

DECISION

Dispute Codes MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property.

Service of the hearing documents, by the Landlord to the Tenant, was conducted via a process server in May 2010. The Tenant confirmed receipt of the hearing documents.

The Landlord and 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.

At the onset of the hearing the Landlord requested to know if the hearing was being taped. She asked what my credentials were and wanted to know if I was a lawyer. I explained to the Landlord that I was not taping the hearing and that I was conducting the hearing on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the unit pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the Tenant occupied the rental unit, a suite located in the basement of the house, on May 1, 2009. The Tenancy was based on a verbal agreement she had entered into with the previous owner. Rent was payable on the first of each month in the amount of \$650.00. The current Landlord purchased the property and title was transferred sometime in September 2009. No move-in inspection report was completed by the previous owner or the current owner when title was transferred. No move out inspection was completed at the end of the tenancy.

Both parties referred to a previous dispute resolution decision where testimony was provided how the Landlord changed the locks on the rental unit October 29, 2010,

removed the rest of the Tenant's possessions and placed them outside. This prevented the Tenant from accessing the rental unit from October 29, 2010, onward.

The Landlord stated no one resided in the rental unit for the month of November 2009 and that she moved into the unit near the beginning of December 2009.

The Landlord has applied for monetary compensation in the amount of \$700.00 for the following:

- 1) \$5.00 for the cost to remove the garbage left behind by the Tenant as supported by the copy of the recycling receipt provided in her evidence dated November 5, 2009. The Landlord argued she normally places a \$2.00 sticker on her garbage so it can be picked up on the weekly garbage pickup. The Landlord stated that she could not use the \$2.00 sticker for this garbage because a bear would get into it. The Landlord confirmed she did not provide evidence to support this garbage was removed from the rental unit.
- 2) \$159.00 to repair a hole in the drywall in the rental unit. In the absence of a move-in inspection report the Landlord could not say that this damage was caused during the course of the Tenant's tenancy. The Landlord referred to a receipt provided in evidence dated April 7, 2010 and confirmed that is the date the work was completed.
- 3) \$266.45 to replace a heat shield blind that had been installed on the exterior of the house. The Landlord confirmed the blind had been removed from the brackets and was leaning against the fence during the last part of the tenancy. She confirmed she made no effort to bring the blind back inside or reinstall it. She referred to her photo evidence to prove there were brackets mounted to the exterior of the house and that there is no blind attached. She claims the Tenant took the blind when she moved out and that the Tenant's mother confirmed this to the Landlord. A copy of an invoice was provided in the Landlord's evidence which she states proves that she replaced the blind on May 14, 2010 with the exact same blind that was there previously. The Landlord was not able to provide testimony about the exact age of the previous blind nor did she provide evidence to support the make or type of blind that was originally installed.
- 4) \$59.99 to recover the cost of rekeying the locks on the rental unit. The Landlord referred to a copy of an invoice she provided in support of this claim which is dated August 1, 2010. The Landlord claimed the work was required after a male kicked in the Tenant's door and that this work was performed at the end of October 2010 and not August 2010.

- 5) \$18.44 to repair the microwave as supported by the invoice dated February 3, 2010. The Landlord stated that the Tenant had a fire in the microwave which damaged the mica sheet which had to be replaced.
- 6) \$89.25 for carpet cleaning as supported by the copy of the invoice provided in evidence and dated December 7, 2009. The Landlord argued that the Tenant failed to have the carpets steam cleaned at the end of the tenancy as is the normal practise for rental units.
- 7) The Landlord is also seeking \$11.70 to recover costs of courier charges she incurred when she sent the Tenant's mail to her new address via courier on January 19, 2010.

The Tenant disputed the Landlord's monetary claim and argued as follows:

- a) She always put tags on her garbage each week and if there was waste left behind it is because the Landlord changed the locks preventing her from removing it.
- b) The hole in the drywall was present at the onset of her tenancy. It was her understanding that the previous owner put the hole in the wall.
- c) She confirmed there used to be a blind installed on the outside of the window; however she did not take the blind nor does she know who did. She argued that there no evidence to support she took the blind.
- d) No one kicked in her door during her tenancy and in fact it was the Landlord who decided to change the locks and moved her remaining possessions outside which prevented her from gaining access to the unit. There is no evidence to show there was a police report or that the door was actually kicked in.
- e) She did not have a fire in the microwave and the microwave was not part of the house sale. The previous owner of the house gave the microwave to the Tenant and she chose not to take it with her at the end of the tenancy.
- f) She only lived in the rental unit for five months and she did not have pets. The carpets were cleaned when she moved into the unit and she was prevented from entering the unit after the Landlord changed the locks.

Analysis

The documentary evidence I have considered in this decision includes: copies of invoices for services provided and photographs of the rental unit.

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

I note that the Landlord has sought a monetary claim in the amount of \$700.00; however she has only provided testimony to claim items totaling \$609.83.

The evidence supports the Landlord violated section 28 of the Act by restricting the Tenant's access of the rental unit after she changed the locks. It is this violation that prevented the Tenant from removing any remaining waste material from the unit or from having the carpets professionally cleaned at the end of the tenancy. Based on the aforementioned I find the Landlord has failed to provide sufficient evidence to prove that the Tenant violated the Act or that the Landlord did what was reasonable to minimize her loss. Therefore I dismiss her claims of \$5.00 for waste removal and \$89.25 for carpet cleaning.

In the absence of a move-in inspection report and in the presence of opposing testimony from the Tenant I find the Landlord has failed to provide sufficient evidence to support that the hole in the wall was caused during the tenancy or that the Tenant violated the Act. Therefore I dismiss the Landlord's claim of \$159.00 for the repair of drywall.

The testimony supports that a blind was installed on the exterior of the house and that the Landlord saw the blind leaning up against the fence. The Landlord confirmed she made no effort to bring the blind in doors nor did she make an effort to reinstall the blind. Therefore I find the Landlord failed to take steps to minimize her loss. There is opposing testimony from the Tenant arguing that she does not have possession of the missing blind. Therefore there is insufficient evidence to support the Tenant has violate the Act. Based on the above I find the Landlord has failed to prove the test for damage or loss, as listed above and I dismiss her claim of \$266.45.

The testimony confirms the Landlord changed the locks on the rental unit on October 29, 2010. There is no evidence to support that the lock change was required due to damage caused to the door. The invoice provided by the Landlord as evidence is dated August 1, 2010 and there is no indication that this invoice is a reprint of work performed ten months earlier. Based on the contradiction of dates when the work was performed and in the presence of opposing testimony provided by the Tenant I find the Landlord has failed to provide sufficient evidence and I hereby dismiss her claim of \$59.99.

The evidence supports the Tenant was prevented access to the unit from October 29, 2009 and the Landlord has occupied the unit from December 1, 2009. If the Landlord was occupying the rental unit it would be reasonable to conclude that she was using the microwave. I question then why the repairs to the microwave did not occur until February 3, 2010; three months after the Tenant vacated the unit and the Landlord had use of the microwave. Based on the aforementioned and in the presence of opposing testimony I find the Landlord has failed to provide sufficient evidence in support of her claim. I hereby dismiss her claim of \$18.44 to repair the microwave.

In relation to courier charges to forward the Tenant's mail after the completion of the tenancy, I find that the Landlord has chosen to incur these costs that cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the Landlord may not claim mail forwarding or courier fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and her claim of \$11.70 is dismissed.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: October 05, 2010.

Dispute Resolution Officer