

DECISION

Dispute Codes: *OPR, OPC, MNR, MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied to cancel the notice to end tenancy and for compensation for loss of quiet enjoyment during the first two weeks of tenancy and for work done at the landlord's request. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenant moved out on August 31, 2011, the landlord withdrew his application for an order of possession. Therefore, this hearing only dealt with the monetary claims of both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, cost of repairs and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to compensation for loss of quiet enjoyment and for work done in the parking area of the home?

Background and Evidence

The landlord testified that the tenancy started on January 15, 2011 and ended on August 31, 2011. The tenant stated that she placed the keys in the mail box as per the landlord's request. The landlord testified that he did a walk through after the tenant had moved out and found the unit to be in an acceptable condition.

The tenant testified that during the first two weeks of tenancy, the landlord worked inside the rental unit completing the final touches to the renovation. The landlord agreed that he did enter the unit on most days of the first two weeks of tenancy, to finish jobs like installing carpet, fixing closet doors, fixing drywall, installing light fixtures, blinds, dryer duct extension, new doors, touching up paint etc. The tenant stated that she did not object or ask for a rebate in rent because she is a "nice person".

However, she stated that the relationship deteriorated with constant complaints about her five year old child's activities in the home and she decided that she should be compensated for the inconvenience she put up with.

The landlord hired the male tenant to fix the perimeter drainage in the parking area. The tenant worked with a bob cat to level the area but the landlord was not pleased with the job and stated that the tenant had actually damaged the parking area and the drainage problem continued to exist. The work arrangement was verbal and payment was not discussed. The tenant stated that the landlord agreed to a rent reduction but the details were not finalized.

On July 31, 2011, the landlord served the tenant with a one month notice to end tenancy. The tenant replied in writing on August 01, 2011, informing the landlord that she would not dispute the notice and would move out on August 31, 2011. The landlord stated that she did not make any efforts during the following weeks to find a tenant for September as she was unable to show the unit while the tenants were living there.

On August 01, 2011 the tenant paid rent after deducting the security deposit plus \$672.00 for the work done in the parking area. This left a balance of \$3 which the tenant paid to the landlord. The landlord is claiming rent for August \$1,347.00, loss of income for September \$1,350.00 and \$1,456.00 to fix the damage in the parking area. The landlord filed an estimate from a contractor for the cost of repairing the parking area. The tenant is claiming \$672.00 for the work done in the parking area plus compensation of one week's rent (\$337.50) for the inconvenience she endured in January 2011.

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In this case the tenant paid \$3.00 for rent for August 2011 and therefore owes the landlord \$1,347.00 in unpaid rent.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss. In this case I find that the landlord did not advertise or show the unit during the month of August and therefore did not mitigate her losses. For this reason, the landlord's claim for loss of income is dismissed.

The landlord has filed an estimate to repair the parking area. The parties entered into a service contract which is not connected to the tenancy and is therefore outside the jurisdiction of the *Residential Tenancy Act*.

Therefore, I do not have the authority to decide compensation with regard to this contract for service and accordingly the monetary claims of both parties with regard to the work done by the tenant (\$672.00) and the repair to be done by the landlord (\$1,456.00) are dismissed. The parties are at liberty to seek the appropriate legal remedy to this dispute.

The tenant has also made a monetary claim for compensation for the loss of quiet enjoyment for a period of two weeks when the landlord completed renovation of the unit. The landlord agreed that he did work during this period and even filed a detailed list of the work carried out by him. The landlord provided proper notice prior to entering the unit and some of the work was delayed due to availability of supplies. Based on the testimony of both parties, I find that the tenant did suffer a certain amount of inconvenience due to the activities of the landlord inside the rental unit.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the tenant \$100.00 as a minimal award.

Overall I find that the landlord has established a claim of \$1,347.00 and the tenant has established a claim of \$100.00. The landlord is also holding a security deposit of \$675.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$572.00. Both parties must bear the cost of filing their applications.

I order that the landlord retain the security deposit of \$675.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$572.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$572.00**

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: September 01, 2011.

Residential Tenancy Branch