DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for damage to the unit, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has made an application for a monetary order for money owed or compensation for damage or loss under the Act, Regulation or Tenancy Agreement.

Both parties have attended the hearing by conference call and have given testimony. As both parties have attended and have confirmed receipt of the notice of hearing and evidence packages, I am satisfied that both parties have been properly served.

The hearing was adjourned due to a lack of time on July 24, 2012 until August 22, 2012 at 1:00 pm, where the hearing then resumed to conclusion with both parties in attendance.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?
Is the Landlord entitled to retain the security deposit?
Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This tenancy began on April 1, 2011 on a fixed term tenancy of 1 year ending on March 31, 2012 as shown by the submitted copy of the signed tenancy agreement. The Landlord states that the Tenancy ended on May 3, 2012 when the condition inspection report for the move-out was arranged and the Tenant returned the keys. The Tenant disputes this stating that the Tenancy ended on April 30, 2012, but that the Landlord requested that the condition inspection report be scheduled for May 5, 2012, then changed it to May 3, 2012. The Tenant retained the keys until the inspection date of May 3, 2012. Both parties agreed that the monthly rent was $3,200.00 payable on the 1st of each month and a security deposit of $1,600.00 was paid on April 1, 2011, of which the Landlord returned $800.00 on May 3, 2012. A copy of the completed

condition inspection report for the move-in and the move-out were submitted by the Landlord. The Tenant disputes that 1 item was added to the addendum list o a “broken door going down to basement.”

The Tenant is seeking a monetary order for $2,268.58 consisting of $968.58 for the recovery of the city of surrey utility bills from March 30, 2011 to February 29, 2012 inclusive. The Tenant states that they are not obligated to pay this as it was not part of the tenancy agreement. The Landlord disputes this stating that section 3 (b) of the Residential Tenancy Agreement (form #RTB-1) states,
“What is included in the rent: (check only those that are included and provide additional information, if needed.)” Under the water heading nothing was selected. The Landlord states that water and utilities were not included in the tenancy. The Landlord also noted that there were no other details in the tenancy agreement attached regarding utilities. The Landlord also stated that the consumption was strictly through the use of the entire rental property by the Tenants. I find based upon the above that the Tenant has failed to establish their claim for recovery of the utilities as they were not included in the tenancy agreement. This portion of the Tenant’s application is dismissed.

The Tenant also seeks $1,300.00 consisting of $100.00 per month from April 2011 to April 2012 as compensation. The Tenant states that parking was included as part of the tenancy agreement. The Tenant has provided a photograph of the car parked in the driveway. The Landlord confirmed in her direct testimony that the vehicle was parked in the driveway for the duration specified by the Tenants, however states that there was room for parking next to the vehicle in the driveway. I find based upon the above that the Tenant has failed to satisfy me that they have established a claim for the $1,300.00 in damages for parking. The Tenant has not provided sufficient evidence that any costs or inconveniences occurred from the Landlord’s car being parking in the driveway. Although an inconvenience caused by the Landlord, the Tenant did not suffer any monetary losses. On this basis, this portion of the Tenant’s claim is dismissed.

The Landlord has also made monetary claim for $3,360.00 based upon a quote from VR Home Services Inc. for the complete replacement of the engineered hardwood floors. Both parties agreed that some scratches exist in the office near the corner of the room as shown by photographs submitted. This is also confirmed in the “agreement” made on May 3, 2012 between the two parties that list deficiencies at the end of the tenancy. The Tenant disputes the cost sought by the Landlord by stating that the floor could be repaired instead of being entirely replaced. Based upon the direct testimony of both parties, I find that the Landlord has not provided sufficient evidence that the floor needs to be replaced as opposed to be repaired. As well, it is noted that the cost sought was an estimate and that the Landlord has not made any repairs or replacement of the floor.

