Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for damages to the rental unit, for cleaning expenses and to recover the filing fee for this proceeding. The Landlord also applied for an order permitting him to serve the Tenant in a different way than required under s. 89 of the Act and to keep the Tenant's security deposit.

The Landlord said the Tenant moved out and would not give him a forwarding address so he served the hearing package in this matter on the Tenant at a school he is currently attending. The Tenant confirmed that he received the hearing package. In the circumstances, I find pursuant to s. 71(2)(c) that the Landlord's hearing package was sufficiently served for the purposes of s. 89 of the Act.

Issues(s) to be Decided

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

Background and Evidence

This fixed term tenancy started on January 1, 2009 and was to expire on December 31, 2009, however it ended on or about May 15, 2009 when the Tenant moved out. Rent was $2,100.00 per month for the furnished suite. The Tenant paid a security deposit of $1,000.00 on January 5, 2009.

The Landlord said he tried to re-rent the rental unit as soon as possible and advertised it in local newspapers and on Craig's List thereafter. The Landlord said he advertised the rental unit at the same rate of rent but has still not been able to re-rent it. The Landlord also said that he advised the Tenant on May 7, 2009 that he might have someone who was willing to pay $1,600.00 per month but the Tenant would not agree to pay the difference of $500.00 for the unexpired term of the lease. Consequently, the Landlord said the rental unit has still not been re-rented.

The Tenant claimed that he agreed to pay the cost of advertising in local newspapers, however the Landlord advertised the rental unit in the local newspapers for only one week and the advertisement did not state the location or the rate of rent. Thereafter the Tenant claimed that the Landlord limited his advertising to Craig's List. The Tenant also claimed that the Landlord advertised the rental unit at a rate of up to $3,000.00 per month and only recently dropped the asking rent to $2,150.00. The Tenant argued that had the Landlord advertised the rental unit for rent in the local newspapers for a longer period of time at a reasonable market rate, it would likely have been re-rented within a short period of time. In support, the Tenant provided copies of advertisements for similar rental units in the same geographic area. Consequently, the Tenant claimed he did not agree to pay $500.00 for 7 months in early May as the unit had barely been advertised and the Landlord never contacted him again to discuss it. The Tenant also claimed that the Landlord refused to appoint a local agent to show the rental unit and therefore was only available for showings on weekends.

The Landlord also claimed that the Tenant left the rental unit unclean and damaged at the end of the tenancy. The Landlord said he did a move in condition inspection report with the Tenant at the beginning of the tenancy but the Tenant refused to participate in one at the end of the tenancy. As a result, the Landlord said he took photographs of the rental unit on or about May 22, 2009 and had the building manager view it. The Landlord claimed that the Tenant broke a custom cut mirror in the kitchen and cracked a granite countertop in the bathroom. The Landlord said he had to fill, sand and repaint "banged up" walls, repair a strip under the bathroom sink, repair a blind in the living room, clean the carpets and spend 33 hours doing general cleaning. The Landlord also said that a number of dishes were missing or broken by the Tenant at the end of the tenancy.

The manager of the rental property gave evidence on behalf of the Landlord. He stated that when he viewed the rental unit after the Tenant moved out it was very messy. He said the kitchen was very dirty in that the refrigerator had not been cleaned and still had food in it while the dishwasher was also dirty and was not working. He also claimed that garbage had been left behind and that the carpets needed cleaning. The Landlord's witness said he recalled that the walls were very dirty and may have required painting but did not notice any other damages to them. The Landlord's witness said he believed it would have taken a crew of 3 professional cleaners 4 hours to bring the suite up to a standard where it could have been re-rented. He also recalled the Landlord spending a couple of days in May at the rental unit.

The Tenant admitted that the Landlord asked him to look at the rental unit on May 22, 2009, but he said he was busy that day and asked the Landlord to arrange another time but the Landlord never contacted him again. The Tenant admitted that he was

responsible for damaging the mirror in the kitchen but denied that he was responsible for damaging the granite counter top in the bathroom or the walls in the rental unit. The Tenant claimed that the carpet was "clean enough" and that the rental unit was reasonably clean. In support, the Tenant provided copies of photographs of the rental unit he said he took on May 15, 2009 when he moved out. Consequently, the Tenant argued that the Landlord's claim for cleaning expenses and repairs was excessive and that because it was only a 600 square foot apartment, 4 hours should have been sufficient for any cleaning.

