

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for a monetary order for a loss of rental income, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

### Issues(s) to be Decided

1. Is the Landlord entitled to 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 February 1, 2009 and was to expire on January 31, 2010, however it ended on July 18, 2009 when the Tenant moved out. Rent was \$690.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 on May 16, 2008.

The Landlord said the Tenant gave him written notice on June 18, 2009 that he was ending the tenancy on July 18, 2009. The Landlord also said that he gave the Tenant permission to end the tenancy on July 15, 2009 and to pay one-half of that month's rent but that the Tenant did not move out until July 18, 2009, did not return the rental unit keys until July 19, 2009 and did not return the mail box and front door keys. Consequently the Landlord sought the balance of the rent for the month of July in the amount of \$345.00.

The Landlord claimed that the rental unit was in good condition at the beginning of the tenancy and that he completed a condition inspection report with the Tenant but that he could not locate a copy of it. The Landlord said he did not do a move out condition inspection report because the Tenant moved out without telling him and left the keys with the caretaker. The Landlord said there were a number of damages caused by the Tenant including holes in the living room walls and bathroom door. The Landlord provided an estimate for the cost to have these damages repaired.

The Tenant claimed that he did not do a move in inspection report with the Landlord at the beginning of the tenancy. The Tenant said the Landlord asked him to sign the new tenancy agreement and that was all. The Tenant denied that he was responsible for the damages to the rental unit and claimed that the rental unit had the damages in question when he moved in and that the Landlord was supposed to repair them but never did. The Tenant admitted that he removed a shower head during the tenancy and replaced it with one of his own but claimed that he left it in the rental unit at the end of the tenancy. The Tenant said that the Landlord never asked him to do a move out inspection.

## 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, the Landlord admitted that he gave the Tenant permission to end the tenancy on July 15, 2009. I find that the Tenant's written notice dated June 18, 2009 states that he would be moving out on July 18, 2009 and the Landlord did not raise this as an issue until July 21, 2009 after the Tenant moved out. Consequently, I find that the Landlord waived reliance on s. 45(2) of the Act and accepted the Tenant's notice ending the tenancy on July 18, 2009. I also find that the Tenant did not pay rent for the period July 16–18, 2009 and did not return his keys for the rental unit until July 19, 2009 and therefore is liable for 4 days of rent or \$89.03.

I do not find it significant to the Landlord's claim for a loss of rental income that the Tenant did not return his key to the front door or mail box as they did not allow him access to or possession of the rental unit. If the Tenant has not returned these items, the Landlord may make a claim for compensation for the replacement cost of them.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for the damages and that they were not the result of reasonable wear and tear. That means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating

Residential Tenancy Branch  
Ministry of Housing and Social Development

evidence to satisfy the burden of proof. I find that there is no evidence that a move in condition inspection report was completed at the beginning of the tenancy. Consequently, there is only the oral evidence of the Landlord that the rental unit was not damaged at the beginning of the tenancy. In the absence of any corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that the Tenant was responsible for the damages to the rental unit and as a result, that part of his claim is dismissed without leave to reapply.

As the Landlord has only been partially successful on his claim, I award him one-half of his filing fee for this proceeding or \$25.00. Consequently, I find that the Landlord has made out a claim for \$114.03.

Sections 24(2) and 36(2) of the Act say that the Landlord's right to claim against the security deposit for damages to a rental unit is extinguished if the Landlord doesn't do a move in or a move out condition inspection report. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$114.03** from the Tenant's security deposit to compensate him for the damages and to return the balance to the Tenant as follows:

Security deposit:	\$300.00
Accrued interest:	<u>\$2.83</u>
Subtotal:	\$302.83
Less: Damage award:	<u>(\$114.03)</u>
Balance owing:	\$188.80

## Conclusion

A monetary order in the amount of **\$188.80** 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.

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: November 18, 2009.

---

Dispute Resolution Officer