The Landlord has not established their monetary claim. However, as both parties have agreed in their direct testimony that damage did occur, I find that the Landlord is entitled to a nominal award of $250.00.

The Landlord is also seeking recovery of $200.00 for professional carpet cleaning as required by the tenancy agreement addendum #4. The Tenant disputes this stating that the carpets were never professionally cleaned at the beginning of the tenancy and has also stated that the carpets were cleaned and in satisfactory condition at the end. The Landlord does not dispute the condition of the carpets, but states that the addendum #4 in the tenancy agreement is clear and the Tenant has acknowledged this. However, the Landlord has not incurred this cost of $200.00. The Landlord states that the amount claimed is based upon a quote for a professional carpet cleaning for her own home and not the rental property. I find that the Landlord has not incurred this cost and is not entitled to this claim. This portion of the monetary claim is dismissed.

The Landlord is seeking recovery of $250.00 for the cost of labour (prorated @ $15.00 per hour for 16.5 hours) for cleaning, and repair work. The Landlord states that cleaning and repairs were done by her brother. The Tenant disputes this stating that she spent a lot of time cleaning the rental. The Landlord has submitted photographs, the completed condition inspection report for the move-in and move-out and the May 3, 2012 addendum in support of this claim. The addendum lists, a broken door going down to basement, toilet seat, floor scratch, wall stickers and touch up of2 rooms, toilet seat on hallway upstairs, light bulbs for the washroom (main washroom) 4, light covers, fridge light, baseboard in office needs cleanse. Also written down was “Mrs. Vilma Contreras and Mr. Kenneth Contreras agree to receive $800 of their deposit and the rest will be settled as soon as the repairs take place.” The Landlord has also made claim for $225.03 for paint, bolts, light bulbs, a door stop, 2 toilet seats, cinches and has submitted some receipts for them. In her direct testimony the Landlord clarified that some of the receipts submitted were duplicates and some items listed in the receipts were not related to the repairs/cleaning. In reviewing the receipts, I found $156.43 to be related to the replacement/cleaning costs of the tenancy. Based upon the documentary and direct evidence of both parties, I find that the Landlord has not established their entire monetary claim. The Landlord has provided no details of the labour performed in the work that was done. However, I am satisfied that the Landlord is entitled to a nominal award of $250.00 for the replacement/repair costs and labour.

The Landlord is also seeking compensation of $320.00 for the loss of rental income for 3 days for the period May 1 to 3, 2012. The Tenant disputes this. The Landlord claims that the Tenant over-held the property because they did not return the keys to the rental unit. The Tenant states that the Landlord had another set of keys and could easily have

entered the unit. The Landlord claims that possession was not gained until May 3, 2012 when the keys were returned. The Tenant disputes this claiming that they vacated the rental unit on April 30, 2012, but did not return the keys until May 3, 2012. The condition inspection report was not scheduled to be completed until May 3, 2012 with the Landlord the Tenant stated that they wished to retain the keys until then. The Landlord had new tenants in possession of the rental on May 4, 2012. As the Tenancy vacated on April 30, 2012 and neither party dispute that the condition inspection report for the move-out took place on May 3, 2012 in which the keys were returned to the Landlord, I find that by keeping the keys, the Tenants did not return possession of the rental. The Landlord has established a claim for $320.00 for the prorated amount for 3 days of over-holding the rental unit.

The Tenant has been unsuccessful in their application and as such, I decline to make an order for the recovery of the filing fee.

The Landlord has established a total monetary claim for $820.00. The Landlord is entitled to recovery of the $50.00 filing fee. As the Landlord has retained $800.00 from the original $1,600.00 security deposit and has already returned $800.00, I grant the Landlord a monetary order under section 67 for the balance due of $70.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application is dismissed without leave to reapply.
The Landlord is granted a monetary order for $70.00. The Landlord may retain the $800.00 portion of the $1,600.00 security deposit currently held.

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 27, 2012.

Residential Tenancy Branch