



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR, MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

The Tenant said the Landlord served her only with a copy of the Notice of Hearing and his evidence package but did not serve her with a copy of his application. The Tenant waived service of the Application and agreed to the matter proceeding this day. The Landlord claimed that the Tenant did not serve him with a copy of her evidence package in this matter. The Landlord admitted that a registered mail notification card was sent to the rental property but claimed it did not have his name on it and was addressed to the lower unit. The Landlord agreed to proceed with his application in the absence of the Tenant's evidence package.

Issue(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to compensation for damage or loss and if so, how much?

Background and Evidence

This month to month tenancy started on March 1, 2005 and ended in September, 2008 pursuant to a 2 Month Notice to End Tenancy given to the Tenant by the Landlord. The exact move out date is in dispute. Rent was \$550.00 per month (plus an additional \$50.00 from time to time for use of laundry facilities). The Tenant paid a security deposit of \$275.00 at the beginning of the tenancy.

The Landlord claims that the Tenant was supposed to move out on September 3, 2008 so that his cousin could move in but that she did not move out until September 28, 2008. As a result, the Landlord claimed his cousin moved into another rental unit and he was not able to re-rent the suite to someone else until October, 2008 with a resulting

loss of rental income for September, 2008 of \$450.00 (ie. rent of \$600.00 pro-rated for 25 days).

The Landlord also claimed that the Tenant gave him a money order for \$150.00 in partial payment of July, 2008 rent, however, it was later returned for non-sufficient funds and remains unpaid. The Landlord did not provide a copy of the returned money order or any documentary evidence from his financial institution that it was returned. The Landlord said he paid the Tenant's first month's rent of \$700.00 at her new rental unit and that this amount is also owed to him.

The Landlord said the Tenant was responsible for holes in the walls, ceiling and bedroom door and estimated the cost of repairing them was \$400.00. The Landlord also said that the Tenant left garbage at the rental unit (broken furniture, a dryer and clothes) and dug trenches in the yard for drainage without his consent. He estimated that it would cost a further \$500.00 to remedy these matters. The Landlord admitted that a condition inspection report was not done when the Tenant moved in or when she moved out but argued that he asked her to do one at the end of the tenancy. The Landlord also claimed that he took pictures of the damages he claims the Tenant is responsible for but he did not submit them into evidence at the hearing.

The Tenant said she moved out on September 4, 2008 but admitted she did not remove all of her belongings from the rental unit for another 3 or 4 days because she was relying on the Landlord to return her security deposit. The Tenant said she relied on the Landlord's advice to her that a money order she gave him for \$150.00 for her roommate's portion of the rent in March, 2008 had been returned. The Tenant said she paid the Landlord this amount but now wonders if she should have based on her belief that a money order could not have been returned for insufficient funds. In any event, the Tenant argued there were no arrears of rent and if there were arrears of rent the Landlord would have issued a 10 day Notice to End Tenancy for Unpaid Rent in July rather than serve her with a 2 Month Notice to End Tenancy. The Tenant also noted that her rent was paid directly to the Landlord from Social Services.

The Tenant also denied that there were any damages to the rental unit and claimed that she filled and painted over picture holes in the walls at the end of the tenancy. The Tenant denied that the Landlord asked her to do a condition inspection report. She said the Landlord's spouse did inspect the unit on the last day she was there and said it was in good condition.

The Tenant also denied that she was responsible for leaving garbage at the rental unit. The Tenant claimed that in February, 2008 the septic tank on the rental property flooded her suite and as a result, the carpeting, flooring and a section of the wall had to be removed and were left outside her patio door since that time. The Tenant said the dryer outside the rental unit was there at the beginning of the tenancy and belonged to the Landlord.

The Tenant also claimed that in the fall of 2006 or 2007, she also suffered flooding due to inadequate drainage and as a result, the Landlord and her roommate had to dig trenches to allow the water to drain away from the house. The Tenant admitted that her roommate had placed rocks along one of the trenches to make it more decorative and appear like a water fall. The Tenant argued that in any event, drainage of the rental property was a maintenance matter that was the responsibility of the Landlord.

Analysis

I find that the Landlord's claim for \$700.00 for paying the Tenant's rent at her new rental unit was dealt with in a previous hearing under file #725715. In particular, the Dispute Resolution Officer in that matter found that the \$700.00 paid by the Landlord on behalf of the Tenant was made up of \$550.00 compensation the Landlord owed the Tenant for her last month's rent (under s. 50 of the Act) and \$150.00 of it was in partial reimbursement of the Tenant's security deposit. Consequently, that part of the Landlord's claim is dismissed.

I also note from the decision in the previous hearing that the Dispute Resolution Officer made no finding as to whether there were rent arrears of \$150.00 as a result of an alleged returned money order. In the absence of any documentary evidence from the Landlord of the returned money order, I find that there is insufficient evidence that rent of \$150.00 is owed and that part of his claim is dismissed.

I find that the Landlord is entitled to loss of rental income for September, 2008. In particular, the Tenant admitted that she knew she was supposed to vacate the rental unit on September 3, 2008 so that another tenant could take possession of it. The Tenant also admitted that she did not give the Landlord vacant possession of it until September 7 or 8, 2008 when she removed her belongings. I do not give any weight to the Tenant's evidence that she was waiting for the Landlord to give her the security deposit because under s. 38 of the Act, he had (at a minimum) 15 days from the end of the tenancy to do so. I accept the Landlord's evidence that he lost his new tenant because he was not able to give him possession of the rental unit on September 3, 2008. I find the Landlord is entitled to recover loss of rental income of \$550.00 prorated for 28 days (September 3 - 30) for a total of \$513.33.

Section 21 of the Act says that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection unless either the landlord or the tenant has a preponderance of evidence to the contrary. Section 35 of the Act says even if a Tenant does not participate in a move out condition inspection, the Landlord must still complete a condition inspection report at the end of the tenancy. I find a condition inspection report was not done. In the absence of a condition inspection report or any other corroborating evidence in support

of the Landlord's claim for damages to the interior of the rental unit, I find that there is insufficient evidence and that part of his claim is dismissed.

Given the contradictory evidence of the Parties regarding the garbage at the rental unit, and in the absence of a condition inspection report or any other corroborating evidence from the Landlord, I also find there is insufficient evidence that the garbage belonged to the Tenant or that it was her responsibility to remove it. I also find on a balance of probabilities that it was necessary to dig trenches on the rental property to drain water away from the rental unit and prevent flooding and further property damage and that the Landlord consented to and assisted with the trenches being dug. As a result, the Landlord cannot now complain that the Tenant is responsible for filling the trenches.

As the Landlord has had limited success in this matter, I find he is not entitled to recover the filing fee and that part of his application is dismissed. Consequently, the Landlord has made out a claim for and will receive a monetary order in the amount of \$513.33.

Conclusion

A Monetary Order in the amount of **\$513.33** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.