



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and for damage to the rental unit, site or property, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

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 March 24, 2010. The tenant confirmed receipt of these documents. The hearing was originally scheduled in July, 2010 and was reconvened to today's date to allow the landlord to provide evidence.

Preliminary Issues

It was brought to my attention that a previous hearing had been held in March, 2010. At this hearing the landlord had applied for an Order of Possession, a Monetary Order for unpaid rent, An Order to keep the tenants security deposit and recover the filing fee. The landlord failed to attend that hearing however the tenant did attend and the landlords' application was dismissed without leave to reapply.

The landlord filed an application for a review of that decision and a review was held on March 31, 2010. The landlords' application for a review was denied. The landlord has filed this application for a Monetary Order for unpaid rent and to recover the security deposit when the decision rendered on March 04, 2010 dismissed her application without leave to reapply. Consequently, I am not prepared to hear these sections of the

landlords claim. I will however deal with the landlords claim for a Monetary Order for damage to the unit, site or property.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit, site or property?

Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2009 and ended on January 27, 2010. The monthly rent for this two bedroom unit was \$1,000.00 which was due on the first of each month. The tenant paid a security deposit of \$500.00 at the end of August, 2009. No Move in or move out condition inspections were completed.

The landlord states the tenant caused damage to the walls of the rental unit. There were holes left in the walls and the landlord had to employ a contractor to replace some drywall. The landlord also states the tenant damaged a door, left broken blinds and a red paint stain on the carpet. The landlord has provided a receipt for the replacement dry wall at a cost of \$250.00.

The landlord states the tenant did not clean the rental unit at the end of the tenancy. The tenant left garbage including baby diapers and some dishes. The landlord had to pay to have the unit cleaned and the new drywall painted at a total cost of \$500.00. The landlord has provided a receipt for this work.

The landlord states the tenant did not return the keys to her unit at the end of her tenancy and they had to change the locks. The landlord has not provided a receipt for this work or claimed a monetary cost.

The tenant disputes the landlords' claims. She states the unit was filthy when she moved into it and she spent days cleaning it. The tenant states the landlord did not do a move in or out condition inspection with her at the beginning and end of the tenancy and she states she cleaned the unit before she moved out and throw away all her garbage. The tenant claims her daughter was three years old when they moved into the unit and did not wear diapers so disputes the landlords' allegations that diapers were left in the unit.

The tenant states she did not cause any damage to the unit. She claims when she moved in there was already a hole in the bedroom wall and one in a baseboard, there were no light fixtures in the kitchen and despite the tenant asking the landlord to make these repairs she failed to do so.

The tenant claims she left her key with a neighbour on the day she moved out as she wanted to avoid an altercation with the landlord. She claims the landlords' husband telephoned her the day after she moved out and she told him where the key was. The tenant also requests the return of her security deposit and states she provided the landlord with her forwarding address in writing at the beginning of March, 2010.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for damages and cleaning to the rental unit; Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

When a landlord's evidence is disputed by the tenant the burden of proof is on the claimant to provide corroborating existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages has not met the burden of proof. The landlord did not complete a move in or move out condition inspection report to show what damage was caused during the tenancy and the landlord has provided no photographic

Residential Tenancy Branch
Ministry of Housing and Social Development

evidence to support her claim that damages existed. The only evidence submitted by the landlord is two receipts one for drywall repair and one for cleaning and painting. These alone do not meet the burden of proof in this matter and the landlords' application for a monetary Order for damage is dismissed without leave to reapply.

The tenant claims she has provided her forwarding address to the landlord in writing at the beginning of March, 2010 however the tenant has provided no evidence to show that this was sent to the landlord; therefore, she is at liberty to make an Application for Dispute Resolution for the return of her security deposit.

Conclusion

The landlord's application is dismissed without leave to reapply

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: September 08, 2010.

Dispute Resolution Officer