



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit. One tenant appeared on his own behalf. The landlord testified that he served the second tenant with the application for dispute resolution and notice of hearing via registered mail sent to the address at which he was residing at the time. I was satisfied that the second tenant was properly served with notice of the claim made against him and the hearing proceeded in his absence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy with the tenant L.C. began in November 2009. L.C. resided in the unit with a co-tenant until mid-2010, at which time the roommate moved out. In or about August 2010, the tenant N.J. moved into the rental unit as a co-tenant. At that time a condition inspection report was completed which indicated that the condition of the rental unit was good. A tenancy agreement was also completed. Both documents were backdated to November 2009 as the landlord was under the impression that because N.J. was replacing a former co-tenant, he was responsible for any damage prior to his occupancy. The parties agreed that the condition inspection report did not accurately reflect the condition of the rental unit at the time the tenant N.J. moved into the rental unit.

The landlord seeks to recover \$895.00 in loss of revenue for the month of November 2010. The landlord testified that he discovered on November 2 that the tenants had vacated the rental unit. He had been verbally advised that the tenant N.J. was vacating the unit, but had not realized that the tenant L.C. was moving out as well. The landlord testified that because the rental unit was not in clean condition and because repairs were required, he was unable to re-rent the unit for the month of November and suffered a loss of income for that month. N.J. testified that he had been told by L.C. that

they had been given a 10 day notice to end tenancy in October and that they had to vacate the unit. The landlord acknowledged having issued a notice to end tenancy, but stated that the tenants cancelled the notice by paying the arrears within 5 days of receipt.

The landlord seeks to recover the cost of removing garbage and abandoned items from the rental unit. He testified that he hired a company to remove the items and provided an invoice showing that they charged him \$301.50. The landlord also seeks to recover \$21.00 in dump fees. N.J. stated that he had removed all of his belongings and was unsure what L.C. had left behind in the unit.

The landlord seeks to recover \$562.50 as the cost of cleaning the rental unit. He testified that the unit was left in an extremely soiled state and provided an invoice showing that he paid that sum for cleaning. He stated that the cleaning company spent a day cleaning the unit with 2 people. He also seeks to recover \$106.78 as the cost of cleaning supplies he provided to the company hired to clean the unit. N.J. stated that as he left the unit in October, he was unsure of the state of the unit at the time L.C. vacated.

The landlord seeks to recover \$901.00 as the cost of replacing the carpet in the rental unit. He testified that the carpet, which was approximately 18 months old at the time it was replaced, was excessively soiled and that he was told by the cleaning company that the stains could not be removed. The tenant agreed that the carpet needed to be replaced and testified that at the time he moved into the unit, it was already excessively soiled.

The landlord seeks to recover \$33.64 as the cost of printing photographs for the hearing as well as the \$50.00 filing fee paid to bring his application.

Analysis

The landlord appears to have acted as though the person who had originally occupied the rental unit had assigned the tenancy to N.J. In an assignment of a tenancy, the assignee, meaning the person who becomes the new tenant under the old agreement, accepts liability for any damage done during the assignor's tenancy. I find insufficient evidence to show that N.J. had intended that the tenancy of the previous co-tenant be assigned to him. I find that the co-tenancy of L.C. and N.J. began at the time N.J. moved into the unit and that N.J. cannot be held responsible for anything which occurred prior to his tenancy.

I find that as co-tenants, N.J. and L.C. are equally and severally liable for any losses proven by the landlord.

I find that the notice to end tenancy served by the landlord was cancelled by the payment of rent and that because the notice was not effective to end the tenancy, the tenants were required to give the landlord at least one month's notice to end tenancy. I find that the tenants failed to do so and that as a result of that failure and because of the cleaning requirement as described below, the landlord was unable to re-rent the unit for the month of November. I find that the landlord is entitled to recover that lost income and I award him \$895.00.

I find that the tenants left a considerable amount of garbage and other items in the rental unit which had to be removed. Although N.J. may have removed all of his own belongings, because he is jointly and severally liable for losses resulting from the co-tenancy, he may be held liable for the cost of removing items and garbage left behind by L.C. I find the \$301.50 garbage removal charge to be reasonable and I award the landlord that sum as well as \$21.00 in dump fees.

I accept that a considerable amount of cleaning was required at the end of the tenancy. I find that the landlord is entitled to recover the cost of cleaning supplies and I award him \$106.78. The invoice supplied by the landlord indicates that the \$562.50 charge represents both cleaning and wall patching. The landlord presented evidence regarding cleaning which was required, but presented no evidence that repairs to the wall were required. As the landlord indicated that 2 men cleaned for one day, I find that a rate of \$25.00 per hour per man for 8 hours is reasonable. I award the landlord \$400.00 for the cost of cleaning. I assume that the remaining \$162.50 represents the cost of patching walls and I dismiss that part of the claim.

I have already found that the co-tenancy of L.C. and N.J. began in August 2010. I find that the landlord is only entitled to claim damages which occurred during their tenancy. Although the condition inspection report indicates that the carpet was in good condition, it is backdated to November 2009 and I am unsure as to whether the report is meant to indicate the condition of the unit at that time or as of August 2010. N.J. claimed that the carpet was already heavily soiled at the time he moved into the rental unit. I am not persuaded that the soiling of the carpet occurred during the tenancy of L.C. and N.J. and I therefore dismiss the claim for the cost of replacing the carpet.

I dismiss the landlord's claim for the cost of printing photographs as under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee. I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring his application and I award him that sum.

Conclusion

The landlord has been awarded a total of \$1,774.28 which represents \$895.00 in lost revenue, \$322.50 for garbage removal, \$506.78 for cleaning and cleaning supplies and the \$50.00 filing fee. I order the landlord to retain the \$450.00 security deposit in partial satisfaction of his claim and I grant him a monetary order under section 67 for the balance of \$1,324.28. This order may be filed in the Small Claims Division of the Provincial 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: August 19, 2011

Residential Tenancy Branch