualified to rent the unit.

The parties agreed that at the beginning of the tenancy a condition inspection report was completed which indicated that there was no damage to the rental unit. The landlord testified that at the end of the tenancy a condition inspection report was completed and that the tenants refused to sign the report. The tenants testified that there was no inspection performed at the end of the tenancy and that the landlord did not give them the option of signing a condition inspection report. The landlord submitted a copy of the condition inspection report which states that the banister and stove were scratched. The tenants denied having damaged either the stove or the banister. The landlord testified that several tiles in the bathroom had to be repaired at the end of the tenancy and submitted a copy of an invoice from COIT showing that he paid $517.00 for that repair. The tenants claimed that any damage to the bathroom was

the result of reasonable wear and tear. In his application for dispute resolution, the landlord only claimed $300.00 for the cost of repairs.

Analysis

First addressing the issue of the landlord's claim for loss of income for March, the Act requires that any notice to end tenancy be given one full calendar month in advance and that it be in writing. I find that the tenant's verbal notice could not have been effective at all and that their notice on February 15 could not have taken effect until March 31. Although the landlord is obligated to act reasonably to mitigate his losses, in this case the tenants chose to advertise for the landlord. I am not satisfied that the landlord turned away qualified applicants. The tenants did not provide evidence from prospective tenants who were turned away for spurious reasons and I have no evidence showing that those who were turned away were indeed qualified. I find that the tenants must be held liable for rent for the month of March and I award the landlord $1,050.00.

I find that the tenants paid a $525.00 security deposit. I have arrived at this conclusion because it is clear that the landlord's record-keeping is not completely accurate as his written submissions conflict with his oral submissions at the hearing. The landlord completely denied having received any security deposit from A.C. until he was confronted with proof that she had indeed paid $263.00. I find it unlikely that the landlord would have permitted the tenant C.B. to remain in the rental unit without paying a security deposit as it is clear that he was careful to collect deposits from each tenant.

I find that the landlord has failed to prove that the tenants participated in the condition inspection of the unit at the end of the tenancy. The report generated at the time the tenancy began is very detailed, with the parties having gone through every room and noted the condition of each. The report generated by the end of the tenancy has no detail except for a comment that the banister and stove were scratched. I find it unlikely that the parties would fail to go through the unit in detail at the end of the tenancy when clearly attention to detail occurred at the beginning. I find that the landlord extinguished his claim against the security deposit and I find that the tenants are entitled to the return of the deposit. I award the tenants $525.00.

Even though the landlord may have extinguished his claim against the security deposit, there is nothing in the Act which prevents him from making a monetary claim against the tenants. I find that the landlord has failed to prove this claim. The tenants denied having scratched the banister and stove and the landlord provided no proof of this damage. The tenants claim that the damage to the bathroom was reasonable wear and tear and in the absence of a photograph showing the damage, there is no way for me to determine whether the damage was indeed the result of reasonable wear and tear. This part of the landlord's claim is dismissed.

As each of the parties has enjoyed success, I find it appropriate that they each bear the cost of their respective applications.

Conclusion

The landlord has been awarded $1,050.00 and the tenants have been awarded $525.00. Setting off these awards as against each other leaves a balance of $525.00 payable by the tenants to the landlord and I order the tenants to pay this amount to the landlord forthwith. I grant the landlord a monetary order under section 67 for $525.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 22, 2010