

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties were represented at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

The landlord testified late evidence was submitted to the Residential Tenancy Branch and acknowledged the evidence was not served upon the tenant. I had not received any documentary evidence from the landlord at the time of the hearing; however, I informed the parties I would not consider any such evidence from the landlord since it was not served upon the tenant.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damages to the rental unit?
2. Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced February 10, 2010 and ended February 28, 2010 pursuant to a fixed term tenancy agreement. The tenant paid rent of \$2,050.00 for the term of the tenancy and a \$750.00 security deposit. The rental unit was furnished and included linens. The landlord did not prepare a move-in or move-out inspection report. On March 1, 2010 the tenant returned the keys to the landlord and provided the landlord with a written forwarding address that the landlord acknowledged in writing. On March 15, 2010 the landlord applied to retain the security deposit.

The landlord testified that the tenant sublet the rental unit to numerous occupants and that at the end of the tenancy the white shag rug was so badly damaged it could not be cleaned and had to be replaced. The landlord spent \$800.00 to replace the rug. In addition, some of the linens were missing at the end of the tenancy. The tenant provided the landlord with other linens but the landlord claimed the replacement linens were mismatched and not of the same quality. The landlord is claiming \$100.00 of the few hundred dollars spent by the landlord to replace linens.

The tenant testified that the rental unit was used by one of the tenant's staff and that there was no damage to the rental unit beyond normal wear and tear. The tenant suggested that perhaps there was normal wear and tear to the rug but that cleaning the rug would have been sufficient. The tenant explained that after the tenancy ended the landlord attended the tenant's office and viewed the tenant's linen inventory and retrieved two towels the landlord stated belonged to the rental unit. The tenant permitted the landlord to take the linens chosen by the landlord.

The tenant submitted that the tenant had requested an inspection report be prepared at the commencement of the tenancy but that the landlord stated she did not have time to prepare one and merely handed the keys to the tenant. The parties were in dispute as to whether a move-out inspection took place between the landlord and another agent for the tenant.

The only documentary evidence provided to me was from the tenant and included the tenancy agreement and a letter signed by the landlord on March 1, 2010 acknowledging return of the keys and fobs. On the March 1, 2010 letter is the tenant's address in writing.

Analysis

Under the Act, where a landlord fails to offer a tenant the opportunity to participate in a move-in or move-out inspection report or the landlord fails to prepare a written move-in or move-out condition inspection report and give a copy to the tenant, the landlord extinguishes their right to claim against the security deposit. Upon hearing from both parties that the landlord did not prepare written condition inspection reports, I find the landlord extinguished the right to claim against the security deposit.

Even if a landlord loses the right to claim against the security deposit, the landlord retains the right to claim for damages to the rental unit. Accordingly, I proceeded to hear from the parties with respect to alleged damages to the rental unit.

As explained to the parties during the hearing, a party that makes an application for monetary compensation against another party has the burden to prove their claim. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case I was presented with disputed verbal testimony with respect to damages to the rug and linens. In the absence of other evidence to substantiate the landlord's claim

such as inspection reports, photographs, receipts, witness statements or the like, I found the disputed verbal testimony to be insufficient to meet the landlord's burden of prove. Therefore, I dismissed the landlord's monetary claims against the tenant.

Since the landlord still has possession of the security deposit and the landlord's claims have been dismissed, the landlord is ordered to return the security deposit to the tenant forthwith. The tenant is provided a Monetary Order in the amount of \$750.00 to serve upon the landlord. The Monetary Order may also be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord's application has been dismissed and the landlord is ordered to return the security deposit to the tenant forthwith. A Monetary Order in the amount of \$750.00 has been provided to the tenant to ensure payment.

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 09, 2010.

Dispute Resolution Officer