

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord made two applications for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants applied for double recovery of the security deposit. One landlord and both tenants participated in the conference call hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to double recovery of the security deposit?

Background and Evidence

The tenants moved into the rental unit on October 26, 2010. On October 21, 2010, the landlord collected a security deposit from the tenants in the amount of \$400. On October 31, 2011 the landlord and tenants conducted a move-in inspection and completed a condition inspection report.

The landlord submitted a tenancy agreement for a fixed term beginning May 1, 2011 and ending on August 31, 2011. On that date, the tenancy would end and the tenants would move out. The landlord signed the agreement on May 1, 2011 and the tenants signed the agreement on May 20, 2011. The new tenancy agreement indicates a reduced rent of \$700. Additionally, the security deposit of \$400 was "held from previous term." The landlord and tenants did not complete a new condition inspection report.

The tenancy ended on July 28, 2011.

Evidence of the Landlord

The landlord stated that they had received a letter from the City which indicated that the rental unit was an illegal suite and the tenants would have to move out. For that reason, the landlord and tenants entered into the fixed term agreement. The landlord received a text message on July 8, 2011 that the tenants intended to move out by July 28, 2011. The landlord has claimed \$700 in lost revenue for August 2011, on the basis that the tenants entered into a fixed term tenancy to end on August 31, 2011.

The rental unit was brand new when the tenants moved in. When the tenants moved out, there was damage to the carpets in the bedrooms. The tenants used one of the bedrooms as a den, and the furniture made a large impression on the carpet. The office chair wore out a pattern on the carpet. Furthermore, there was a small stain that could not be removed. The landlord rented a steam cleaner and cleaned the carpets. The carpets were very dirty, and the stain could not be removed. The landlord has claimed \$44 for rental of the steam cleaner and \$50 for two hours of his time, at \$25 per hour, to clean the carpets.

The landlord removed and replaced one 10 by 12 foot portion of the carpet and under pad. The tenants did damage to the hardwood flooring. The landlord removed and reinstalled the flooring. The tenants acknowledged in emails that they had caused damage to the flooring. The landlord has claimed \$425.60 for carpet replacement and \$392 for removing and replacing the hardwood flooring.

The landlord has also claimed \$21.22 for replacement of the basket strainer in the kitchen sink.

The landlord and tenants carried out the move-out inspection over two days on August 15 and 16, 2011. The landlord received the tenants' written forwarding address by email on August 24, 2011. The tenants returned the second key for the rental unit on August 31, 2011.

Evidence of the Tenants

In regard to the landlord's claim for lost revenue for August 2011, the landlord told the tenants that they would have to move out by the end of August because it was an illegal suite. The tenants began searching for a new place. The landlord told the tenants that they would not have to complete the tenancy.

In regard to the landlord's claims for damages, the tenants stated that they did not notice any damage on the carpet, just an indication that there was furniture there. The landlord wanted to clean the carpets, so the tenants should not be responsible for that cost. The tenants acknowledged that there was a bit of damage on the hardwood floor, but they question the amount of the cost for removing and replacing the flooring. In their

evidence the tenants stated that the sink stopper in the kitchen sink fell apart days before the tenants moved out.

Analysis

Upon consideration of the evidence, I find as follows.

The landlord and the tenants entered into a new tenancy agreement commencing May 1, 2011. Therefore, the applications of the landlord and the tenants are based on that tenancy. I find that the tenancy ended on July 28, 2011, when the tenants moved out.

The landlord is entitled to the lost revenue for August 2011, in the amount of \$700. The tenants stated in the hearing that the landlord told them they had to move out by the end of August. The tenants signed the new fixed term agreement, and the landlord and tenants did not make any agreement in writing that the tenants could vacate the rental unit before the end of the fixed term and not be responsible for lost revenue to the end of the term.

The landlord is not entitled to the amounts claimed for replacement of carpet and hardwood flooring. The landlord did not do an inspection and complete an inspection report at the beginning of the tenancy – that is, in May 2011. Any damage to the carpet or hardwood flooring may have been caused prior to May 2011. The landlord cannot establish whether the damage was caused during this tenancy because he failed to conduct an inspection, as required by the Act, at the beginning of the tenancy. I therefore dismiss these portions of the landlord's claim.

The landlord is not entitled to the amounts claimed for carpet cleaning. A tenant is generally held responsible for steam cleaning or shampooing the carpets after one year. In this case, the tenancy ended after three months. The tenants are therefore not responsible for cleaning the carpets, and I dismiss this portion of the landlord's application.

The landlord is not entitled to the amount claimed for the kitchen sink basket strainer, as the landlord did not provide evidence that the tenants unreasonably used the basket strainer and caused it to break.

The tenants are not entitled to double recovery of the security deposit. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on July 28, 2011. The tenants provided their forwarding address by email on August 24, 2011. Email is not normally considered an acceptable method of service under the Act; however, the landlord did apply to keep the security deposit within 15 days of August 24, 2011.

The landlord failed to properly complete a condition inspection report at the outset of the tenancy, and as a result the landlord's claim against the security deposit for damage to the property is extinguished. However, in this case the landlord applied to keep the pet and security deposits in partial compensation of monetary claims for damage to the property as well as for lost revenue for August 2011. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit. The tenants are therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenants' application.

Filing Fees

It was not necessary for the landlord to file two applications and pay two filing fees. Further, the landlord was only partially successful in their application, and I therefore decline to award the landlord recovery of either of their filing fees.

As the tenants' claim was not successful, they are not entitled to recovery of the filing fee.

Conclusion

The application of the tenants is dismissed.

The landlord is entitled to \$700. I order that the landlord retain the security deposit of \$400 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$300. This order may be filed 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: December 2, 2011.

Residential Tenancy Branch