



Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order for unpaid rent, cleaning and repairs to damage, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of the tenancy is from October 1, 2008 to September 30, 2009. Thereafter, tenancy was to continue on a month-to-month basis. Rent in the amount of \$1,250.00 was payable on the first day of the month, and a security deposit of \$625.00 was collected on September 23, 2008.

A walk through of the unit was completed at the outset of tenancy and the parties signed a move-in condition inspection report. There was no copy of the move-in condition inspection report submitted into evidence.

By letter dated on or about May 20, 2009, the tenants informed the landlord's agent of their intention to vacate the unit at the end of May 2009. While the tenants claim the unit was re-rented almost immediately following their departure, the landlord's agent claims that the unit was not re-rented until July 15, 2009.

The tenants take the position that the landlord's agent failed to respond to their report of bedbugs in the unit in a timely manner. In turn, this led to their concern that the condition of the unit did not meet health and safety standards. In the result, the tenants

consider they had no alternative but to vacate the unit and end the tenancy prior to the end of the fixed term.

There were two separate occasions when bedbug spray was applied in the unit by a pest control agent: May 15 and June 9, 2009. The parties appear to agree that the initial attendance of the pest control agent occurred approximately three days after the tenants first reported the problem to the landlord's agent. The landlord's agent testified that any delay in action being taken with regard to the bedbugs was because the tenants informed him of the problem during a weekend. Neither party submitted any evidence of times or dates when the tenants made their report of bedbugs to the landlord's agent.

It is understood that a move-out condition inspection and report were completed by the landlord's agent without the participation of the tenants. The tenants dispute the landlord's agent testimony that a time to undertake the move-out condition inspection had been agreed upon but that the tenants declined to attend. There was no copy of the move-out condition inspection report submitted into evidence.

The tenants acknowledge responsibility for costs associated with removal of furnishings and rubbish from the unit. The tenants also acknowledge that they did not clean the carpets at the end of tenancy.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part, as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that the tenants' manner of giving notice to end the tenancy did not comply with the above statutory provisions. On a balance of probabilities I accept the evidence of the landlord's agent that the unit was not re-rented until mid-July. Accordingly, I find that the landlord is entitled to loss of rent for June 2009 in the amount of \$1,250.00.

Residential Tenancy Policy Guideline # 1 speaks to Landlord & Tenant – Responsibility for Residential Premises. Under the heading – “Garbage Removal and Pet Waste,” it is stated as follows:

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

Further to the above, the tenants also acknowledge responsibility for the landlord's need to remove furniture and rubbish left by them in the unit, and I therefore find the landlord is entitled to related costs in the amount of \$315.00.

Tenants are responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. The tenants acknowledge they did not clean the carpets at the end of tenancy, and I therefore find the landlord is entitled to carpet cleaning costs in the amount of \$120.00.

Section 35 of the Act addresses **Condition inspection: end of tenancy**. In particular, section 35(2) & (2) states:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Further to the above statutory provision, section 17 of the Residential Tenancy Regulation speaks to **Two opportunities for inspection** and provides as follows:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

For the information of the parties, the full text of the relevant legislation, fact sheets, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website:

www.rto.gov.bc.ca/

One such form available via this website is the "Notice of Final Opportunity to Schedule a Condition Inspection."

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides as follows:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35(2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35(2) *[2 opportunities for inspection]*,

(b) having complied with section 35(2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In sum, as for a move-out condition inspection, there is insufficient evidence that the landlord provided two opportunities to the tenants for inspection. While pictures submitted into evidence by the landlord's agent reveal a unit in need of miscellaneous cleaning, minor repairs and painting, once again for reasons stated immediately above in regard to the move-in and move-out inspections, I dismiss the landlord's claim for costs totalling \$558.59 for miscellaneous cleaning, minor repairs & painting.

Under the heading – "Major Appliances," in Residential Tenancy Policy Guideline #1, there is provision in part, as follows:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

Further to the fact that both parties did not participate in the completion of a move-out condition inspection and report, and in the absence of a copy in evidence before me of either a move-in condition inspection report or move-out condition inspection report, I am unable to find that the landlord has established entitlement to costs related to repair of the stove in the amount of \$138.77. Accordingly, I dismiss this aspect of the landlord's claim.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**. I am satisfied that the landlord's agent took proper action in response to the report from the tenants related to the problem of bedbugs. However, I find that the landlord's agent has not met the burden of proof in claiming that the problem with bedbugs was introduced by the tenants, or that they hindered efforts required to remedy the problem. Accordingly, I dismiss the landlord's claim for costs of \$315.00 related to pest control.

In summary, as for the monetary order I find that the landlord has established a claim of \$1,735.00. This is comprised of \$1,250.00 in unpaid rent, \$315.00 for rubbish and furniture removal, \$120.00 for carpet cleaning, and recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$625.00, plus interest of \$2.56, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,107.44 (\$1,735.00 - \$627.56).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,107.44**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: September 1, 2009

Dispute Resolution Officer