



Dispute Resolution Services

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

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

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for Unpaid Rent, for damages to the rental unit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit and pet damage deposit.

The Landlord served the Tenant with a copy of the Application and Notice of Hearing on December 15, 2008 by registered mail. The Tenant filed responding written submissions to the Landlord's application on February 4, 2009 and in those submissions requested an adjournment of this matter due to a family matter. The Landlord objected to an adjournment. In the absence of the attendance of the Tenant or an agent on her behalf at the hearing, I declined to grant an adjournment of the hearing. I find that the Tenant was properly served with the Landlord's hearing package pursuant to s. 89 of the Act and the hearing proceeded in her absence.

Issue(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit or pet damage deposit?

Background and Evidence

This fixed term tenancy started on September 1, 2008 and was to expire on August 31, 2009, however, it ended on November 30, 2008 when the Tenant moved out. The Landlord admitted that the Tenant gave her Notice that she would be moving out at the end of November, however, the Landlord said the Tenant changed her locks and would not let the Landlord show the rental unit to prospective tenants despite being given 24 hour written notices. In her submissions, the Tenant admitted she changed the locks but claimed when she was advised she was not allowed to, she put the original lock back on the following day. The Landlord said the Tenant returned her keys to her on December 1, 2008. As a result, the Landlord said she was not able to show the unit

until that time and did not get a new tenant until December 6, 2009. Consequently, the Landlord sought loss of rental income for 6 days.

The Landlord also claimed a number of expenses for repairs and cleaning the rental unit. The Landlord claimed that she had a move in condition inspection report signed by the Tenant but forgot to provide a copy as evidence at the hearing. The Landlord admitted she did not do a move out condition inspection report but claimed she didn't know how to contact the Tenant to set one up. The Landlord provided photographs of the rental unit she said she took on December 2, 2008.

The Landlord claimed that the Tenant used the shower improperly and as a result, excessive water got under laminate tiles in the bathroom, causing mold to grow on the sub-floor, the tiles to lift and caused water damage to the ceiling of the commercial premises below. The Landlord also claimed that the wood floor in the rental unit was scratched from the Tenant's bed and that she had to wash the floor and apply 2 coats of stain. In addition, the Landlord said the Tenant's cats scratched an outdoor balcony and therefore she had to re-stain it. The Landlord said the Tenant also broke a window in the rental unit and it had to be replaced. The Landlord also claimed the cost of a flea bomb and carpet cleaning as well as the cost to replace missing or burned out light bulbs. The Landlord said the Tenant left behind a couch and some garbage which had to be removed and thrown out and therefore she applied for compensation for that expense.

The Landlord also applied to recover expenses related to repairs that were made during the tenancy. In particular, the Landlord said at the end of October, 2008, the Tenant's bathroom taps had to be fixed because they were leaking, her closet railing had to be fixed and a kitchen door that she had removed had to be re-hung. The Landlord also said the Tenant did not pay November rent until November 2, 2008 and therefore she sought a late payment fee in accordance with the tenancy agreement. The Landlord also sought to recover advertising expenses for re-renting the rental unit.

Analysis

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. In this case, I find that the Landlord is entitled to loss of rental income for 5 days (December 1 - 5) in the amount of **\$120.97**. I find that the Landlord is not entitled to expenses for advertising the rental unit as she would likely have had to incur those expenses at the end of the fixed term in any event.

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 32 of the Act says that a Landlord is responsible for maintenance and repairs to a rental unit. A Tenant is responsible for repairing any damage caused by that tenant but is not required to make repairs for reasonable wear and tear. I find that the water damages in the bathroom are the result of inadequate maintenance to seal the floor and bathtub areas and as a result, the Landlord cannot pass those expenses off to the Tenant. Furthermore, I note that the Tenant resided in the rental unit for only 3 months and I find it likely that the floor damages complained of pre-existed the tenancy.

Similarly, I find that the Landlord is not entitled to pass off maintenance costs that she incurred during the tenancy to fix bathroom taps, a closet railing or to re-hang a door. As a result, that part of the Landlord's claim is also dismissed.

I find that the Landlord has not established that the Tenant is responsible for repairing scratches to a wood floor and an outside porch. There is insufficient evidence to determine if those scratches existed prior to the tenancy. Furthermore, I am not satisfied that the scratches in question are damage as opposed to reasonable wear and tear. The Landlord claimed they only had to be re-stained rather than sanded out, for example. Consequently, I find there is insufficient evidence that the Tenant is responsible for repairing the floor and outside porch and those parts of the Landlord's claim are dismissed.

The tenancy agreement does not have a clause requiring the Tenant to clean the carpets at the end of the tenancy. However, 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. As the Tenant had 2 cats, I find the Landlord is entitled to recover the cost of carpet cleaning (including a flea bomb)

I also find the Landlord is entitled to recover the costs of replacing a window damaged by the Tenant during her move out, light bulbs, garbage removal, a late rent payment fee for November, 2008 and registered mail expenses. As the Landlord has been partially successful in this matter, I find she is also entitled to recover ½ of her filing fee for this proceeding. In summary, the Landlord is entitled to compensation for the following amounts:

Loss of rental income:	\$120.97
Replacement window:	\$106.93

Carpet cleaning:	\$50.00
Flea bomb:	\$20.00
Light bulbs:	\$10.00
Late payment fee:	\$25.00
Registered Mail:	\$8.82
Garbage removal:	\$30.00
Filing Fee:	<u>\$25.00</u>
Subtotal:	\$346.72

I order the Landlord to return the balance of the Tenant's deposits as follows:

Security deposit:	\$362.50
Accrued interest:	\$1.81
Pet deposit:	\$200.00
Accrued interest:	<u>\$1.00</u>
Subtotal:	\$565.31
Less: Damages:	<u>(\$346.72)</u>
Balance due:	\$218.59

I order the Landlord to keep \$346.72 from the Tenant's security deposit in payment of the damage award and also order the Landlord to return the balance of the deposits in the amount of \$218.59 to the Tenant forthwith.

Conclusion

A Monetary Order in the amount of **\$218.59** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.