

DECISION

Dispute Codes MND, MNSD, 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. Both parties participated in the conference call hearing.

At the hearing the parties agreed that the landlord had inaccurately named the tenant C.N. on his application for dispute resolution and that the application should be amended. The style of cause reflects this amendment.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 15, 2008 and ended on February 18, 2010. The landlord claimed that the tenants paid a \$360.00 security deposit while the tenants claimed that they paid a \$375.00 security deposit. The parties agreed that the tenancy agreement states that the tenants paid a \$360.00 deposit.

The landlord testified that the tenants failed to adequately clean the rental unit and seeks compensation for the time spent cleaning the oven, hood fan, bathtub and toilet. The tenants testified that they thoroughly cleaned the rental unit and provided photographs showing the condition of the rental unit at the end of the tenancy. The landlord claimed that the tenants damaged a windowsill and a door jamb and seeks compensation for the time spent repairing the damage. The tenants denied having caused the damage to the windowsill and door jamb and claimed that the landlord may have damaged the door jamb when he was moving a refrigerator through the door near the end of the tenancy. The parties agreed that the tenants did not pay rent in the

month of February and that they vacated the rental unit pursuant to a 10-day notice to end tenancy for unpaid rent. The landlord seeks to recover the unpaid rent as well as retain the security deposit for income lost in the month of March. The landlord testified that he was unable to find new renters for March.

Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. The landlord provided oral testimony but submitted no documentary evidence such as photographs or invoices for work performed to corroborate his testimony. The tenants provided photographs which show that the rental unit was thoroughly cleaned. Section 37(2) of the Act requires tenants to leave the rental unit reasonably clean. Having viewed the tenants' photographs, it is clear to me that the unit was reasonably clean. While it may not have been spotless, the Act does not impose that standard on vacating tenants. Without photographs of the alleged damage to the windowsill and door jamb, it is not possible to determine whether the damage may be characterized as reasonable wear and tear, which is expected during a tenancy, or whether the damage exceeds reasonable wear and tear, in which case the tenants could be held responsible for the cost of repairs. I find that the landlord has failed to prove his claim for cleaning and repairs and I dismiss those claims.

I find that the tenants were responsible to pay rent for the month of February and failed to do so. I award the landlord \$750.00. I find that the landlord has failed to prove that his inability to re-rent the unit for March was the fault of the tenants and further find that the landlord has not proven that he took reasonable steps to re-rent the unit. The claim for loss of income for the month of March is dismissed.

I find the landlord is entitled to recover the \$50.00 filing fee paid to bring his application and I award the landlord \$50.00.

Conclusion

The landlord is awarded \$800.00 which represents \$750.00 in rent for February and the \$50.00 filing fee. The remainder of the landlord's claims are dismissed. I find that the tenants have proven that they paid a \$360.00 security deposit. I order the landlord to retain the \$360.0 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$440.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 06, 2010
