

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property 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 the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 3, 2011. I am satisfied that the landlord served this document to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage 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 the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on October 1, 2010. Monthly rent was set at \$545.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$272.50 security deposit paid on or about October 1, 2010. The tenant vacated the rental unit on March 2, 2011.

The landlord applied for a monetary award of \$817.50. This amount included an application for \$545.00 in unpaid rent for March 2011. The parties agreed that the tenant did not provide the landlord with a written notice to end this tenancy. The landlord testified that the tenant provided five days oral notice that she was moving. The tenant said that she told the landlord she was going to vacate the rental unit more than a month in advance of her moving. She claimed that he told her that she did not need to provide him with anything in writing to confirm this. The landlord testified that on March 10 or March 11, 2011 the owner of the property placed advertisements on Craigslist for the availability of this suite for rental as of March 15, 2011. The landlord said that the suite was re-rented for the same monthly rent as of April 1, 2011.

The remaining portion of the monetary award sought by the landlord was for \$272.50 in damage and carpet cleaning that the landlord said he undertook when the tenant vacated the rental unit. This was the same amount as her security deposit.

The landlord submitted into written evidence a copy of the September 22, 2010 joint move-in condition inspection report and the March 2, 2011 joint move-out condition inspection report. These reports confirmed the landlord's claim that five major gouges on the bedroom walls and two stains to the carpets occurred during the course of this tenancy. The landlord said that he was eventually able to remove the stains and that he repaired the wall damage. He also said that venetian blinds were damaged during this tenancy. He testified that he had to clean the rental unit after he completed the repairs to the walls caused by the tenant.

Analysis

Section 52 of the *Act* requires that a notice to end tenancy issued by either the landlord or the tenant must be in writing. Since there is undisputed evidence that the tenant did not end this tenancy in accordance with section 52 of the *Act*, she is responsible for the landlord's loss of rent for March 2011. Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for March 2011. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss. I issue a monetary award in the landlord's favour in the amount of \$545.00 for his loss of rent for March 2011.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Once that has been established, the claimant must provide evidence to verify the actual monetary amount of the loss or damage.

Based on my review of the joint move-in and move-out condition inspection reports, I am satisfied that the landlord is eligible to recover a monetary award for damage arising out of this tenancy. However, the landlord did not submit receipts for the work undertaken to repair damage to the rental unit. The tenant also noted that on the move-out inspection report she gave her written consent to allow the landlord to deduct \$72.50 from her security deposit. She testified that this was all the damage that the landlord identified in the move out inspection report. The landlord selected the dollar amount of the damage at that time.

In the absence of any receipts to quantify the actual amount of the damage, I find that the landlord is entitled to a monetary award of \$72.50 for damage to the rental unit, the amount identified by the landlord during the move out inspection.

I allow the landlord to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in his application, I allow him to recover the filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, losses arising from damage to the rental unit, and his filing fee for this application, less the retained portion of the tenant's security deposit.

Item	Amount
Unpaid March 2011 Rent	\$545.00
Damage	72.50
Less Security Deposit	-272.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$395.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.