



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damages or loss; a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for loss of revenue for the month of February, to a monetary Order for compensation for damages to the rental unit, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2008; that the Tenant was required to pay monthly rent of \$850.00; and that the Tenant paid a security deposit of \$425.00 on May 12, 2008.

The Landlord and the Tenant agree that on January 09, 2009 the Tenant gave notice that he intended to end this tenancy on January 31, 2009. The parties agree that the Tenant did vacate the rental unit on January 31, 2009.

The Landlord is seeking compensation for loss of revenue from the month of February, which she believes is due because the Tenant did not provide sufficient notice of his intent to vacate on January 31, 2009. She stated that she advertised the unit for rent in

the Capital News on February 10, 2009, on the internet sometime near the middle of February of 2009, and with Home Finders sometime near the beginning of February, but she still has not located a new tenant for the rental unit.

The Tenant argued that he should not be required to compensate the Landlord for the loss of revenue because the Landlord created a "hostile" environment which made it impossible for him to continue the tenancy.

The Landlord and the Tenant agree that the Tenant damaged the vinyl siding on the residential complex. The Tenant stated that he previously offered to compensate the Landlord for the damage, in the amount of \$629.00. The Landlord stated that she declined this offer of compensation because she was not certain how much the repairs would cost.

The Landlord stated that she needed to special order siding to match the existing siding on the house, and that she had to purchase a full box of the siding because it was a "special order". She submitted a copy of a receipt to show that she purchased the siding for \$251.08. The Tenant stated that he phoned two suppliers who informed him that he could purchase individual pieces of siding, however he submitted no evidence to corroborate this statement.

The Landlord submitted a copy of an estimate from Rona that shows that labour for repairing the siding will be \$661.50. The Tenant contends this estimate is excessive, as the Landlord previously told him she had a labourer who would complete the repairs for \$100.00. The Landlord agrees that she had previously located a person who was willing to install the siding for that price, but he has since left town and is no longer available.

The Landlord and the Tenant agree that the Tenant broke the toilet tank lid sometime near the beginning of October of 2008, when he was repairing the toilet on behalf of the Landlord. The parties agreed that the Tenant advised the Landlord that he would be obtaining a new lid from his brother-in-law, who is a plumber. The parties agreed that the Landlord replaced the entire toilet within 2-4 weeks of the lid being broken.

The Landlord stated that she replaced the entire toilet as her plumber could not find a replacement lid and the Tenant had not replaced the lid, as he indicated he would. The Tenant stated that the Landlord replaced the toilet before he had the opportunity to replace it, although he stated that his brother-in-law had located one and he was making arrangements to have it delivered.

The Landlord contends that the Tenant damaged the countertop in the kitchen of the rental unit. She submitted photographs to show that the countertop was burned. The Tenant denies damaging the countertop and he contends that the countertop was burned prior to the beginning of his tenancy.

The Landlord agrees that there was no Condition Inspection Report completed at the beginning of the tenancy that establishes the condition of the countertop at the beginning of the tenancy. She attempted to call the former tenant as a witness, however after phoning two telephone numbers the former tenant could not be located.

The Landlord submitted a letter from a personal friend who stated that he conducted repairs in the rental unit in May of 2008, at which time he noted that there was no damage to the kitchen countertop and that the toilet was functioning properly. The Tenant questioned the credibility of the author of the letter, as he was previously involved in a romantic relationship with the Landlord. He also contends that the contents of the letter are inaccurate, as both the Tenant and the Landlord have already acknowledged that the toilet was not working properly in September of 2008.

The Tenant submitted a letter from a personal friend who stated that the toilet was not functioning properly when he helped the Tenant move into the rental unit.

The Landlord is claiming compensation, in the amount of \$78.18, for expenses she incurred advertising the rental unit after this tenancy ended.

Analysis

I find that the Tenant failed to comply with section 45 of the *Act* when he ended the tenancy without providing one full month's notice of his intent to end the tenancy, although he did provide her with twenty-two days notice.

I find that the Landlord made no efforts to attempt to find a new tenant for February 01, 2009. In reaching this conclusion, I note that the Landlord did not even advertise for a new tenant until after February 01, 2009, even though she knew on January 09, 2009 that the rental unit would be vacant.

