Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

The parties both attended, gave affirmed testimony, and provided evidence in advance of the hearing. All testimony and information provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the tenant referred to her evidence package which contains a Decision dated May 21, 2010 from a Dispute Resolution Officer who dealt with the security deposit. I find that there has been a prior determination on this matter and therefore, I am bound by the finding. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties. The tenant's claims were officially determined at the hearing held in May, 2010. I find that the principle of *res judicata* applies, meaning that the matter has already been decided and is therefore final and binding on the parties. I do not have the authority to over-rule or make an alternate finding in regards to the determination made in the previous decision.

The landlord stated that her witnesses were unable to attend the hearing and requested an adjournment until sometime after January 8, 2011. The tenant opposed the adjournment application. I note that the landlord filed the application for dispute resolution in July, 2010, and I find that the witnesses, even if away during the holiday

season, could have dialled into the conference call hearing from anywhere. Further, the tenant received an order in May, 2010 and I find that it would be prejudicial to the tenant if the hearing were adjourned. Therefore, the landlord's application to adjourn the hearing is dismissed.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

The parties agree that foreclosure proceedings were commenced against the rental unit, and the unit was ultimately sold. The landlord is no longer the owner of the rental unit. The landlord testified that her claim for damages is tantamount to the value of the rental unit, and that it could be proven that the amount of the proceeds from the sale of the rental unit would have been a different amount had repairs not been necessary before the sale, and that the necessity of painting and repairs were a result of the tenant's failure to comply with the *Residential Tenancy Act* or the tenancy agreement. The landlord, however, was not able to provide any evidence to support that claim. Further, the landlord was not able to provide testimony with respect to the move-in condition inspection report or the move-out condition inspection report.

The landlord provided a copy of a quote from a contractor dated July 29, 2010 that states that painting the unit and fixing scratches to the patio and doors would cost a total of $2,031.00, but that work was not completed. The landlord claims $2,031.00 as loss of revenue from the proceeds of the sale.

The tenant testified that she has been to the building within the last 2 months and the rental unit has been renovated. She stated that the landlord would not have received any higher amount from the proceeds of the sale because the new owners were renovating anyway, and painting the unit would not have changed the outcome. The tenant did not call any witnesses to support that claim.

Analysis

Claims for damages are meant to be restorative, meaning that any award for damages should put the landlord in the same financial position if the damage had not occurred. I find that the landlord was not able to prove the damage or loss, and further, the landlord no longer owns the rental unit, and therefore would not be applying any financial award for damages toward the repair of any such damage.

The landlord testified that the purchase price would have been $2,031.00 more if the repairs had been completed prior to the sale of the rental unit, but could not provide any evidence to support that claim.

Further, the landlord was not able to provide evidence as to when the unit had been painted last, or that any damage caused by the tenant was beyond normal wear and tear.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety 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: December 22, 2010.

Dispute Resolution Officer