DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

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

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2010. The Tenant confirmed receipt of the hearing documents.

The Landlord, Agent, and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on October 1, 2009 and ended on March 31, 2010. Rent was payable on the first of each month in the amount of $850.00 and a security deposit of $375.00 was paid on September 26, 2009. A move-in inspection report was completed September 30, 2009. No move-out report was completed.

The Landlord's Agent referred to their documentary evidence, in support of her testimony, which included among other things a written statement of their claim, receipts and invoices, a copy of the tenancy agreement, a copy of the move-in inspection report, a letter written by the upper tenant, photographs of the rental unit taken April 1, 2010, and photographs of the rental unit taken April 2, 2010. The Landlord confirmed the upper tenant had removed the furniture he wanted by April 2, 2010.

On March 31, 2010, at 8:00 p.m. the Landlords attended the unit to complete the move out inspection. When they arrived the Tenant was there and so was a large quantity of furniture. The Tenant told the Landlords that he was not removing the remaining furniture as the tenant from the upper unit would be taking it all. The parties then got into a heated argument whereby the Landlords advised the Tenant that they would not be getting involved with his agreement with the upper tenant. The Landlords made the choice not to re-rent the unit and left on vacation shortly after the beginning of April 2010. They confirmed they did not make an attempt to clean the unit until July 2010 as they had family weddings to deal with and were under a lot of personal stress.

The Landlord is seeking compensation as follows:

1) $31.30 for two new door handle/locks plus $10.00 for labour to install them. The Landlord confirmed they paid cash to have the door handles installed and while they had a receipt for the purchase of the door handles dated April 12, 2010, they did not have a receipt for the labour. The Agent advised the Tenant failed to return the keys to them so they felt they had to change the locks.
2) $50.53 for garbage drop-off fee as supported by their invoice which confirms they took 240.00 KG of garbage to the depot on July 24, 2010. Plus $20.00 for casual labour paid cash to have the garbage removed. The Landlord did not have a receipt for the claim of labour.
3) $50.00 for cleaning the rental unit. The Landlords advised they had to clean the oven, cupboards, window sills, floors, and vacuum in the rental unit. They performed this work sometime in July 2010. The Landlord did not know which date(s) they cleaned or for how many hours.
4) $103.22 for professional carpet cleaning. The Landlord referred to her evidence which included a copy of the receipt for carpet cleaning which was performed on July 19, 2010.
5) $50.00 for fridge repair. The repairs have not been completed to the fridge and the Landlords have requested $50.00 as an estimated cost to complete the repairs. They stated they require a special type of spray paint to repair the damages.
6) $263.59 for hydro costs. The Landlord submitted copies of hydro invoices and is seeking payment for hydro costs which exceed $100.00 per month. The hydro bill is for the upper and lower rental units as there is only one meter. The Landlord argued the upper unit was vacant for several months so the Tenant should have to pay the full hydro bill. The Landlord confirmed the tenancy agreement states that hydro was included in the rent however she states that she entered into a verbal agreement with the Tenant that he would pay for any hydro costs that were over $100.00 per month. The Landlord confirmed that the Tenant has never made a separate payment towards hydro costs.

The Tenant testified and confirmed that he did attend the move out inspection on March 31, 2010, which ended in a heated discussion with the Landlords. He stated that when the Landlords left the unit he went out to his vehicle to grab his camera and took the photos of the unit which he provided in his evidence.

The Tenant disputed the Landlords' claim as follows:

1) The keys were left in the rental unit on the counter. The door lock is not a deadbolt so the Tenant was able to leave the keys inside, turn the knob on the handle to lock the door, and then close the door behind him. The Tenant questioned why the Landlord waited twelve days to purchase the new door handles if it was critical to change the locks and argued that he only ever saw one door and not two. The Tenant referred to section 25 of the Act which provides that a Landlord must pay all costs to rekey or change locks at the start of a new tenancy if requested by the tenant.
2) The Tenant referred to the Landlords' evidence which included a letter issued by the upper tenant. This letter lists the amount of furniture the upper tenant took that remained in the unit at the end of the tenancy. The Tenant argued that the remaining furniture could not weigh even close to 240.00 kg or (528 pounds) and questions what was actually taken as "garbage" to the depot on July 24, 2010, four months after his tenancy ended.
3) The Tenant's photos support his testimony that he cleaned the rental unit to the beset of his ability. He argued that if he did not clean his place for four months it would definitely require cleaning again and pointed out the Landlord did not provide a date of when the work was performed.
4) He states that his photos clearly show there are no stains on the carpet. He has no control over what happened in the rental unit between the end of his tenancy, March 31, 2010 and July 19, 2010 when the carpets were cleaned. He noted that the carpet cleaning receipt states "Normal wear" which indicates there were no stains on the carpet.
5) The Tenant declined responsibility for the damage to the fridge because the damage was a result of the Landlord's failure to install a door stop when they constructed the suite. He referred to his photos when he explained that the main entrance to the suite was designed so the door would open into the suite and the handle would hit against the side of the fridge. He argued that he was never rough and never purposely slammed the door into the fridge and that it is simply the case that the Landlord failed to install a proper door stop. He noted that the Landlords are seeking $50.00 without providing proof of the cost of the paint.

