

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. As the parties agreed that the landlord handed the tenant a copy of his dispute resolution hearing package on November 25, 2010, I am satisfied that the landlord served this package in accordance with the *Act*.

The tenant said that she did not serve a copy of her application for dispute resolution to the landlord. I dismiss the tenant's application for dispute resolution without leave to reapply as she did not serve her application to the landlord and I have considered the tenant's security deposit in the context of the landlord's application to retain that deposit.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage to the rental unit or losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on February 1, 2008. Monthly rent was set at \$1,000.00, payable on the first of each month. The landlord continues to hold the

tenant's \$500.00 security deposit paid on January 22, 2008, plus interest. Although this tenancy was supposed to end on May 7, 2010, the landlord agreed to the tenant's request to let the tenant stay in the rental unit until May 31, 2010 to allow the tenant to leave the rental unit in acceptable condition. The tenant did not fully vacate the rental unit and give the key to the landlord until June 7, 2010.

The landlord and his wife who is a co-owner of this property testified that the rental premises were in very bad condition at the end of this tenancy. Although the parties' residential tenancy agreement did not allow smoking in the rental unit, the parties confirmed that the tenant regularly smoked in the rental unit. The tenant gave sworn testimony that she commenced smoking inside the rental unit in September 2008.

The landlord testified that the premises were damaged to the extent that they could not be rented until repairs were completed. The landlord testified that he was able to rent the premises to another tenant as of August 1, 2010 at a monthly rental rate of \$900.00. The landlord claimed loss of two months' rent of \$2,000.00 to compensate him for unpaid rent in June 2010 and loss in rent for July 2010, which resulted from the premises being unavailable for rental until August 2010.

Although the parties confirmed that a joint move-in inspection was conducted on January 22, 2008 and a condition inspection report was prepared, they did not submit a copy of this report into written evidence. The parties agreed that the landlord did not attempt to schedule a joint move-out condition inspection, the landlord did not conduct a move-out condition inspection and no report was prepared at the end of this tenancy. The landlord entered into evidence copies of photographs taken on a cellphone of the condition of the rental unit a few days after the tenant handed the keys to the landlord. However, these photographs were taken after flooring had been removed.

The landlord listed the following items in his \$14,627.59 claim for a monetary award:

Item	Amount
New Carpets	\$4,964.70
Removal of Flooring	275.00
Bleaching of Walls, Ceiling & Floors	168.00
Painting & Cleaning - M - 3 days @ \$120.00	360.00
Painting & Cleaning- S -12 days @ \$120.00	1,800.00
Painting & Cleaning- G -10 days @ \$160.00	1,600.00
Painting & Cleaning- J -20 days @ \$160.00	3,200.00
Dump Fees	159.50
2 Months Rent @ \$1,000.00	2,000.00
Total Monetary Award Requested	\$14,527.20

At the hearing, the landlord's wife testified that they realized that it was unlikely that they would be able to recover all of the considerable labour that the four co-owners of this property expended in repairing this rental unit. However, the landlord's wife and the landlord asked for recovery of their out of pocket expenses and the loss in rent that they experienced as a result of the tenant's actions.

Analysis

Damage to Rental Unit

The parties provided conflicting evidence regarding the extent of the damage caused by the tenant during this tenancy. The landlord's wife claimed that the smell of smoke was "horrendous" and permeated the entire rental unit. The landlord confirmed the extent of this damage. They noted that there were major cigarette burns in the carpet. The tenant testified that the damage was not that serious and that the condition of the premises could easily have been restored by applying her security deposit to cover the work required. She also provided oral testimony regarding other sources of damage to the property such as garbage left by a previous tenant and never removed by the landlord and black mould in the rental unit.

The landlord's failure to provide a copy of the joint move-in condition inspection report or make any attempt to conduct a joint move-out inspection at the end of this tenancy reduces the landlord's eligibility to obtain a monetary award for damage. The photographs that the landlord provided were of generally poor quality and did not involve a significant portion of the landlord's claim.

However, the tenant did confirm that she smoked in the rental unit from September 2008 until she left the unit in late May 2011. Her witness agreed that there was a definite smell of smoke in the rental property. The tenant also admitted that she did not clean some of the walls in the rental unit before she moved, did not clean the carpets, and left assorted debris and materials on the premises when she left. The landlord's wife said that they took some of this material, including eight boxsprings/mattresses to the tenant's new rental premises.

At the hearing, the parties agreed that most of the existing carpet was in good condition when the tenant moved into the rental unit. The landlord and his wife did not know the exact date when the carpet in this property was last replaced, but testified that it was new when the tenant prior to this tenant first occupied the rental unit. They believed that the previous tenant moved into this rental unit "a year or so" before the tenant in this application commenced her lease. By this estimate, the carpet was approximately four years old by the end of this tenancy. The Residential Tenancy Policy Guidelines

establish that landlords are normally expected to replace carpet every ten years. Although the walls and ceiling were damaged by the tenant's smoking, there is also an element of wear and tear that would require some painting and repairs to be conducted at the end of a tenancy that extended more than two years.

In considering the landlord's claim for almost \$5,000.00 to replace the carpet, I note that the landlord's invoice includes much work beyond simple replacement of the carpets. This invoice includes vinyl installation, installation of ceramic tiles, paint and Venetian blinds. The landlord and his wife also agreed that the invoice they presented was from the couple's own carpet company, although they testified that the prices quoted were wholesale prices.

Based on the evidence provided by the parties, I am satisfied that the tenant is responsible for considerable damage to this rental unit, mostly resulting from her smoking inside the rental unit which she realized was contrary to her tenancy agreement. I find that the landlord is entitled to a monetary award for damage to this rental unit. However, calculating the extent of his entitlement is affected by the length of this tenancy, the fact that the carpets were four years old when they were replaced, and the landlord did not provide adequate evidence to enable a proper comparison of the state of the rental unit before and after this tenancy.

I allow a monetary award of \$2,000.00 to replace the flooring and to repair walls, ceilings and other items damaged by the tenant during her tenancy. I also allow the landlord's claim of \$159.50, an amount that was not disputed by the tenant. I allow a monetary award of \$300.00 to clean up the inside and outside of the rental premises at the end of this tenancy.

Unpaid Rent and Loss of Rent

I allow a monetary award of \$1,000.00 for unpaid rent for June 2010 and \$1,000.00 for July 2010 for rental loss arising out of this tenancy.

Security Deposit

The parties agreed that there was a previous application from the tenant regarding the return of the tenant's security deposit. However, at this hearing, they agreed that the landlord received the tenant's forwarding address in writing on November 12, 2010. The landlord filed his application for dispute resolution to retain the tenant's security deposit on November 23, 2010, within fifteen days of receiving the tenant's forwarding address in writing. I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued in this decision.

As the landlord has been partially successful in this application, I allow the landlord to recover \$50.00 of his filing fee from the tenant.

Conclusion

I dismiss the tenant's application without leave to reapply.

I issue a monetary Order in the landlord's favour in the following terms which compensates the landlord for damage to the rental unit, unpaid and lost rent during this tenancy, and recovery of \$50.00 of the landlord's filing fee for this application:

Item	Amount
Unpaid June 2010 Rent	\$1,000.00
Loss of Rent for July 2010	1,000.00
Internal Repairs Resulting from Smoking Damage to Rental Unit	2,000.00
Dumping Fees	159.50
Cleaning of Rental Premises	300.00
Less Security Deposit plus Interest (\$500.00 + \$7.07 = \$507.07)	-507.07
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$4,002.43

The landlord is also entitled to retain the tenant's security deposit plus interest in partial satisfaction of the landlord's monetary award.

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*.