

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for damage to the unit, site or property, for an order to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing package by registered mail on June 7, 2010, the tenant did not attend the conference call hearing.

The landlords both attended and gave affirmed evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on August 1, 2006 and ended on June 30, 2009. Rent in the amount of \$725.00 was payable in advance on the 1st day of each month, and there are no rental arrears. The landlords collected a security deposit from the tenant on August 1, 2006 in the amount of \$362.50.

The landlords testified that they had served the tenant with a 1 Month Notice to End Tenancy for Cause, and the tenant moved out in accordance with that notice. They had inspected the suite on May 9, 2009 and advised the tenant of issues that needed attention prior to her vacating, and that they would be conducting the move-out

condition inspection on June 30, 2009 at 12:00 noon. The tenant was advised of the date and time again when she attended the landlord's residence to pay June's rent on June 1, 2009. She was again reminded of that date and time when the landlord saw the tenant on June 28, 2009. The tenant did not attend the move-out condition inspection, and the landlords completed the report in her absence.

The landlords testified that the tenant had removed almost all light bulbs both inside and outside of the residence. She had also changed the locks to the unit without the landlords' knowledge or consent, and was asked to put it back, but did not do so. The tenant did not complete a thorough cleaning, and the landlords hired a contractor to do the cleaning and repairs. A bleach stain was left on the living room carpet, and the carpet had to be replaced. Other repairs required included repairing 2 burn marks on the front of the fridge, replacing or repairing ceiling light panels, repairing a kitchen drawer, repairing the filter/screen over the hood of the range, repairing the counter top laminate in the kitchen, installing a bedroom closet door, repairing the frame around a window and a door, repairing screw holes and cable holes in the siding of the house, replacing the missing shower head, replacing the linoleum in the kitchen due to several chunks missing, as well as painting, cleaning and hauling garbage to the dump. A copy of the invoice of the contractor, as well as proof of payment, was provided in advance of the hearing. The contractor was paid \$4,800.00 for his services. The landlords are also claiming a legal bill for legal services in the amount of \$98.01, the cost of photographs in preparation for this hearing in the amount of \$114.76, \$150.17 for changing the locks, \$137.00 for gasoline in an effort to find the tenant to serve her with documents, \$75.00 for cutting the lawn on 3 occasions, and extra hydro in the amount of \$43.52, even though hydro is included in the rent because the tenant had installed a sauna without the landlord's consent. The landlords also claim the cost of filing this application as well as the cost for filing an application for substitutional service in the amount of \$50.00 and \$25.00 respectively, as well as mail and courier fees.

Analysis

Firstly, I find that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing package on June 7, 2010 in accordance with the *Residential Tenancy Act*, and that the tenant was deemed served on June 12, 2010.

The *Act* also states that the landlord is required to provide the tenant with 2 opportunities to complete a move-out condition inspection, and that failing to do so, Section 36 (2) applies:

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*], and
- (b) having complied with section 35 (2), does not participate on either occasion,
or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I have no evidence before me that the tenant abandoned the unit, and therefore I find that the tenant was provided one opportunity, and was reminded of that date; the tenant was not provided with 2 opportunities as required, and therefore, the landlords' right to claim against the security deposit is extinguished.

As for the monetary order, I find that the landlord has established a claim for \$4,950.17 in damages; the landlords are entitled to \$4,800.00 for the contractor and \$150.17 for the locksmith. The tenant is not liable for the cost of the landlords to prepare for the hearing, and I therefore decline to award the gasoline purchases, photograph costs, legal costs, mail or courier fees. I cannot find that the landlords are entitled to an extra hydro fee because there is nothing in the tenancy agreement stipulating how much hydro the tenant was entitled to use.

The landlord is also entitled to recovery of the \$50.00 filing fee and I also find the landlords are entitled to recover the filing fee in the amount of \$25.00 for making an application for substitutional service, for a total of \$5,025.17. I also find that, pursuant to my authority under section 72 (2), the amount of damages should be set off from the security deposit.

Conclusion

I order that the landlord retain the deposit and interest of \$374.25 in partial satisfaction of the claim, pursuant to section 72 (2), and I grant the landlord an order under section 67 for the balance due of \$4,650.92. 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*.

Dated: July 20, 2010.

Dispute Resolution Officer