Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord seeking:

1. A monetary Order;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving the claims she has brought?

Background and Evidence

This tenancy began on August 1, 2010 and ended on December 31, 2010. Rent was $895.00 per month and the tenant paid security and pet deposits of $895.00 per month. The landlord claims that the tenant drove over the septic field on the landlord's property repeatedly despite being told not to do so. At move-out the landlord says the tenant's mover drove his truck over the septic field in order to gain access to the rental unit to move the tenant's goods. The landlord is claiming $698.82 for repairs to the septic field.

The landlord produced a witness who said that she called the landlord on her birthday on December 4 and during the call the landlord exclaimed that the tenant was driving on her septic field again. The witness also said she was speaking on the phone with the landlord on another occasions when the tenant came banging on to door without an appointment.

The landlord says further that while the tenancy did not end until December 31 the tenant vacated earlier and did not supply heat to the home. The landlord says she was forced to fill the oil tank at a cost of $89.00. The landlord also claims $327.85 for

“electric for range & hood fan”. The landlord says that the tenant cut wires to the fan and it needed to be replaced. The landlord said she also had to pay $20.00 for paint and $100.00 for new screens because the tenant’s cat caused holes in the screens. The landlord says the tenancy agreement requires the tenant to do a pest treatment after moving out because the tenant had pets yet this was not done. The landlord is claiming $51.50 for the pest treatment. The landlord is also claiming $18.00 for two halogen bulbs and $50.00 for damage to a closet door which the landlord says came off its hinges and required replacement. In total the landlord seeks $1,055.17.

The tenant says she did not drive over the septic field. The tenant says the landlord directed her mover to move his truck over to a particular area to pick up some goods and when he did as he was instructed by the landlord his truck tire did go onto the septic field by a foot or so. The tenant agrees that she did not refill the oil tank but says she did not do so because she did not remain in the rental unit for the entire month of December and did not believe she was responsible for heating the rental unit for that month. The tenant says her pet did not have fleas so it was not necessary to have the rental unit treated. The tenant says both the screen door and the closet doors were damaged at move in and she did not cut any wires on the range or hood fan.

Analysis

With respect to documentary evidence the landlord has submitted a condition inspection report created by the landlord. While the individual items are checked and notes are made in the “leaving” column, the “arriving” column has no check marks and few comments. It is difficult to determine whether some comments represent the condition of the various items at move in or at move out. Further, the tenant did not participate in the move-out inspection and there is little evidence to show that she was given sufficient opportunity under the Act to do so. I therefore find that the report is inadequate for the purposes of determining the condition of the rental unit at the start of the tenancy with any accuracy.

Further, the tenant disputes all of the landlord’s claims although she does admit she did not fill the oil tank and did not have the rental unit treated for pests at the end of the tenancy although the tenancy require does have such a requirement.

The landlord, having made this claim, bears the burden of proving it. When one party provides one version of the events in one way and the other party provides an equally probable but different version of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord bears the burden of proving both liability and quantum and I find her claim fails in both respects.

With respect to liability I find the landlord has brought insufficient evidence to demonstrate that the tenant caused the damage at issue. With respect to the witness testimony, I do not accept it as reliable. It was not an eye witness account of the tenant (or her mover) driving over the septic field it was that the witness was on the phone with the landlord and the landlord told her the tenant was driving over the septic field.

With respect to quantum I find there is insufficient proof of the sums paid or of the work performed or, in fact, to demonstrate that work was performed. In fact the entire lack of this important evidence is in direct contrast to the detailed and voluminous records the landlord has otherwise supplied to support her claim.

In the end, even if I were to accept that the tenant was liable any or all of the matters claimed by the landlord, the landlord has failed to bring sufficient evidence to prove quantum or that the work performed was directly related to something the tenant did or did not do. This includes the matter of the oil costs and the pest control because even though the tenant admits that she did not fill the oil tank or did not have the rental unit treated for pests there is insufficient proof of the sums expended by the landlord and I will therefore not allow these claims either.

Conclusion

The landlord's application is dismissed in its entirety.

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*.