6) The Tenant stated that he never entered into a verbal agreement with the Landlord to pay additional costs towards utilities. He confirmed that his tenancy agreement was for a monthly rent of $850.00 which included the costs of water, electricity, and heat and that he never once paid extra for hydro.

The Landlord confirmed she submitted two batches of photos and that the first batch of photos were taken on April 1, 2010 and were taped to sheets of paper. The second batch of photos was taken April 2, 2010, and was stacked together with a paper clip. The Landlord argued the fridge was damaged in three separate locations so it could not have been the door handle for each dent.

The Tenant responded by stating he had moved the fridge and the stove out to clean behind them which changed the location of the fridge in relation to the door handle.

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

The Landlord has applied for a monetary order in the amount of $673.69 however the Landlords' testimony confirms they are seeking compensation in the amount of $578.64.

The evidence supports the Landlords purchased two door handles or new locks on April 12, 2010, however there is no evidence to support which date they were installed or

which location they were installed. In the presence of opposing testimony from the Tenant, I find the Landlords have failed to prove the test for damage or loss as listed above and I hereby decline their claim for $31.30 plus $10.00 for changing the locks.

The evidence supports the cleaning and waste removal occurred between July 19, 2010 and July 31, 2010, four months after the tenancy ended. The repairs to the fridge have not been completed therefore there is no evidence to support the actual cost. The move-out inspection report was not completed to indicate the condition of the rental unit at the end of the tenancy. The Tenant provided opposing testimony and photographic evidence speaking to the condition of the unit at the end of the tenancy; which negates the Landlords' evidence. Therefore I find the Landlords have failed to provide sufficient evidence to prove the test for damage or loss, as listed above, and I hereby dismiss their claim for labour to remove furniture ($20.00.); cleaning the rental unit ($50.00); carpet cleaning ($103.22); and estimated repair costs for fridge ($50.00).

Both parties confirmed the Tenant left furniture and possessions in the rental unit and the evidence supports the upper tenant removed some of the articles by April 2, 2010. Section 25 of the *Residential Tenancy Regulation* provides that a landlord must store a tenant's personal property for a period of not less than 60 days before disposing of it. Based on the evidence before me the Landlords did suffer a loss to dispose of some items on July 24, 2010, however there is insufficient evidence to support that the Tenant's possessions weighed 240.00 kg. Therefore, in accordance with section 67 of the Act I hereby approve the Landlord's claim in the amount of $25.27 (1/2 of $50.53)

The Landlord argued they had a verbal agreement about utilities and the Tenant testified there was no verbal agreement but rather a written agreement that utilities were included in his rent. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Therefore I find there is insufficient evidence to prove the test for damage or loss and I hereby dismiss the Landlords claim for $263.59 for hydro costs.

Upon careful review of the move-in inspection report I note that at the beginning of the tenancy the Landlord had the Tenant sign the inspection report under section 2 of the "END OF TENANCY" section agreeing to deductions from the security deposit in the amount of $375.00. The Tenant signed this section on September 30, 2009. This contravenes section 20 (e) of the Act which states a landlord must not require at the

onset of the tenancy that the landlord automatically keeps all or part of the security deposit.

The Landlords have been partially successful with their application; therefore I award recovery of the $50.00 filing fee.

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

Waste removal depot fee	$25.26
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$75.26**
Less Security Deposit of $375.00 plus interest of $0.00	- 375.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	**$299.74**

The Landlord is hereby ordered to return the balance of **$299.74** of Tenant's security deposit.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **$299.74.** The order must be served on the respondent and is enforceable through the Provincial 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: August 30, 2010.

Dispute Resolution Officer