Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit. The landlord applied for compensation for damage to the rental unit; unpaid rent or utilities; and, authority to retain the security deposit. Both parties requested recovery of the filing fee paid for their respective applications. Both parties appeared at the hearing or were represented during the hearing. Both parties were provided the opportunity to made submissions, in writing and orally, and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Is the landlord entitled to compensation from the tenant for damage and unpaid rent or utilities?

Background and Evidence

I was provided the following undisputed evidence. The fixed term tenancy commenced February 13, 2010 and ended March 31, 2010. The rent for the fixed term was $1,350.00 and included heat and electricity. The tenant paid a $500.00 security deposit March 1, 2010. The landlord did not prepare move-in or move-out inspection reports in the required format. On April 24, 2010 the tenant sent a letter to the landlord with his forwarding address via registered mail. The landlord responded to the tenant's letter on May 8, 2010. The parties had subsequent conversations with respect to damages,

hydro consumption and the security deposit but an agreement was not reached. The tenant did not authorize any deductions from the security deposit in writing. The tenant made this application on May 28, 2010 and the landlord made an application on October 4, 2010.

The landlord claimed that during the tenancy the tenant had the heat excessively high which caused the landlord to incur significant hydro charges and contributed to the lifting of the vinyl tiles in the bathroom. The landlord claims that after showers the tenant turned the heat up, did not turn on the bathroom fan and shut the door. As a result, the six vinyl tiles in the bathroom lifted.

Upon enquiry, the landlord described the rental unit as newly converted garage with addition. The landlord stated that the construction was professional with installation of proper vapour barriers, insulation, venting and subflooring. The landlord submitted that he entered the unit to show the unit to prospective tenants and noticed the extreme heat and humidity in the rental unit. As well, the landlord's contractor attended the unit to inspect the flooring while the tenancy was in effect and wrote a letter describing their discovery of extremely high temperatures and evidence of condensation. Further, the tenant's son acknowledged that there was damage to the bathroom flooring in writing.

The tenant's agent pointed out that the tenancy agreement provided that heat and electricity were included in rent. The agent acknowledged that the temperature and consumption of hydro may have been high but that is irrelevant and not recoverable by the landlord in accordance with the terms of the tenancy agreement. The agent was of the position that the new construction does not guarantee the unit was well constructed and suggested that it was not as a bathroom floor should be able to withstand splashing water. The agent submitted that the flooring repair should be covered by the contractor's warranty. Further, the document signed by the tenant's son does not acknowledge damage for which the tenant is responsible for repairing.

As documentary evidence, the tenant provided a copy of the tenancy agreement, letter to the landlord dated April 22, 2010 and registered mail receipts.

As documentary evidence, the landlord provided copies of two hydro bills, an estimate for the replacement of the bathroom flooring, the contractor's letter, the landlord's letter of May 8, 2010 and the document signed by the tenant's son.

Analysis

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain the tenant's written consent for deductions. However, a landlord cannot obtain a tenant's consent for deductions for damages if the landlord has not met the move-in or move-out inspection report requirements. In this case, the landlord did not have the legal right to withhold or make deductions from the security deposit as the landlord did not have the tenant's written consent and because the landlord had not met the move-in and move-out inspection report requirements.

Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit.

I find that the tenancy ended March 31, 2010 and the tenant sent his forwarding address in writing on April 24, 2010 which was deemed to be received by the landlord five days later under section 90 of the Act. Accordingly, the landlord had until May 14, 2010 to either repay the security deposit to the tenant or make an application for dispute resolution. Since the landlord did neither of these two options the landlord did not

comply with section 38(1) of the Act and the landlord must now repay the tenant double the security deposit pursuant to section 38(6) of the Act. The tenant is awarded $1,000.00 under the tenant's application.

With respect to the landlord's claims for hydro I find as follows. In order to succeed in establishing an entitlement to compensation the applicant must show that the respondent violated the Act, regulations or tenancy agreement. I find the tenancy agreement provides that heat and electricity are included in the payment of rent. I do not find a violation with respect to hydro consumption and the landlord is not entitled to compensation for hydro consumption from the tenant.

Although the landlord is not entitled to compensation for hydro consumption, I am satisfied that the tenant did have the heat turned up exceptionally high during the tenancy and considering all of the other evidence before me I find, based on the balance of probabilities, that the tenant's actions caused the vinyl flooring in the bathroom to lift. I find the landlord substantiated the damage or loss incurred as a result of the lifted tiles. Therefore, I award the landlord $250.00 for damage to the bathroom flooring.

I order that each of the parties must bear the cost of making their respective applications.

Pursuant to section 72 of the Act, I net the monetary awards granted to each of the parties and provide the tenant with a Monetary Order for the net amount of $750.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court if necessary.

Conclusion

The tenant was successful in this application and the landlord was partially successful. The tenant has been provided a Monetary Order for the net amount of $750.00 to serve upon the landlord.

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 21, 2010.

Dispute Resolution Officer