



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began some time in 2005 at which time a \$975.00 security deposit was paid. At the time the tenancy ended, the tenant was paying \$2,100.00 per month in rent. The tenant vacated the rental unit on July 3, 2010.

The tenant testified that he advised the landlord on June 22 that he would be having problems paying rent in July. The tenant denied that he specifically stated that he would be ending the tenancy on July 1. The landlord brought contractors into the unit to give estimates for sanding the hardwood floors and repainting. There was some discussion between the parties as to whether the tenant would move his belongings to the basement while the floors were being sanded, but the parties agreed that no sanding or painting was performed while the tenant lived in the unit. The parties agreed that the landlord negotiated the tenant's rent cheque for the month of July. The tenant

seeks to recover rent for July as well as his security deposit and the filing fee paid to bring his application.

The landlord testified that the tenant specifically stated that he would be vacating the rental unit on July 1. The landlord stated that she made efforts to re-rent the unit, but was unable to find new tenants until mid-August. The landlord proceeded to sand the floors and do other repairs after the tenant vacated the unit. The landlord claimed that at the end of the tenancy several items were missing, including a new sink and plumbing fixtures which had been stored in the basement and a deacon's bench which the tenant had used throughout the tenancy.

The landlord testified that the tenants did not adequately clean the rental unit and that she incurred costs of \$200.00 to clean the unit, although she only has a receipt for \$144.00 of that charge. The landlord provided photographs of the refrigerator and oven which show that they required cleaning as well as a photograph of the dishwasher which shows that the edges are somewhat soiled and of a cupboard which is somewhat soiled. The tenant acknowledged that the refrigerator required additional cleaning but maintained that the rest of the rental unit was adequately cleaned.

The landlord testified that the tenant failed to maintain the garden area and that she had to pay \$261.00 to have the overgrown garden restored. The landlord submitted photographs showing dried plants and weeds in the garden. The tenant testified that during his tenancy he created and maintained the gardens, which included planting at his own expense.

The landlord testified that at the end of the tenancy it was pointed out to her that there was water in the bottom of the dishwasher. The landlord discovered coffee grounds in the dishwasher and hired a plumber at a cost of \$120.00 to clear the plumbing leading to the dishwasher. The tenant testified that the dishwasher worked well throughout the tenancy and stated that plumbers came to the rental unit yearly to dredge the drain tiles, which was unrelated to the dishwasher.

The landlord seeks to recover pro-rated rent for 3 days in July, the cost of cleaning and gardening, \$450.00 as the value of the missing sink, \$100.00 as the value of the missing deacon's bench, the cost of the plumbing repair, advertising costs, her filing fee and the cost of registered mail and making photocopies.

Analysis

First addressing the issue of rent for the month of July, section 45(1) of the Act requires a tenant who wishes to end a month to month tenancy to give notice equivalent to one full rental period. In other words, in order to end the tenancy on June 30, the tenant would have had to give notice no later than May 31. While the tenant claimed to have only told the landlord that he would have trouble paying rent for July, I find it more likely that he told the landlord he would not be continuing to live in the unit in July. I find this explanation to be more consistent with his actions, which included packing and moving from the rental unit on July 3. I find that the tenant did not give sufficient notice to end the tenancy.

Despite that finding, I note that there is no provision in the Act whereby a landlord is automatically entitled to lost income for the month in which the tenant should have been paying rent. The landlord bore an obligation to mitigate her losses. I accept that the landlord placed advertisements in the newspaper and I find that she initially made an attempt to find new tenants, but when she was unsuccessful in doing so, she chose to renovate the unit, including sanding the hardwood floors. I can see no reason why the tenant should pay rent for a month in which the landlord renovated the rental unit, particularly when the nature of the renovation made much of the home unfit for occupation for a time. I find that the landlord is entitled to occupational rent for July 1-3 and I award the landlord \$203.23.

I find that the rental unit was not adequately cleaned at the end of the tenancy. Despite the tenant's assertions that the unit was clean with the exception of the refrigerator, it is clear from the photographs that the oven, dishwasher and cupboards also required cleaning. I find the landlord's \$144.00 claim to be reasonable and I award her that sum.

The tenant also claimed that during the tenancy he kept a garden which he described as spectacular. The landlord's photographs show that the garden is overgrown and neglected. While the tenant may have planted the garden at his own expense, he had a responsibility to maintain it and I find that he failed to do so. I find the landlord's \$261.00 claim to be reasonable and I award her that sum.

Turning to the items which were missing at the end of the tenancy, the landlord bears the burden of proving not only that the items were missing, but also their value. The tenant acknowledged that he discarded the sink, plumbing fixtures and deacon's bench. The landlord claimed that the sink and plumbing fixtures were worth an estimated \$450.00, which the tenant disputed. The landlord provided an advertisement showing the value of a sink she considered similar, but could provide no evidence of the purchase price of the actual sink which was lost. I find that the landlord has not proven the value of the sink and accordingly find that a nominal award is warranted. I award the landlord \$50.00 for the sink. The same reasoning applies to the deacon's bench. While it may have had value to the landlord, there is no evidence to corroborate its actual value and again, a nominal award is appropriate. I award the landlord \$50.00 for the bench.

Although the landlord clearly had plumbing performed in September, the invoice does not specify that the plumbing work was related to the dishwasher or that it was required as a result of the actions of the tenants. I find that the landlord has not proven that the tenants caused the plumbing problems and I dismiss this claim.

The claim for the cost of advertising is dismissed as the landlord would have had to advertise the unit regardless of whether the tenant gave adequate notice. Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee. I dismiss the claim for registered mail and photocopying costs. As each party has enjoyed partial success I find it appropriate that they bear the cost of their own filing fees.

Conclusion

The landlord has been awarded a total of \$708.23 which represents occupational rent, cleaning, gardening and missing items. The landlord currently holds \$2,100.00 in rent for July and the \$975.00 security deposit and interest. For the purpose of calculating interest, as neither party knew the date on which the tenancy began, I have used July 1, 2005 as the date the deposit was paid. Interest of \$34.53 has accrued up to the date of this judgment, which means the landlord currently has \$3,109.53 in her hands. I order the landlord to retain \$708.23 and to return the balance of \$2,401.30 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$2,401.30. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: November 25, 2010

Dispute Resolution Officer