

DECISION

Dispute Codes:

MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover costs of damage to the rental unit and for unpaid rent and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. The landlord's application for unpaid rent actually seeks compensation under the Residential Tenancy Act (the Act) for loss of revenue for the month of December 2009 in the amount of \$1190. The landlord claim for damage is in respect to the cost of carpet cleaning in the amount of \$115.50.

I accept the landlord's evidence that despite the tenant(s) having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant(s) did not participate in the conference call hearing. The landlord provided testimony of the registered mail tracking numbers for 2 registered mail items.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed for carpet cleaning and the application fee?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claims?

Background and Evidence

The landlord's testimony is that the tenancy began on October 03, 2008, 2007 and ended November 30, 2009. Rent in the amount of \$1190 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a

security deposit from the tenant in the amount of \$575. The landlord received tenant's written notice to vacate (Notice to End) on November 02, 2009 for the tenant to vacate the rental unit November 30, 2009.

The landlord provided a copy of the tenant's Notice to End dated November 02, 2009. The landlord testified they are requesting rent for the month of December 2009 due to the tenant's late notice to vacate and the landlord's consequent inability to re-rent the unit due to the late Notice to End. The landlord testified their efforts to re-rent the unit for December 01, 2009 consisted of advertising the unit on several websites and local newspapers on the weekends, although the landlord did not provide supporting evidence in this regard. The landlord's testimony is that in this type of situation the landlord is not compelled to seek new tenants when late Notice to end is given by a tenant. Nonetheless, despite their efforts, the landlord testified they were only able to re-rent the unit for February 01, 2010 as the result of a, "tough market".

The landlord provided a copy of the tenancy agreement and a portion of the last page of the move out condition inspection report conducted on November 30, 2009. The landlord testified that the inspection report purports the tenant is in agreement with the landlord's claim of rent for December 2009, as well as the cost of carpet cleaning.

The landlord's monetary claim is for \$1305.50 comprising of rent for December 2009 of \$1190 and the carpet cleaning of \$157.50.

Analysis

The onus is on the landlord to prove their monetary claim for damage or loss.

Based on the undisputed testimony of the landlord, and on the preponderance of all the evidence before me, I find that despite the lack of a move in inspection report, and missing the move out inspection report contents respecting carpets, on the balance of probabilities, the landlord's claim for carpet cleaning is adequately supported by section 3 of the tenancy agreement – *Condition of the Premises*. The landlord is entitled to the cost for carpet cleaning in the amount of **\$115.50**.

The landlord is seeking compensation for loss of revenue due to the tenant's non-compliance with the Act, by giving a late Notice to End.

Section 7 of the Residential Tenancy Act states as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act. Rather, the landlord's testimony and evidence supports that their loss resulted from a lack of tenants interested in this rental property due to market conditions. The landlord has not met their burden of proving the tenant's non-compliance with the Act resulted in their loss. As a result, the portion of the landlord's claim for loss of revenue for December 2009 **is hereby dismissed** without leave to reapply.

The landlord is also entitled to partial recovery of their filing fee in the amount of **\$25**, for a total entitlement of **\$\$165.50**.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

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.

In this application the landlord requested the retention of the entire security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been partially dismissed without leave to reapply it is appropriate that I order the balance of the tenant's security deposit with interest returned to the tenant.

I order that the landlord retain \$165.50 from the security deposit and interest of \$577.12 being held by the landlord, and I grant the tenant an order under Section 67 of the Act for the balance due of **\$411.62**.

Conclusion

The tenant is being given a Monetary Order in the amount of **\$411.62**. If necessary, this order may be filed in the Small Claims Court 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*.