

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by Landlord (1) for a Monetary Order for damage to the unit site or property and to recover the cost of the filing fee from the Tenants for this application.

At the onset of the hearing a male signed into the hearing and confirmed under oath that he was one of the Landlords. Landlord (1) testified and confirmed that this person was her husband and was indeed a Landlord. The application has been amended to include the male Landlord as confirmed and recorded on the tenancy agreement.

Service of the hearing documents, by the Landlord to each Tenant, were sent via registered mail on May 12, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants confirmed receipt of the hearing package and copies of the Landlord's evidence.

The Landlords and Tenants appeared, 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 section 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy was effective January 1, 2009 and switched to a month to month tenancy after December 31, 2009. Rent was payable

on the first of each month initially for the amount of \$2,000.00 and effective January 1, 2010 was reduced to \$1,400.00 per month. The Tenants paid as security deposit of \$1,000.00 on November 15, 2008 and a pet deposit of \$500.00 on January 1, 2009. The tenancy ended effective April 30, 2010 after the Tenants were served a 2 Month Notice to End Tenancy for Landlord's use as the property had been sold. The Landlords returned \$650.00 to the Tenants which is comprised of the \$500.00 pet deposit and \$150.00 from the security deposit. The Landlords retained \$850.00 of the security deposit. Move-in and Move-out inspection reports were completed in the presence of both parties. The Tenants provided their forwarding address on April 20, 2010.

Landlord (1) initially testified that the 2 Month Notice was mailed to the Tenants on February 28, 2010, after a verbal discussion took place on February 27, 2010, and at no time was the Notice personally served to the Tenants. Landlord (1) later changed her testimony to confirm she did serve a copy of the Notice in person to the Tenants on March 22, 2010. The Landlords do not live in the same province where the rental unit is located and had family friends act as their agents for emergencies.

The Landlords are seeking compensation of \$850.00 to cover the costs of repairs to the ceiling in the basement. They confirmed that they had been advised of three water leaks during the period of the tenancy but that they were not informed of "significant damage" caused to basement ceiling or that they light electricity had to be turned off. The repairs were completed over several days at the end of August 2009 and the final invoice was issued October 1, 2009.

The Tenants provided testimony in support of their documentary evidence which included among other things copies of several e-mails back and forth to the Landlords, copies of telephone bills, a copy of the 2 Month Notice to End Tenancy, and a Mutual Agreement to End the Tenancy. They confirmed that there were three water leaks in the kitchen during 2009 and the Landlord was advised of each leak. The first leak occurred on approximately January 9, 2009, which caused a large amount of water to leak into the basement bedroom ceiling and pooled in the light fixture. The electrical breaker was

turned off until the Landlord's agent could attend and replace the light fixture. The second water leak occurred in February, 2009, and on March 15, 2009, the third leak occurred. The Agent attended the evening of March 15, 2009, and could not stay so instructed the Tenants to mop of the water and they would arrange for a plumber to attend. The Agent made no attempt to check the basement for additional water leakage and advised they were on their way out for dinner and would send a plumber soon.

Landlord (2) testified that he attended the rental unit to replace the light fixture in the basement bedroom and found that the electrical breaker had been shut off and the ceiling was stained yellow and showed water damage. He confirmed the water leak resulted from the water hose under the sink coming loose and that the Tenant's boyfriend had tightened the hose to prevent further leakage. He replaced the light, turned the breaker back on, and told the Tenants they would be seeking compensation for the damage.

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

Section 32 (1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law; while Section 32 (3) provides that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or person permitted on the property by the tenant.

In this case the evidence supports that during the tenancy there were three occurrences which caused water to leak into the lower basement ceiling area which resulted in water pooling in the light fixture in the ceiling of the basement bedroom. That being said, it would be reasonable to conclude that if water leaked below the kitchen and pooled in the light fixture that water would or could have leaked into the ceiling that surrounds the light fixture causing the ceiling to turn yellow and damage the drywall and textured finish. That being said there is no evidence to support that the water leaks were caused by anything other than normal wear and tear or the loosening of hoses that could result over time. Based on the aforementioned I find there is insufficient evidence to prove the Tenants violate the Act or the tenancy agreement and I hereby dismiss the Landlord's claim.

Section 38 of the Act provides that within 15 days after the receipt of the tenant's forwarding address or after the end of the tenancy, whichever is later, the landlord must return the tenant's security deposit or file for dispute resolution. In this case the Landlord was required to either return the deposit in full or file her application for dispute resolution before May 15, 2010. The Landlord filed the application on May 6, 2010.

Having dismissed the Landlord's claim for damages above, I find the Landlords are not entitled to retain the \$850.00 from the Tenants' security deposit and are hereby ordered to return it to the Tenants plus interest of \$1.64.

The Landlord has not been successful with her claim; therefore I decline to award recovery of the filing fee.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$851.64**. The order must be served on the Landlords and is enforceable through the Provincial Court 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: September 22, 2010.

Dispute Resolution Officer