

DECISION

Dispute Codes OPC, MNSD, MND, FF

Introduction

This hearing dealt with an application by the Landlord for an order of possession with cause to end the tenancy, to keep all or part of the security deposit, for damage to the unit, and to recover the filing fee from the Tenant for the cost of this application by obtaining a monetary order. There is an application by the Tenant for the return of the security deposit and to recover the filing fee from the Landlord for the cost of this application by obtaining a monetary order. Both parties attended by conference call and gave affirmed testimony.

Issues to be Decided

Has the Landlord shown cause to end the tenancy and obtain an order of possession?

Has the Landlord shown that the Tenant caused the damages by a deliberate or negligent act or omission?

Is the Landlord entitled to keep all or part of the security deposit against a claim for dispute resolution?

Is the Landlord entitled to the recovery of the filing fee?

Is the Tenant entitled to the return of the security deposit?

Is the Tenant entitled to the recovery of the filing fee?

Background and Evidence

This tenancy began on December 15, 2009 on a 1 year fixed term. Both parties agree that there was a signed tenancy agreement and that each possessed a copy, but was not filed in evidence. Both parties agree that the Tenancy ended on May 1, 2010 when the Tenant vacated the residence. The Landlord states that an order of possession is no longer being sought.

The monthly rent is \$1,325.00 payable on or before the 1st of each month, with a security deposit of \$675.00 which was made December 15, 2009. Both parties agree that both the Condition Inspection Report for Move-In and Move-Out were completed visually, at the beginning and end of tenancy by the Landlord's agent, with the Tenant. No written copies of either report were given to the Tenant. The Landlord contends that the suite was in "spotless" condition at the beginning of the tenancy. The Tenant disputes this by citing issues with mould in the bathroom and other deficiencies throughout the suite during the tenancy. On May 1, 2010 after the visual move-out inspection, the Tenant provided the Landlord's agent in writing her forwarding address. The Landlord filed his application for dispute resolution on-line on May 17, 2010. The Tenant was served the hearing package by registered mail on May 21, 2010. The Landlord has provided in the hearing package 22 pictures. While the Landlord submitted to the Tenant the full hearing package with color pictures, the Landlord had chosen to submit to the Residential Tenancy Branch the pictures by facsimile. The quality of the pictures was noted at the hearing as at best very poor and at worse undistinguishable. The Tenant agreed that the pictures were a fair representation of the condition of the suite, on May 1, 2010. I found that the hearing could continue referencing the pictures, with both parties being as descriptive as possible with the pictures and agreeing to the content. I agreed that I would suspend making my decision regarding this matter for two days to give the Landlord the opportunity to send in the color pictures to the Residential Tenancy Branch for my review. The Landlord provided evidence of damage repair costs in the form of hand written notations that he wrote from a telephone conversation with the individual who performed the repairs. No written estimates, receipts or any other documents were provided into evidence regarding the cost of the repairs. The Landlord is seeking costs according to his hand written note, \$1,195.00, less \$150.00 that was listed in his costs as a lock set which was withdrawn by the

Landlord. The Landlord is also submitting a cost of personally cleaning the residence for \$50.00, at \$25.00 per hour for 2 hours. The Landlord was originally seeking \$662.00 in costs from their initial application for dispute resolution. In the evidence package submitted by the Landlord and upon revision during the hearing the Landlord explains that not all costs were accounted for when the application was filed, making the total costs sought by the Landlord to be \$1,145.00. This cost is established by the Landlord in their evidence from a handwritten note which accounts for the work to repair the damage. This labour costs totalled \$500.00 for 20 hours of work at \$25.00 per hour for both the bedroom and bathroom. The amount of \$545.00 for materials such as drywall for the bedroom and bathroom, tape, mud, 5 gallons of paint, tiles, tile concrete, grout, brushes and rollers make up the balance of the claim. No invoices, estimates or means of payment in any form of documentation has been submitted for review. The Tenant has conceded a \$50.00 fee for cleaning the residence. The Landlord is also filing for the recovery of the filing fee of \$50.00. The claim by the Landlord totals \$1,145.00 inclusive. The Tenant is claiming \$1,325.00 for double the amount of the security deposit for failure on the part of the Landlord to return the deposit within 15 days of receipt of the forwarding address in writing. The Tenant has also filed for recovery of the \$50.00 filing fee. I note that during the hearing that both parties agreed that the security deposit given and received was \$675.00. The actual security deposit amount should have been \$662.50 making it one half of the monthly rent. As such, I will be adhering to the amount specified by the Act and the notice that the Tenant made for \$1,325.00 which would equal one month's rent, equalling double the security deposit for the Tenant's application. The Tenant is also seeking recovery of the \$50.00 filing fee.

Analysis

I find that the Tenants claim that the Landlord failed to return the security deposit within 15 days of receiving her forwarding address in writing has failed. The Tenant provided

the written forwarding address on May 1, 2010. The Landlord had filed their application for dispute resolution on May 17, 2010 pursuant to Section 38 of the Residential Tenancy Act. I note that the calculation of the 15 days begins on May 2, 2010 and ends on Sunday, May 16, 2010. Pursuant to the Interpretations Act, Section 25 (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open. Accordingly, the 15 day limitation time would expire on May 17, 2010. I dismiss the Tenants application for a monetary order and as such the Tenant has failed in their application for recovery of the filing fee.

As both parties have stipulated that the color pictures are a fair representation of the residence at the end of tenancy, I have allowed the Landlord time to submit by post within 2 days of the hearing the same pictures so that I can have better understanding of the state of the residence. I have waited with no success a total of 7 days since the hearing date for the color pictures to be sent to the Residential Tenancy Branch by the Landlord. I find that although I do not have the pictures to reference, both parties have agreed on the contents of those pictures as described by the Landlord during the hearing. As described by both parties, they depict damage beyond those incurred during a normal tenancy. I find that the Landlord has proven their claim for damage to the unit beyond what would constitute normal wear and tear through the pictures and the costs required to repair the damage.

The Landlord is entitled to compensation, but as stated previously, there is no documented proof of any repairs being done to the residence. I find that the labour costs are excessive at \$25.00 for 20 hours, so I award to the Landlord the credit of 12 hours for labour equalling \$300.00. That is \$200.00 less than what was claimed by the Landlord. The Tenant has conceded \$50.00 for the cleaning of certain parts of the residence, in one case citing the area behind the refrigerator.

I award to the Landlord \$995.00 for their claim. The Landlord may retain the security deposit of \$675.00 in partial satisfaction of this award. The remaining amount of \$320.00 is awarded to the Landlord in a monetary order pursuant to section 67 of the

Act. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$320.00.

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*.