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 he incurs as a result. However, 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 take reasonable steps to try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Tenant argued that the Landlord failed to mitigate his damages because he did not properly advertise the rental unit, he advertised it at an excessive rate of rent and was not available to do showings. The Landlord argued that he advertised the rental unit at the same rate of rent and that he could have rented it for $1,600.00 per month but the Tenant refused. The Tenant provided a copy of an advertisement for the rental unit dated September 27, 2009 which shows an asking rate of rent of $2,150.00. The Tenant also provided a copy of an advertisement for a 2 bedroom unit in the same geographic area with similar amenities for $2,200.00 per month and another for a 1 bedroom unit for $1,500.00 per month. The Landlord provided a copy of a rate page for short-term/commercial accommodations in the building which shows a monthly rate of $3,600.00 (for off season).

I find that the Landlord did not fail to mitigate his losses by advertising only on Craig's List, however I do find that he failed to mitigate his losses by not reducing the asking price of the rent in his advertisements. In particular, I find that after a maximum of two months, the Landlord should have reduced the rent to a more reasonable, market rent and that the unit did not re-rent because it was overpriced. I find that there is insufficient evidence to conclude that the Landlord had a prospective tenant in early May who would have paid $1,600.00 per month for the unexpired term of the lease. In his e-mail to the Tenant, the Landlord only claimed that he "***might have"*** someone who was interested. Consequently, I find that the Landlord is entitled to a loss of rental income for only 2 months for a total of **$4,200.00**.

Section 37 of the Act says that a Tenant must leave a rental unit clean and undamaged (except for reasonable wear and tear) at the end of a tenancy. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Section 35 of the Act says that at the end of a tenancy a Landlord must complete a condition inspection report and give a copy of it to the tenant even if a tenant refuses to participate. Furthermore, section 17 of the Regulations to the Act says that a Landlord must give a tenant two opportunities to do a condition inspection report with the last opportunity given to the tenant on a Notice of Final Opportunity to Schedule a Condition Inspection. In the absence of a move out condition inspection report, there is only the contradictory evidence of the Parties as to the condition of the rental unit at the end of the tenancy.

As there is no dispute that the Tenant was responsible for damaging the kitchen mirror, I find that the Landlord is entitled to recover the amount of **$567.84**. I also find that the Tenant agreed to pay the Landlord's advertising expenses but note that the amount incurred by the Landlord was for advertising 2 suites. As a result, I find that the Landlord is entitled to recover one-half of the invoice amount or **$101.86**. Although the move in condition inspection report does not show a crack in the granite counter top in the bathroom, I find that there is insufficient evidence to conclude that the Tenant was responsible for it (as opposed to some other cause such as a defect in the material) and as a result, that part of the Landlord's claim is dismissed.

I also find that there is insufficient evidence to conclude that the walls in the rental unit were damaged and had to be repaired. The Landlord's witness did not recall seeing any damages to the walls other than that they were dirty and the Landlord's photographs do not clearly show any damages as he alleged. Consequently, this part of the Landlord's claim is also dismissed. Based on the corroborating evidence of the Landlord's witness, I find that carpet cleaning and some general cleaning was required at the end of the tenancy. I find however, that the Landlord's claim of 33 hours for cleaning a 600 square foot unit is excessive and instead I award him 12 hours at $25.00 per hour for a total of **$300.00** for general cleaning.

I also award the Landlord **$85.22** for carpet cleaning which includes the cost of renting a carpet cleaner and one hour of labour. I find on a balance of probabilities that repairs to the blinds and a strip on the bathroom sink were also necessary and as a result, I award the Landlord **$50.00** representing 2 hours of labour to make these repairs.

The Landlord provided a document titled, "Content List" which purportedly shows what items were included in the rental unit at the beginning and end of the tenancy. The

document is not signed by the Tenant. The Landlord claimed that the Tenant broke some dishes and that other kitchen items were missing. In the absence of any written acknowledgement from the Tenant at the beginning of the tenancy as to the number and condition of those items, I find that there is insufficient evidence that the Tenant is responsible for the alleged damaged or missing items. Consequently, this part of the Landlord's claim is dismissed.

As the Landlord has been successful in this matter, he is entitled to recover the **$100.00** filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the loss of rental income. The Landlord will receive a monetary order for the balance owing as follows:

	Loss of rental income:	$4,200.00
	Mirror:	$567.84
	Advertising expenses:	$101.86
	General cleaning:	$300.00
	Carpet cleaning:	$85.22
	Repairs:	$50.00
	Filing fee:	$100.00
	Subtotal:	$5,404.92
Less:	Security deposit:	($1,000.00)
	Accrued interest:	($0.00)
	Balance owing:	$4,404.92

Conclusion

A monetary order in the amount of **$4,404.92** 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 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: October 08, 2009.

Dispute Resolution Officer