Although I accept that the late notice provided by the Tenant hindered the Landlord from finding a new tenant for February 01, 2009, I find that the Landlord's failure to advertise the rental unit greatly contributed to the loss of revenue she experienced in February. Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for a loss that results from the tenant's non-compliance with the *Act* must do whatever is reasonable to minimize the loss. In these circumstances, I find that the Landlord did not make reasonable attempts to mitigate her losses by advertising the rental unit prior to February 01, 2009, and I therefore find that she is not entitled to compensation for loss of revenue from February.

I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damage to the house siding at the end of the tenancy. I therefore find that the

Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*.

In these circumstances, I find that the Landlord is entitled to compensation, in the amount of \$251.08, for purchasing the siding for the house. Although I accept that the Landlord purchased more siding than was necessary to complete the repairs, I accept the Landlord's evidence that she had to buy a full box of siding because it was a "special order". In reaching this conclusion, I noted the absence of evidence that corroborates the Tenant's statement that other suppliers would have sold individual pieces of siding to the Landlord. I also note that it is not likely that the Landlord would have purchased an entire box of siding if she could purchase the pieces individually, as it is not particularly beneficial to the Landlord to have spare siding.

I also find that the Landlord is entitled to compensation, in the amount of \$661.50, for labour to install the siding. In reaching this conclusion, I was strongly influenced by the labour estimate that was provided by Rona, and the absence of evidence from the Tenant that shows this estimate is unreasonable. Although both parties agree that the Landlord had previously found a labourer who was willing to make the repairs for significantly less, neither party established that this option was still available to the Landlord, and the Landlord is not obligated to find casual labourers who will complete repairs for significantly less than qualified professionals.

Section 37(2) of the *Act* requires tenants to repair damages to the rental unit at the end of a tenancy. I find that the Landlord acted prematurely when she replaced the toilet before the Tenant had the chance to replace the broken lid. In reaching the conclusion that the Landlord acted prematurely, I was strongly influenced by the fact that the Tenant advised the Landlord that he intended to repair the damage he caused, yet the Landlord replaced the toilet within one month of the incident, without further consultation with the Tenant. As the Landlord denied the Tenant the right to repair the damage, at a minimal cost, I do not find that he should be responsible for compensating the Landlord for the costs she incurred. On this basis, I dismiss the Landlord's claim for compensation for repairs to the toilet.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the claim for compensation for damage to the countertop, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the kitchen countertop was damaged during the tenancy.

In reaching this conclusion I was strongly influenced by the absence of a Condition Inspection Report that establishes the condition of the countertop at the beginning of the tenancy. Section 23 of the *Act* requires Landlords to complete a Condition Inspection Report at the beginning of each tenancy. The primary purpose of completing a

Condition Inspection Report is to establish the condition of the rental unit at the beginning of the tenancy. In the absence of a Condition Inspection Report it makes it very difficult for either party to assign responsibility for damages in the rental unit.

Although the Landlord submitted a letter from a person who had viewed the rental unit prior to the tenancy and who stated that the countertop was not damaged, I am not satisfied that the damage did not exist prior to the tenancy. In reaching this conclusion, I considered the following:

- The author of the letter specifically noted that the toilet in the rental unit was functioning properly, which was contradicted by a letter written by a friend of the Tenant
- The author of the letter specifically noted that the toilet in the rental unit was functioning properly, although the Landlord and the Tenant both agree that the toilet needed to be repaired
- The author of the letter was in the rental unit for the purposes of making repairs and was not viewing the rental unit for the purposes of noting damages in the rental unit, which raises the possibility that he did not notice the damage to the countertop
- The Tenant has proven himself to be a very credible witness, as he has accepted responsibility for other damage to the rental unit.

As the Landlord has submitted insufficient evidence to show that the Tenant is responsible for damaging the countertops, I dismiss the Landlord's application for compensation for repairing the countertop.

Section 67 of the *Act* authorizes me to compensate landlords only if they experience a loss that resulted from the tenant not complying with the *Act*. I find that the Landlord would have incurred the expense of advertising the rental unit even if the Tenant had complied with the *Act* and provided proper notice of his intent to vacate the rental unit on January 31, 2009 and I, therefore, do not find that the Tenant is responsible for the costs of advertising the rental unit.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$912.58 in compensation for damages to the siding of the house. I find that the Tenant is entitled to the return of his security deposit plus interest, in the amount of \$429.08.

I hereby offset the Landlord's monetary claim with the return of the security deposit, and determine that the Landlord is entitled to a monetary Order for the balance of \$483.50. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 31, 2009