Decision

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

Introduction

This hearing dealt with an application from the landlord for a monetary order for damage to the unit, unpaid rent, retention of the security deposit / pet damage deposit, compensation for damage or loss under the Act, regulation or tenancy agreement, in addition to recovery of the filing fee. All parties to the dispute participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from November 1, 2008 to October 31, 2009. Thereafter, the signed tenancy agreement reflects consensus amongst the parties that "the tenancy may continue on a month-to-month basis or another fixed length of time." Rent in the amount of $1,800.00 was payable in advance on the first day of each month. A security deposit of $900.00 was collected on November 1, 2008; a pet damage deposit of $900.00 was collected on November 10, 2008. A move-in condition inspection and report were completed by the parties on November 1, 2008.

The tenants informed the landlord verbally of their intent to vacate the unit by the end of October 2009. The tenants recall that a conversation of this nature took place on or about October 1, 2009, and the landlord's recollection is that verbal notice was given by way of a telephone conversation on October 18, 2009.

Ultimately, the tenants vacated the unit effective October 31, 2009. While the landlord and tenant "JH" walked through the unit together on or about November 4, 2009, there

was neither a proper move-out condition inspection nor report completed by the parties. In spite of efforts made to advertise the unit, the landlord states that no new renters have subsequently been found, and the landlord is now attempting to sell the unit.

The landlord's original application is comprised of claims for a range of miscellaneous costs totaling $2,980.00 plus the $50.00 filing fee. During the hearing the landlord withdrew the claim of $25.00 for "stove chip" which was included in his original application.

During the hearing the parties exchanged views on some of the circumstances surrounding other aspects of the dispute, and undertook to achieve a resolution. In the result, agreement was reached between the parties in relation to the tenants' share of other specific costs set out in the landlord's application as follows:

$75.00 – cleaning

$50.00 – yard cleanup

$15.00 – cleaning re-cycle bin

$30.00 – haul garbage to dump

$40.00 – pressure wash driveway

Total: $210.00

Aspects of the landlord's claim which were unable to be resolved between the parties during the hearing include the following:

$30.00 – furnace filter

$75.00 – yard repair

$75.00 – blinds

$200.00 – floor damage

$150.00 – wall repairs

$50.00 – light bulbs

$145.00 – carpet cleaning

$1,800.00 – loss of rental income (November 2009)

Analysis

As to the landlord's claim of $30.00 for replacement of the furnace filter, Residential Tenancy Policy Guideline # 1 speaks to Landlord & Tenant – Responsibility for Residential Premises. This guideline provides in part, as follows:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

Following from the above I hereby dismiss this particular aspect of the landlord's claim.

As to the landlord's claim for costs associated with yard repair, blinds, floor damage, wall repairs and light bulbs (total claim: $550.00), as earlier noted, there was no move-out condition inspection or report completed by the parties. Related to this, section 35 of the Act addresses **Condition inspection: end of tenancy**, and section 36 of the Act speaks to **Consequences for tenant and landlord if report requirements not met**. In particular, section 36(2)(a) of the Act states:

36(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].*

Further to the position taken by the tenants which is that they are not responsible for any of the above-cited damage or replacement(s), the landlord acknowledged that where it concerns the absence of a move-out condition inspection and report, he "dropped the ball." Flowing from all of the foregoing I hereby dismiss the landlord's claim for these particular costs.

As to carpet cleaning, the "Addendum to rental contract" signed by the parties provides as follows:

> Carpets are to be professionally cleaned during tenancy if needed and at the end of the tenancy.

Further, Residential Tenancy Policy Guideline # 1 provides in part, as follows:

> CARPETS
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> 2. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
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> 3. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, had pets which were not caged or if he or she smoked in the premises.

In the circumstances of this dispute, the tenants owned a pet that was not caged, but also undertook to clean the carpets themselves at the end of tenancy. As the landlord found that the carpets were not cleaned to his satisfaction, he had them professionally cleaned after the tenants vacated the unit. However, as earlier noted, there was no move-out condition inspection or report completed. Having considered the full

circumstances of this specific claim, I find that the landlord is entitled to half the cost claimed for professional carpet cleaning in the amount of $72.50 ($145.00 ÷ 2).

Related to the landlord's claim for loss of rental income, section 45 of the Act speaks to **Tenant's notice**. Specifically, section 45(2) of the Act states:

> 45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.

Further to the above, section 52 of the Act addresses **Form and content of notice to end tenancy,** as follows:

> 52 In order to be effective, a notice to end a tenancy must be in writing and must
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> (a) be signed and dated by the landlord or tenant giving the notice,
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> (b) give the address of the rental unit
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> (c) state the effective date of the notice,
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> (d) except for a notice under section 45(1) or (2) *[tenant's notice],* state the grounds for ending the tenancy, and
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> (e) when given by a landlord, be in the approved form.

There is no evidence that notice given by the tenants complied with the above provisions.

However, further to the above, Residential Tenancy Policy Guideline # 5 speaks to Duty to Minimize Loss, and provides in part, as follows:

> Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.
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> The Legislation requires that the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.
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> If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

The parties presented varying accounts of when discussions about the end of tenancy began, and about precisely what was said and / or agreed to. As to advertising for new renters, evidence submitted by the landlord includes copies of two on-line advertisements, one dated October 21, 2009, and the other dated December 3, 2009.

There is no evidence of advertisements for the month of November 2009. As previously stated, it is also understood that the landlord currently seeks to sell the unit.

Notwithstanding the absence of proper notice by the tenants to end the tenancy, the evidence suggests that efforts made by the landlord to mitigate the loss of rental income for November 2009 were minimal. Accordingly, I find that the landlord's entitlement to loss of rental income is limited to recovery of the equivalent of 3 weeks' rent, which I calculate to be $1,260.00 ([$1,800.00 ÷ 30] x 21).

In summary, based on the documentary evidence and testimony of the parties, I find that the landlord has established a claim of $1,592.50. This is comprised of $210.00 which is the amount agreed to between the parties, as above, $72.50 for carpet cleaning, $1,260.00 for loss of rental income, in addition to the $50.00 filing fee.

The landlord's entitlement is offset by the tenants' security deposit of $900.00 plus interest of $2.25, and the pet damage deposit of $900.00 plus interest of $1.92, totaling $1,804.17.

I order that the landlord retain $1,592.50 from the combined security deposit and pet damage deposit plus interest, and repay the balance to the tenants in the amount of $211.67 ($1,804.17 - $1,592.50).

Conclusion

Following from the above and pursuant to section 67 of the Act, I order the landlord to FORTHWITH make payment to the tenants in the full amount of **$211.67**.

DATE: January 7, 2010 _____

Dispute Resolution Officer