

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail to the Tenant on January 18, 2010. The Tenant confirmed receipt of the hearing package.

The Landlord, the Agent for the Tenant, and the Occupant appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Is the Landlord entitled to Orders under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the Landlord entered into a written tenancy agreement with an Agent for the Corporation who is listed as the Tenant on the agreement. The rental unit was occupied by an employee and his family who worked for the Corporation. The tenancy agreement was for a fixed term which began on September 1, 2008 and switch over to a month to month tenancy after August 31, 2009. Rent was payable on the first of each month in the amount of \$3,800.00 and a security deposit of \$1,900.00 was paid on August 1, 2008. Notice to end the tenancy was received by the Landlord's agent, his son, on or before November 30, 2009, to end the tenancy effective December 31, 2009. Move-in and move-out inspection reports were not completed with either the occupants or with an Agent of the Corporation.

The Landlord testified and referred to his documentary evidence which included, among other things, 12 photos, copies of letter and e-mail correspondence between the Landlord and Tenant, a copy of a move-in inspection report that was completed for a

different rental unit with Tenant's who have no relation or connection to this claim, a copy of the fixed term tenancy agreement, copies of utility invoices for the rental unit, estimates and invoices for work performed on the rental unit.

The Landlord advised that he was out of the country for a period over November 2009 and returned on December 14, 2009. The Landlord's son works as his agent during the Landlord's absences and assists the Landlord while he is in town. The Landlord confirmed that it was customary for the Tenant to prepay their rent and the Landlord had received \$3,800.00 for December 2009 and January 2010 in advance. The Tenant contacted the Landlord prior to December 31, 2009 to advise they had vacated the rental unit and it was during that telephone conversation that the Landlord requested the keys of the rental unit be returned to the Landlord in the mail. The Landlord has not returned the prepaid rent for January 2010 and he has not refunded the security deposit and interest.

The Landlord argued that he was not given the opportunity to meet with the occupants to conduct the move in or move out inspections and confirmed that he did not provide the occupants or Tenant with written notification of two dates and times to perform the inspections, nor did he provide the occupants or Tenant with a final written notice of when the inspections would take place. The Landlord testified that he has made no attempts to re-rent the unit and that he made the personal choice to hire professional contractors to fix up the rental unit prior to listing it for sale. The Landlord was not able to provide a date of when the property was listed for sale but he suspected it was sometime in early February 2010, after the renovations were completed.

The rental unit was built approximately 40 years ago, was purchased by the Landlord in 2008, and was occupied by tenants at the time the Landlord purchased the unit and continued as tenants in the unit until August 31, 2008. The house is approximately 2700 square feet with a main floor and partial basement. The previous tenants completed their cleaning and move out on September 1, 2008 when the Occupants took possession. The Landlord argued the rental unit was renovated by the previous owners however he did not have evidence to support when or what amount of work was done.

The Landlord is seeking a monetary order which is comprised of \$5,987.75 for painting the interior and exterior of the house plus carpet cleaning; plus \$518.99 to replace the kitchen sink and taps; and \$1,314.90 for unpaid utilities.

The Occupant testified that they first met the Landlord at the rental unit on September 1, 2008 and they noticed that the oven was still on self cleaning from the previous tenants. The Landlord gave them the keys to the house on September 3, 2008, after he had

some if the locks changed in the basement. The Occupant stated that the Landlord never requested to complete a move-in inspection form. They vacated the rental unit on December 18, 2009 and they called the Landlord on December 20, 2009 at which time the Landlord requested they return the keys in the mail.

The Occupant stated there were numerous nail holes, nails, marks, tears, and picture hooks left in and on the walls when they took possession of the house. The Landlord later told the Occupant that they could hang up as many pictures they wanted to in order to make the place feel like their home. She stated there was only one minor amount of damage caused to the rental unit and that was a small piece of drywall was knocked off the corner of the wall by the staircase when they were moving out.

The Agent testified and referred to his documentary evidence which included copies of email and letter correspondence between the Landlord and Tenant, and copies of invoices issued by the Landlord for rent and utilities.

The Agent argued that they paid the Landlord's invoice # 1013 in the amount of \$697.37 on June 1, 2009, which covered utilities for October 2008, January 2009, and April 2009. Their accounting person was then told not to pay any further invoices for utilities unless they were supported by copies of the actual utility bills. They never received copies of the actual bills until they received a copy of the Landlord's evidence. The Agent noted that the Landlord has failed to return the prepaid rent for January 2010 of \$3,800.00 and has not refunded their security deposit of \$1,900.00.

In closing the Landlord argued that throughout the tenancy the Occupants were very meticulous in keeping the unit maintained and had even requested the carpets be steam cleaned a second time at the onset of the tenancy which is why he could not believe the state of the rental unit when they vacated it.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The Landlord provided a written estimate for the wall repair, painting and carpet cleaning and was not able to provide evidence of when the work was actually performed. There is no evidence before me which substantiates the condition of the interior and exterior of the rental unit at the onset of the tenancy; therefore I cannot determine if any amount of damage was caused by the occupants that would exceed that of normal wear and tear. Based on the aforementioned I find the Landlord has failed to prove the test for damage and loss, as listed above and I dismiss their claim of \$5,987.75.

The evidence supports the kitchen sink was made of porcelain, was scratched, worn and stained by what appears to be several years of normal use. While the sink is cosmetically non-appealing there is no evidence before me that substantiates the sink or taps were damaged where they could not be used. There is no provision in the Act that provides that a Tenant is responsible for costs associated with items which become unappealing to look at after normal wear and tear changes their original appearance. As per the aforementioned I find that Landlord has failed to prove their claim and I hereby dismiss their claim of \$518.99.

The evidence supports the Tenant was responsible for the cost of utilities during the tenancy. I accept the testimony of the Tenant's Agent that the Landlord's invoice #1013 of \$697.37 was paid by the Tenant on June 1, 2009 and was payment of utilities for October 2008, January 2009, and April 2009. The Landlord is required to provide Tenants with a written demand for payment of utilities that is supported by copies of the actual utility bills. I find the Tenant did not receive the proper evidence to support the Landlord's previous requests for payments until the evidence for dispute resolution was received by the Tenant. There remains a balance owing for the utility invoice beginning

July 1, 2009 of \$252.37. I note that the Landlord did not submit the actual utility invoice for the billing period beginning October 1, 2009 therefore this amount will be dismissed. In accordance with section 67 of the Act, I hereby approve the Landlord's claim of \$252.37 for unpaid utilities.

The evidence supports the tenancy ended in accordance with section 45 of the Act; therefore the Landlord is not entitled to retain any portion of the prepaid rent for January 2010. I hereby order the Landlord to return the \$3,800.00 received in advance from the Tenant for January 2010 rent as listed below.

The Landlord has not been completely successful with his claim therefore I decline to award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit and prepaid rent as follows:

Unpaid Utilities	<u>\$252.37</u>
Subtotal (Monetary Order in favor of the Landlord)	\$252.37
Less Prepaid Rent held by the Landlord for January 2010	-3,800.00
Less Security Deposit of \$1,900.00 plus interest of \$11.91 from August 1, 2008 to July 2, 2010	-1,911.91
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$5,459.54

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$5,459.54**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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*.

Dated: July 02, 2010.

Dispute Resolution Officer