



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and his agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties that has been received by the hearing date has been reviewed and are considered in this decision.

Preliminary Issues

A previous hearing took place on May 02, 2012 for the tenant's application for the return of double the security deposit and a monetary order was issued in favour of the tenant. The landlord has now applied to keep the security deposit.

Section 77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer at the prior hearing are not matters that I have any authority to alter

and any decision that I render must honour the existing findings. The landlord's application in this matter concerning, in part, with the landlords request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2010 for a fixed term of one year and then reverted to a month to month tenancy. The tenancy ended sometime around the middle of January, 2012. Rent for this unit was \$800.00 per month and was due on the first day of each month in advance.

The landlord testifies that the tenant or the tenant's guest had been smoking in the rental unit. The landlord claims that the entire unit had to be washed down with ammonia to get rid of the nicotine stains and then repainted. The landlord testifies that the cost for this work was \$3,500.00. The landlord has not provided a quote for this work in time for the hearing however the tenants did agree that they had received a quote from the landlord for \$3,500.00. The landlord testifies that the nicotine stains are not visible to the eye or camera.

The landlord testifies that the unit was painted about a year and a half before the tenancy started. The landlord testifies that he and his friend saw a female guest of the tenants smoking in the tenant's bathroom.

The landlord seeks to recover the sum of \$450.00 to replace locks because the tenant did not return all the keys to the unit. The landlord states he did receive a key on April 12, 2012 from the tenant however the three locks had to be changed for security purposes as the tenants girlfriend also had a key which had not been returned. The landlord has not provided a receipt for this work before the hearing however the tenants agree they have received a copy of the receipt.

The landlord testifies that he had a verbal agreement with the tenant that if the tenant was going to burn wood in the fireplace the tenant would be responsible to have the chimney and flue cleaned. The landlord testifies that the tenant did burn wood but failed to clean the chimney and flue and the landlord seeks to recover the sum of \$80.00 for this work. The landlord has not provided a receipt for this work before the hearing. The landlord also seeks \$40.00 for wood kindling the landlord claims the tenant used and did not replace.

The landlord seeks to recover the sum of \$300.00 for damage to two of the speakers located in the ceiling. The landlord claims the tenant hooked up his system to the speakers and either had the volume on to high or did not make the correct wire connections because two of the speakers no longer work. The landlord has not provided a receipt for this work before the hearing.

The landlord seeks to recover the sum of \$50.00 for damage to a blind. The landlord testifies that the tenant has broken the pull string on the blind so the blind can no longer be put up or down. The landlord has not provided a receipt for this work before the hearing.

The landlord seeks to recover unpaid rent for February, 2011 of \$800.00. The landlord testifies that the tenant moved from the rental unit in the middle of January, 2011 and the unit was not re-rented until May 01, 2011. The landlord agrees he has not added this sum to his monetary claim but verbal requests that I consider this claim.

The tenant disputes the landlord's claims. The tenants agent testifies on behalf of the tenant and states there was nothing wrong with the paint work in the unit. The tenants agent states that at the last hearing the landlord stated that he did not have a problem with the condition of the suite and in the landlords written submissions dated March 22, page four, the landlord has stated that the unit was left in a decent./ fair condition with some minor deficiencies but nothing unusual.

The tenant's agent testifies that the tenants photographs of the unit taken at the end of the tenancy show that the unit was left in a clean and good condition. The tenant's agent testifies that she was the women the landlord accused of smoking in the bathroom as seen through the partially closed blinds. The tenant's agent testifies that she does not smoke and there are no blinds in the tenant's bathroom. The tenant's agent testifies that they have taken pictures of the walls and ceiling and there is no evidence of any smoke damage or nicotine stains. The tenant does smoke but he smokes outside the unit.

The tenant's agent testifies that she obtained a price quote for painting a unit of this size from a painting company for materials and labour and that quote came in under \$1,000.00. The tenant's agent states the landlord is attempting to claim an exorbitant amount.

The tenant's agent testifies that at the end of the tenancy she helped the tenant move out and the tenants key was left on the counter and the doors were left unlocked for the landlord. A cleaner went into the unit after they had left. The tenant testifies that later they found his girlfriends key and this was sent by registered mail to the landlord with the request for the security deposit. This was sent on February 04, 2012.

The tenant's agent testifies that she obtained a quote to redo tumblers on three locks including new keys and this quote came in at \$43.65. The tenant's agent states the landlord is attempting to claim an exorbitant amount for this work.

The tenant testifies that he does not remember having a verbal agreement with the landlord about cleaning the chimney and flue and there is nothing in the tenancy agreement relating to this. The tenants agent testifies that the tenant purchased two loads of wood for the fire.

The tenant testifies that the speakers were all working at the end of his tenancy and the blind the landlord is referring to was already damaged when the tenant moved into the unit and it is noted as such on the move in inspection that was eventually completed by the landlord.

The tenant's agent testifies that the landlord's application does not contain any information about a claim for a loss of rental income. The landlord's monetary claim of \$4,420.00 is only for the landlords claim for damages. The tenant's agent states the tenant would have provided other evidence concerning the reasons the tenancy ended without proper notice if the landlord had made it clear that he was claiming for this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation does not meet all of the components of the above test. The landlord has not submitted any evidence to show that the tenant or the tenants guest did smoke in the unit or that the unit did require painting; the landlord has not shown that the tenant did not leave the keys to the unit or that the landlord did actually have the locks changed and I find the amount quoted for this work to be extreme; the landlord has not shown that there was a verbal agreement in place that the tenant had to clean the chimney and flue and by their very nature verbal agreements between parties are difficult to proof when one party contradicts the testimony of the other.. The landlord has not shown that the speakers or the blinds are damaged or that these items were damaged by the tenant's actions or neglect. In fact the landlord has documented that there is general wear and tear on a blind on the move in condition inspection report.

I also find that in the landlords written submissions dated March 22, 2012 the landlord has declared that the unit was left in a decent and fair condition with some minor deficiencies but nothing unusual. Consequently I find the landlords claim for compensation for damage to the unit, site or property is dismissed.

With regard to the landlords verbal claim for a loss of rent; the landlord has made no mention of a claim for loss of rent on his application, submissions or monetary order

calculations. The landlord has asked me to consider his claim in this matter. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process. The tenants have a right to know what the landlord is claiming for when the landlord serves the tenant with an application so the tenant would have opportunity to form a rebuttal if the tenant chooses to. Consequently as the landlord has made no mention of this in his claim I decline to hear this or make a decision in this matter and the landlord is at liberty to file an application to recover a loss of rent.

As the landlord has been unsuccessful in this matter the landlord must bear the cost of filing his own application.

Conclusion

The landlord's application for a monetary order for damages is hereby dismissed without leave to reapply.

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 21, 2012.

Residential Tenancy Branch