

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the notice of hearing and submitted documentary evidence, I am satisfied that both parties have been properly served.

At the beginning of the hearing, the Landlord's Agent indicated that the monetary claim for damages is being withdrawn as the repair/renovation work is not yet complete. The Tenant had no objections. As such, this portion of the application requires no further action as it is being withdrawn by the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for loss of rental income?

Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

This Tenancy began on March 1, 2004 on a month to month basis as shown by the submitted copy of the signed Tenancy Agreement. Both parties agreed that the monthly rent at the end of the Tenancy was \$2,193.00 and that a \$1,000.00 security deposit was paid.

The Landlord states that they are seeking \$2,193.00 for the loss of rental income as the Tenant failed to provide proper notice in ending the tenancy. The Tenant disputes this stating that notice was given by email on April 30, 2012 at 9:29 pm and that the Landlord's Agent was contacted the next day on May 1, 2012 to confirm receipt of the notice. The Landlord's Agent confirms that the email was sent, but that this was not in the accepted written form as per section 10 of the tenancy agreement. The Tenant states that notice was given this way to end the tenancy on May 31, 2012 as they had

communicated frequently by way of email in the past. The Landlord's Agent disputes this stating that everything was communicated by way of written letter between the parties as there has been animosity between the parties. The Landlord states that the Tenants over-held the rental and that the Landlord completed a condition inspection report on June 1, 2012. The Landlord states that the condition inspection report was not completed as the Tenant refused to sign the document. The Landlord states that she returned to the rental property on June 4, 2012 and discovered the keys on the counter. The Tenant disputes this stating that the keys were left on the counter on May 31, 2012.

The Act requires the Landlord to prepare a condition inspection report at the beginning and the end of the Tenancy. Where a Landlord fails to fulfil this obligation the Landlord's right to claim against the security deposit for damage to the unit is extinguished. The Landlord, however, retains the right to file an application for dispute resolution seeking compensation from the Tenant for damage to the unit or other damages or loss associated to the Tenancy. I find that the Landlord's right to claim against the security deposit is extinguished as a condition inspection report was not completed.

The Landlord has satisfied me on a balance of probabilities that the Tenant failed to provide written notice to end the tenancy on May 31, 2012. Section 45 of the Residential Tenancy Act states,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

However, the Landlord has also failed to comply with the Act by mitigating any possible losses. The Landlord has not provided sufficient evidence of an attempt to mitigate the loss of rent for June. On this basis, I find that both parties erred and as such, the Landlord has failed to establish a claim for the loss of rental income.

The Landlord is ordered to return the \$1,000.00 security deposit to the Tenant. The Tenant is granted a monetary order for the return of the security deposit of \$1,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed. The Tenant is granted a monetary order for \$1,000.00 for the return of the security deposit.

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: August 22, 2012.

Residential Tenancy Branch