

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on March 1, 2010 and ended when the tenant vacated the unit on April 1, 2012. They further agreed that the tenant was obligated to pay \$1,200.00 in rent in advance on the first day of each month and that at the outset of the tenancy, she paid a \$600.00 security deposit. The rental unit is on the upper floor of a home in which the landlord occupies a separate unit on the lower floor.

I address the landlord's claims and my findings around each as follows.

- 1. Insulation.** The landlord claimed \$700.00 as the cost of installing insulation between the ceiling of his unit and the floor of the rental unit in order to improve soundproofing as he was being disturbed by noise from the tenant's child. I did not hear evidence on this claim and advised the landlord that if he were disturbed by noise from the tenant or occupants, his remedy was to evict her rather than install improvements to his home at her expense. The claim is dismissed.
- 2. Carpet cleaning.** The parties agreed that the tenant would bear the cost of cleaning the carpets. I therefore award the landlord \$164.64.
- 3. Driveway cleaning.** The parties agreed that the tenant's friend, N.N., would clean oil stains from the driveway. I leave it to the parties to arrange a time for N.N. to attend the rental unit to perform the cleaning. In the event the parties are unable to agree that the driveway is adequately cleaned, I grant the landlord leave to reapply for this claim.

- 4. Fire extinguisher.** The landlord claimed \$54.98 as the cost of replacing a fire extinguisher. He testified that there was an extinguisher in the unit at the outset of the tenancy and that it was gone at the end of the tenancy. The landlord provided a photograph of the unit showing the fire extinguisher and stated that the picture was taken within a few weeks of the start of the tenancy. The tenant and other occupants of the unit stated that there was not a fire extinguisher in the unit at the outset of the tenancy and that it should have been listed in the tenancy agreement if it had been in place. I do not accept that because the extinguisher was not listed on the agreement, it was not in the unit. I find it very likely that it would have been considered insignificant enough that it was simply not worth listing. The tenant did not dispute the landlord's claim that the photograph was taken shortly before the tenancy began and I find it unlikely that the landlord would have taken a photograph with the extinguisher in place and later moved it. I find it more likely than not that there was a fire extinguisher in the rental unit at the beginning of the tenancy and that it was missing at the end of the tenancy. I award the landlord \$54.98.
- 5. Curtain replacement.** The landlord claimed \$100.17 as the cost of replacing curtains in the rental unit. He claimed that the curtains were approximately 3 years old and that at the end of the tenancy they were stained. He stated that they needed to be dry cleaned and that he had tried to spot clean them, but had not been able to remove all of the stains. The tenant acknowledged that there may have been some stains on the curtains, but she and another occupant stated that there were stains on the curtains at the beginning of the tenancy. I accept that there are stains on the curtains, but I find that the reasonable approach to removing those stains would be to dry clean the curtains rather than replace them. The parties did not perform a condition inspection of the unit at the outset of the tenancy and I find it entirely possible that the curtains had some staining that pre-dated the tenancy. For these reasons I find that the landlord is not entitled to recover the cost of replacing the curtains and I dismiss the claim.
- 6. Unpaid rent.** The parties agreed that on March 3, the tenant was served with a one month notice to end tenancy which set the end of tenancy date at May 1, 2012. The tenant vacated the rental unit on April 1 and did not pay rent for that month. The tenant claimed that because the notice stated that she could move out earlier than the effective date of the notice, she believed she was justified in vacating and not paying rent.

A tenancy agreement is a contractual relationship in which both parties have certain rights and obligations. For instance, the tenant has the obligation to pay rent throughout the term of the contract and the landlord has the obligation to provide the rental unit to the tenant. The Act outlines specific circumstances under which a

tenancy comes to an end, putting a stop to the respective obligations of each party. The service of a notice to end tenancy is one of those means. In this case, the landlord served a one month notice to end tenancy, but chose to extend the end of tenancy date past one month from the date it was served, which he was entitled to do under section 53(3)(b) of the Act. The tenant did not dispute the notice and pursuant to section 47(5)(a) of the Act is therefore conclusively presumed to have accepted that the tenancy ended *on the effective date of the notice*. The tenant's obligation to pay rent would continue until the tenancy ended. Although she was not obligated to remain in the unit until May 1, this did not relieve her of her obligation to pay rent. I find that the landlord is entitled to recover the rent owed for the month of April and I award him \$1,300.00.

- 7. Showerhead.** The landlord claimed \$115.83 as the cost of replacing a showerhead. He testified that the showerhead was new at the outset of the tenancy and that at the end, the face was missing. The tenant testified that the showerhead broke approximately a week after she received the notice to end tenancy and stated that she did not report it to the landlord because she would soon be vacating the unit. N.N. testified that the showerhead broke as he was using a dial function on the face to change the spray pattern. He stated that he did not apply unusual force and that this was the first time the dial had been used. In order to succeed in his claim, the landlord must prove not just that the showerhead was broken, but that the breakage occurred through unreasonable use. I find that the landlord has not proven that the breakage occurred through something other than reasonable wear and tear and I dismiss the claim.
- 8. Filing fee.** As the landlord has been partially successful, I find that he is entitled to recover the filing fee paid to bring his application and I award him \$50.00.

Conclusion

The landlord has been awarded \$1,569.62 which represents the following awards: \$164.64 for carpet cleaning, \$54.98 for the fire extinguisher, \$1,300.00 for rent and \$50.00 for the filing fee. I order the landlord to retain the \$600.00 security deposit in partial satisfaction of the claim and I grant him a monetary order for the balance of \$969.62. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that there was some discussion about the parties having not completed a condition inspection together at either the beginning or the end of the tenancy. The Act requires a landlord to provide the tenant with 2 opportunities to schedule a condition inspection, the second in writing on a prescribed form. Landlords who fail to provide

these opportunities extinguish their right to claim against the security deposit. It is clear that the landlord failed to provide opportunities to inspect as prescribed by the Act and I find that he extinguished his claim against the security deposit. However, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits the landlord to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord and I have found it expedient to do so in this case.

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: June 07, 2012

Residential Tenancy Branch