Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, (MND), FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income as well as for compensation for cleaning expenses and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit. The Tenant(s) application was for the return of a security deposit as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for loss of rental income and damages and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on May 1, 2008 and was to expire on May 31, 2009 however it ended on November 30, 2008 when the Tenants moved out. Rent was $1,750.00 per month. The Tenants paid a security deposit of $875.00 on April 17, 2008.

The Landlord claimed that the Tenants gave her verbal notice on or about November 25, 2008 that they were ending the tenancy on November 30, 2008. The Landlord admitted that the municipality advised her that she could not have 3 rental units with cooking facilities in the rental property so at the beginning of December 2008 she advertised the whole rental property for rent immediately. The Landlord said she was unable to rent the rental property again until January 2009. Consequently, the Landlord sought a loss of rental income for December 2008 in the amount of $1,750.00.

The Landlord also claimed that at the end of the tenancy, the Tenants left a number of items behind in the garage of the rental property and they had to be disposed of. The Landlord said there was also some "touch up" cleaning needed inside the rental unit. As a result the Landlord said she paid $300.00 to have this work done. The Landlord also said that she paid $183.75 to have the carpets cleaned at the end of the tenancy.

The Tenants claimed that in October 2008 the Landlord approached them and asked them if they wanted to rent the whole rental property. The Tenants said they decided it would be too expensive for them so on November 20, 2008 they told the Landlord they could not afford to rent the house and would end the tenancy as of January 1, 2009. The Tenants said that on November 25, 2009, however, a safety officer with the BC Safety Authority inspected the rental property and found that the electrical system in the 3 rental units was unsafe. Consequently, the safety officer issued the Landlord a notice advising her that the property had failed the inspection in that there were 17 instances of non-compliance with the Safety Standards Act that had to be rectified by a certified electrical contractor on or before December 5, 2008 or a compliance Order would be issued to do the work immediately.

The Tenants said the safety inspector advised them that the wiring in the rental unit was unsafe and that he was surprised there had not been an electrical fire. The Tenants said that as a result of this information, they called the Landlord on November 25, 2008 but she did not return their messages right away but later advised them that nothing needed to be done. The Tenants said they were uneasy so on November 29, 2008 they sent the Landlord an e-mail advising her that they did not feel safe in the rental unit and as a result would be ending the tenancy as of December 1, 2008 instead of January 1, 2009.

The Tenants said that they did a brief inspection of the rental unit on December 5, 2008 with the Landlord's spouse and he advised them that the only issue was their belongings left in the garage. The Tenants said the Landlord's spouse agreed to dispose of a dresser, bed frame and mattress for them and they agreed he could deduct an amount from their security deposit. The Tenants said they believed $75.00 would be reasonable given that that was an amount a commercial person said he would charge them. The Tenants said that some of the articles in the garage belonged to previous tenants (which the Landlord denied). The Tenants denied that any cleaning was required in the rental unit and noted that the rental unit had not been cleaned at the beginning of the tenancy. The Landlord claimed she gave the Tenants $200.00 to clean the rental unit at the beginning of the tenancy which the Tenants denied.

The Tenants admitted they did not clean the carpets in the rental unit but argued that they were soiled with pet urine (in one room) from a previous tenant and attempts by the Landlord to clean them at the beginning of the tenancy had not been successful. The Tenants said the Landlord told them that if the smell persisted she would throw out the carpeting. The Landlord argued that the Tenants never advised her that there was a persistent smell and that cleaning was necessary because the Tenants' children had soiled the carpets. The Landlord also alleged that the Tenants had a dog which they denied.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that she incurs as a result. The only exception to this rule is found in s. 45(3) of the Act which says that if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy without further notice.

I find that there was a material breach of the tenancy agreement in that there were serious defects in the wiring in the rental property that made it unsafe and unfit for occupation. I find that the Tenants gave the Landlord written notice of the breach on November 29, 2008 and she advised them, contrary to the terms of the Safety Notice, that nothing needed to be done. Consequently, I find that the tenants were entitled to end the tenancy early.

Furthermore, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. In this case, the Landlord admitted that she could not re-rent the rental unit because it did not comply with the municipal by-laws and therefore she had to re-rent the whole rental property. I find that the Tenants should not have to compensate the Landlord for her difficulties in renting out the whole rental property. Consequently, the Landlord's application for a loss of rental income is dismissed.

Sections 23 and 35 of the Act require the Landlord to do a condition inspection report with the Tenant at the beginning and at the end of the tenancy. The purpose of the report is so that both parties can determine if any damages are caused by the Tenant during the tenancy. In this case, neither a move in or a move out condition inspection report was done. RTB Policy Guideline #1 (Responsibility for Residential Premises) says that a Tenant will usually be responsible for cleaning carpets after a tenancy of a year unless the tenant had pets, or smoked or soiled the carpets. In the absence of a condition inspection report, I find that there is insufficient evidence that the carpets were soiled by the Tenants. I also find that there is no evidence that the rental unit required additional cleaning and note that the invoice relied on by the Landlord does not state that interior cleaning was done. Consequently, those parts of the Landlord's application are dismissed.

I find that the Landlord is entitled to expenses for removing items from the garage, however I find the amount of $300.00 is unreasonable. I accept the evidence of the

Tenants that they had one truck load of items to be disposed of and that they could have hired a commercial truck to do so for $75.00. Consequently, I award the Landlord the amount of $75.00.

In summary, the Landlord has made out a claim for $75.00. As the Landlord has been unsuccessful on most of her claims, I find that she is not entitled to recover the $50.00 filing fee for this proceeding. However, as the Tenants have been successful, I find that they are entitled to recover their filing fee. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep $75.00 of the Tenants' security deposit and to return the balance of it to them with accrued interest as follows:

	Security deposit:	$875.00
	Accrued interest:	$9.29
	Subtotal:	$884.29
Less:	Garbage removal:	($75.00)
Plus:	Filing fee:	$50.00
	Total Owing:	$859.29

Conclusion

A monetary order in the amount of **$859.29** has been issued to the Tenants 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.

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: July 31, 2009.

Dispute Resolution Officer