



Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for loss of rental income and for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

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 damages and if so, how much?

Background and Evidence

This fixed term tenancy started on July 15, 2008 and was to expire on July 31, 2009, however it ended on or about November 30, 2008 when the Tenant moved out. Rent was \$2,900.00 per month payable on the 1st day of each month.

The parties agree that the Tenant gave the Landlord a written notice which he received on or about November 17, 2008 and in which she advised him she was ending the tenancy on November 30, 2008.

The Landlord claimed he started advertising the rental unit in an online publication as of December 7, 2008 and in a local newspaper as of January 12, 2009 as he was not getting a good response. The Landlord said he had a few showings of the unit, however, the only interested applicants had pets which he did not want in the rental unit. The Landlord claims the rental unit has still not been re-rented despite the fact that he dropped the asking rental rate to \$2,550.00 per month. The Tenant claimed that she also advertised the rental unit in Craig's list as early as November 7, 2008 but got no response.

The Landlord said the Tenant's rent cheque for December, 2008 was returned to him for non-sufficient funds. The Tenant said although the Landlord was advised by her bank that she put a stop payment on the cheque, the Landlord still tried to deposit it at his bank.

The Landlord said he did a condition inspection report with the Tenant at the beginning of the tenancy. The report provided by the Landlord only indicates that it refers to an Addendum to the tenancy agreement. The Landlord also provided a copy of the Addendum which he said shows the Tenant agreed to be responsible for the condition of the rental unit in the condition it was in when the previous tenant left. The Landlord said he did a move out condition inspection with the previous tenant and any deficiencies were corrected by that tenant prior to her moving out. The Landlord claimed if there were any issues with the condition of the rental unit at the beginning of the tenancy, they would have been indicated on that Addendum (which was blank).

The Tenant claimed that she did not do a move in condition inspection with the Landlord and provided a copy of a condition inspection report she said she received from the Landlord that had only the parties' names written on it. The Tenant admitted that some of the damages complained of by the Landlord were caused by her but claimed that some of the damages claimed by the Landlord were from reasonable wear and tear that existed at the beginning of the tenancy.

The Landlord admitted that a move out condition inspection report was not done but said that he was out of the country until November 28, 2008 and the Tenant never contacted him to do one. Similarly, the Tenant argued that the Landlord never contacted her to do one and could have had an agent (family member who lived close by) arrange a condition inspection. The Landlord provided a number of photographs of the rental unit that he said he took on December 2, 2008.

The Parties agree that the Tenant knocked a panel off the stairwell landing, removed a light fixture from the wall, made some dents and scratches in the stairwell wall, some scuff marks in the hallway and left some nails and screws in the walls where pictures had been hung. The Landlord argued that there were many holes that had to be filled and painted over. The Tenant said there were not many holes in the walls and many of them were so small that they would not have had to be filled. The Tenant also argued that it was unnecessary for the Landlord to repaint all of the walls in question when they could have been spot painted.

The Landlord also said he incurred general cleaning expenses and carpet cleaning expenses. The Landlord applied to recover the replacement cost of carpeting in the living room which he said was damaged by the Tenant and could not be salvaged. The Tenant admitted to causing a bleach stain of 3-4" in diameter on the carpet but argued that the carpet could be repaired, or in the alternative, the Landlord had replacement carpet stored in the crawl space of the rental unit. The Tenant said she left the rental unit reasonably clean at the end of the tenancy and that it did not need additional cleaning or carpet cleaning.

Analysis

The Tenant claimed that due to financial circumstances beyond her control she was unable to continue to pay the amount of rent set out in the tenancy agreement and offered to pay a lesser amount but the Landlord would not agree. I find that the financial circumstances referred to by the Tenant are personal to her and do not amount to a frustration of the tenancy agreement.

Section 45(2) of the Act says that a Tenant of a fixed term tenancy cannot end the tenancy earlier than the last day of the specified in the tenancy agreement as the last day of the tenancy. Consequently, if a Tenant ends a fixed term tenancy earlier, the Landlord may be entitled to compensation for any loss of rental income he incurs as a result of the breach of the tenancy agreement. The Landlord, however, has an obligation under s. 7 of the Act to minimize (or mitigate) his losses by taking reasonable steps to re-rent the rental unit. The Landlord's duty to mitigate does not mean he has an obligation to reduce the Tenant's rent.

In this case, I find that the Landlord has taken reasonable steps to re-rent the rental unit but has incurred a loss of rental income for December, 2008 and January, 2009. Consequently, I find that the Landlord is entitled to recover a loss of rental income in the total amount of **\$5,800.00**.

Section 20 of the Regulations to the Act sets out the information that must be included in a condition inspection report. In particular, it notes that the report must contain a statement of the state of repair and general condition of each room in the rental unit, floors, window coverings, appliances, fixtures and so forth. I find that the Landlord did not do a move in condition inspection or a move out condition inspection with the Tenant. I also find that the document provided by the Landlord which states "see Addendum" does not comply with the requirements of s. 20 because it does not state the general condition of the rental unit. Consequently, I give little weight to the Landlord's argument that the condition inspection report is evidence that the rental unit was in perfect condition at the beginning of the tenancy.

