

DECISION

Dispute Codes

MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage or loss under the Act, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be decided

Is the landlord entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of the upper level of a single detached house in Richmond. Pursuant to a written agreement, the month to month tenancy started on May 24th, 2006 and ended on March 24th, 2010. The monthly rent of \$1000.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$500.00. Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord testified that the tenant caused significant damage to the rental unit. In her written submissions, the landlord provided in part three colour photographs of the carpet showing what appears to be cigarette burns, and black and white copies showing partial

repairs to a wall, plumbing under the sink which the landlord reported as damaged, and some items left behind by the tenant in the garage. The landlord stated that the carpet was new in 2003, and that the tenant also ruined the linoleum in the kitchen. The landlord submitted an updated claim as follows:

- New flooring: \$2652.51
- Materials to repair the unit: \$ 528.48
- Total: \$3180.99

The landlord brought two witnesses to the hearing: her new tenant who moved into the unit in June 2010, and the person who did the repairs to the suite. In summary, he testified that he viewed the unit just before the carpet was replaced, and stated that it reeked with dog urine and that the unit was in a deplorable condition. The other witness confirmed that he did the repairs as claimed by the landlord.

The tenant testified that the landlord's claim concerning the alleged damages to the unit was dealt with at a hearing held on October 14th, 2008, and that a decision had already been reached. The tenant stated that the landlord filed a further application for dispute resolution and another hearing was held on August 23rd, 2010. During that hearing, the tenant said that the landlord abandoned her monetary claim against the tenant for damages to the suite.

The new tenant testified that he accompanied the landlord at the August 23rd hearing. He stated that the Dispute Resolution Officer declared that she would only address the landlord's claim regarding the security deposit, and that she would not hear evidence regarding damages.

In that regard, in her decision the Dispute Resolution Officer's wrote:

"Although the Landlord has made reference to damage to the rental unit in the documents that have been submitted in evidence, the Landlord has not made a claim

for compensation for damages and damages to the rental unit were not in issue at this hearing.”

The tenant stated that she was not aware that evidence would be brought concerning issues with the garage. She stated that the garage was a common area shared with the other tenants, but that she did leave a number of personal belongings behind, in particular the wall unit showed in the landlord's pictures. The tenant stated that there were no inspection condition reports and that she has no knowledge of the damages claimed by the landlord. She stated that the linoleum already needed replacement when the tenancy started. Included in her evidence, the tenant provided photographs when she left the unit. The tenant stated that she cleaned the unit and used a professional shampooer to clean the carpet.

Analysis

The landlord bears the burden to prove the grounds for the claim against the tenant. Based on the landlord's documentary evidence and her testimony, I find that the issue regarding the damaged carpet was previously heard in a hearing dated October 14th, 2010, and that a decision was reached on the same day. To accept that evidence again would prejudice the tenant and breach the rules of procedural fairness. The landlord did not bring new evidence and I therefore I dismiss that portion of her claim.

I find on the preponderance of the evidence that the landlord failed to prove her claim against the tenant. In the absence of condition inspection reports, I am unable to assess the extent of damages that occurred during the tenancy; how much of that cost could be ascribed against the tenant; and to make an accurate finding of liability. It is not sufficient to allege damages to the unit; the landlord must prove on a balance of probabilities that they were caused by the tenant, particularly where other tenants lived in the residential property during and after the tenancy.

Concerning the personal belongings in the garage, it was not disputed that the garage was part of the tenancy, and that the tenant did leave certain items behind. I find that the landlord was inconvenienced and had to dispose of these items herself. For this portion of her claim I award the landlord \$100.00

Since the landlord was partially successful, I grant the landlord partial recovery of the filing fee for \$25.00.

Conclusion

The landlord has established a claim of \$125.00. Pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum of \$125.00. If necessary, This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: February 1, 2011.

Residential Tenancy Branch