

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was reconvened following an adjournment on February 24th, 2011 to allow the landlord sufficient time to serve the evidence and for the tenant sufficient time to seek legal advice.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that she did not receive the Notice of Hearing until March 9th, 2011; that she did not have time to prepare for the hearing; and that she did not receive the landlord's evidence.

T.J. testified that she met the tenant at the rental unit on February 25th, 2011. She stated that the tenant did not provide her with a forwarding address and declined to do a move-out condition inspection before leaving. T.J. stated that she received the February 24th, 2011 decision that the hearing was adjourned to this date on March 7th, 2011. She said that in order to meet the timelines she sent her documentary evidence by express post at the tenant's address specified on the decision. T.J. read Canada Post's tracking statement and advised that the package had not been claimed and was waiting for pick up. The tenant said that she has no knowledge of that delivery. T.J. said that she has tried to contact the tenant by email and cell phone without success. The tenant replied that she currently does not have access to the internet.

Issue(s) to be Decided

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

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

My February 24th, 2011 decision provided the background, the details of the landlord's monetary claim of \$8714.00, and the parties' testimony. Therefore it is not necessary to reiterate information already provided by the parties; their testimony was, and will likely remain at complete odds whether or not the tenant receives written evidence of the landlord's oral submissions.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 the Act, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimony is at odds, in the absence of other substantive independent evidence the burden of proof is not met without assessing credibility. Based on the available evidence I prefer the landlord's testimony that the tenant left the unit in a condition that can be considered beyond reasonable wear and tear and on that basis I find that the tenant did not comply with the Act.

Section 32 of the *Residential Tenancy Act* provides in part that; a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; and that a tenant must repair damage to the rental unit or common areas by the actions or neglect of the tenant. The toilet was plugged and required repairs three times during the tenancy. I am satisfied on the balance of probabilities that either the tenant or her guests did not comply with the landlord's directions concerning the use of the toilet. Therefore I find that the tenant must share part of the responsibility for the repairs; however the landlord has not

completed the repairs and therefore could not provide receipts to establish the final cost. Based on the documentary evidence and the parties' testimony, I accept the landlord's claim for plumbing repairs during the tenancy for \$80.00 on December 31st, 2010, \$80.00 on January 19th, 2011, and \$379.00 for February 7th, 2011. In the absence of objective, material evidence I dismiss the landlord's claim for estimated or future repairs.

Concerning unpaid rent, I find that the tenant did not pay the rent when it was due, nor did she pay the rent within 5 days of receiving the 10 Day Notice to End Tenancy. I find that the landlord is entitled to recover the rent for February 2011. I also find that the repairs and cleaning of the suite caused the landlord loss of rent for March 2011 and that he is also entitled to that month's rent.

Conclusion

The landlords established a claim of \$1289.00. Since they were successful, I grant them partial recovery of the filing fee for \$25.00 for a claim totalling \$1314.00. I authorize the landlord to keep the tenant's \$187.50 security deposit and Pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$1126.50. 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: March 14, 2011.

Residential Tenancy Branch