Sections 23 and 35 of the Act say that a Landlord must arrange a move in and move out condition inspection and must prepare a move in and move out condition inspection report even if the Tenant does not participate on either of those occasions. If a Landlord fails to do the condition inspections and reports required by the Act, the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished (however he can still claim it to offset other damages such as arrears of rent).

Section 37 of the Act says a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. The Landlord provided photographs showing an

un-cleaned lint trap of a dryer, some kitchen drawers with debris and a cabinet under a sink that needed to be wiped out. The Landlord provided an invoice in the amount of \$650.00 for cleaning windows, cabinets, sinks, floors the microwave and washer and dryer. At a rate \$25.00 per hour, this would amount to 26 hours of cleaning. Based on the Tenant's evidence and the Landlord's photographs I find the amount claimed for cleaning is unreasonable and I award the Landlord instead **\$50.00** for general cleaning. I accept the Tenant's evidence that in all other respects she left the rental unit reasonably clean at the end of the tenancy.

Section 32 of the Act says a tenant must repair any damage caused by her but is not required to make repairs for reasonable wear and tear. The Tenant admitted that a panel in the stair well would have had to be glued back on and that a light fixture would have had to be screwed back on. The Tenant disputed that she was responsible for re-aligning cupboard doors or repairing blinds which she claimed were in that condition at the beginning of the tenancy. In the absence of any corroborating evidence concerning the condition of the cupboard doors and blinds at the beginning of the tenancy, I find that the Landlord is not entitled to recover amounts for those repairs. However, I do find that the Landlord is entitled to recover the cost of the balance of the repairs set out in the invoice of Reflections Industries in the amount of \$105.00 plus GST of \$5.25 for a total of **\$110.25**.

The Landlord claimed carpet cleaning expenses of \$550.00. He argued that it was a large, 3 storey rental unit and relied on photographs of the living room carpet, master bedroom carpet and another bedroom carpet. The tenancy agreement does not have a clause requiring the Tenant to clean the carpets at the end of the tenancy. RTB Policy Guideline #1, states at p. 2 that a tenant is responsible for cleaning carpets after a tenancy of one year unless the tenant has stained the carpets, had pets or smoked.

The Tenant argued that the carpets did not need to be cleaned and the Landlord confirmed it had been steam cleaned by the previous tenant approximately 4 months earlier. Based on the photographs of the Landlord and in the absence of any other corroborating evidence of the condition of the rest of the carpets in the rental unit, I award the Landlord **\$100.00** for carpet cleaning expenses for the living room and 2 bedrooms only. I find there is insufficient evidence to conclude the balance of the rental unit required carpet cleaning especially after such a short tenancy.

The Landlord claimed \$3,675.00 for painting the rental unit. The Landlord said this was necessary because a number of walls had damage which had to be repaired. The Tenant (who used to be a commercial painter) agreed that some walls such as the halls and stairwells had to be painted, however, she claimed many of the walls with nail holes could have been spot painted. The Tenant argued that some of the walls in the rental unit had signs of wear and tear at the beginning of the tenancy.

In the absence of a properly completed condition inspection report, I find that there is insufficient evidence that the Tenant was responsible for all of the scuff marks and scratches claimed by the Landlord to have been caused by her. Further, I am not satisfied that some of the walls with small nail holes needed to be painted. I find that the Landlord is entitled to be compensated for those areas of damage which the Tenant does not dispute such as the stair well and hallway areas. I find that the Landlord is also entitled to be compensated for re-painting walls for which repairs were made for holes caused by screws or bolts. The invoice for the painting provided by the Landlord covers the cost to "prepare and paint all interior walls throughout and trim where needed." Consequently, I conclude that all of the interior walls were painted not just those that the Landlord claimed had damage. As a result, I apportion 15% of the painting bill to the Tenant or **\$551.25**.

There is no dispute that the Tenant left a bleach stain on the living room carpet. The Tenant says the carpet can be repaired or alternatively replaced with spare carpeting that the Landlord already has in his possession. The Landlord denies that the carpet can be salvaged. The burden of proving the carpet cannot be salvaged is on the Landlord. Given the contradictory evidence of the Parties, however, and with nothing more to resolve the contradiction, I find the Landlord has not provided sufficient evidence to conclude that the carpet cannot be salvaged. As a result, I find that the Landlord is entitled to compensation for the diminished value of the damaged carpet and award him **\$250.00**.

I find the Landlord is also entitled to recover his reasonable expenses associated with preparing his claim which includes the cost of photographs (**\$48.74**), photocopies (**\$5.60**) and the **\$100.00** filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit in partial payment of the damage award for loss of rental income. The Landlord will receive a monetary order for the balance owing as follows:

Loss of rental income:	\$5,800.00
General cleaning:	\$50.00
Repairs:	\$110.25
Carpet cleaning:	\$100.00
Painting:	\$551.25
Carpet damage:	\$250.00
Photographs:	\$48.74
Photocopies:	\$5.60
Filing fee:	<u>\$100.00</u>
Subtotal:	\$7,015.84
Less: Security deposit:	(\$1,450.00)
Accrued interest:	<u>(\$10.40)</u>
Balance Owing:	\$5,555.44

Conclusion

A Monetary Order in the amount of **\$5,555.44** 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 enforced in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.