Decision

Dispute Codes:

MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property, to keep the remainder of the security deposit and to recover filing fee from the tenant for the cost of this application.

The landlord and tenant appeared and gave testimony in turn.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to a monetary Order under section 67 of the *Residential Tenancy Act* for damages or loss.
    - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:
        - a) that the damage was caused by the tenant and
        - b) a verification of the actual costs to repair the damage
        - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenant moved in on February 1, 2008. A deposit of $600.00 was paid. The tenancy ended on September 1, 2009 and the tenant provided a forwarding address in writing on September 8, 2009.

The landlord testified that when the tenant left there was a serious condition issue in regards to a shed on the property which the landlord attributed to intentional damage on the part of the tenant. The landlord included photographs of the shed showing a damaged structure. The landlord testified that the shed was approximately 30 years old and was constructed of plywood, including the roof, which also had a plastic tarp draped over the top. The landlord testified that, although the shed was damaged early in 2008, evidently by a snowstorm, half of the roof remained and the landlord did have plans to eventually repair the damage. However, a portion of the shed was still useable. The landlord testified that after the tenant vacated in September 2009, it was discovered that the actions of the tenant, in throwing rocks at the building which was apparently witnessed by a child, had seriously damaged the shed by the end of the tenancy and it was left totally un-useable requiring significant repairs.

The landlord was claiming an estimated $407.39 cost of materials and $200.00 labour for repairing the shed. The landlord was also claiming cleaning costs of $50.00, Lawn mowing costs of $50.00, compensation for a missing blind valued at $10.00 and one-day of pro-rated rent in the amount of $40.00 because the tenant was late in vacating. No receipts were submitted into evidence. However the landlord included an itemized list of the above claims.

The evidence from the tenant included a move-in inspection report signed by both parties and a move out inspection report signed only by the landlord. The landlord testified that the tenant had refused to cooperate in the move-out inspection. However no documents were submitted to verify that the tenant was ever given a official request for final inspection. The tenant's written testimony alleged that the landlord had added

some additional items to the condition inspection report at the end of the tenancy that were not featured on the original copy when the tenant signed it at the start of the tenancy.

The tenant had submitted into evidence copies of emails between the parties. The tenant testified that the shed was already old, rotten and flimsy when they moved in and was hazardous to use. The tenant pointed out that the photos confirm an decaying exterior made of unpainted plywood and showed a partial roof of plywood without any shingles which was topped with a tarp. The tenant testified that any damage to the shed had resulted from normal wear and tear. The tenant testified that a winter storm early in 2008 had caused part of the roof to fail and, although the landlord was aware of the damage before or during the month of May 2008, no repairs were ever done by the landlord. The tenant testified that the matter was ignored until the tenancy ended and the landlord brought it up in seeking to keep the deposit.

The tenant disputed the landlord's cleaning and lawn mowing costs that were being claimed.

Analysis: Damage Claim

In regards to the landlord's monetary claim for damages to the unit, I note that, in order to support compensation under section 67 of the *Act*, the landlord had the burden of proving the following:

(1) Proof that the damage or loss existed

(2) Proof that this damage or loss happened solely because of the Respondent and occurred in violation of the Act or agreement

(3) Verification of the actual amount or cost of repairing or rectifying the damage.

(4) Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs *for reasonable wear and tear*.

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged *except for reasonable wear and tear.*

I find that the landlord's testimony and evidence does verify that the shed was damaged and I find that element one of the test for damages has been successfully met.

However, in regards to meeting element two of the test for damages, the landlord's position was that this damage was committed by the tenant in violation of the Act during the course of the tenancy. I find that in order to establish this, the landlord would be required to prove that the shed did not deteriorate due to normal wear and tear or other factors not the fault of the tenant.

I find that the landlord's testimony alleging that the tenant had intentionally vandalized the building by throwing rocks at the structure did not have sufficient evidentiary support. Even if this was proved to have occurred, the expectation would be that an external storage structure should have sufficient durability to withstand this abuse without merely caving in.

I note that the average useful life expectancy of exterior *ceda*r siding is set in the policy guidelines to be 20 years, and it is evident that the expected durability of plywood used

as exterior siding would be substantially less than that. The average useful life of roofing, with *proper roofing materials such as asphalt shingles*, would range between 15 and 20 years and I note that this shed was not covered by proper roofing materials. Accordingly the prorated value of this vintage shed with an estimated age of approximately 30 years, would be set at zero for total replacement value, even if the landlord succeeded in proving the tenant was solely responsible its destruction.

In any case, I find that the landlord was not in compliance with section 32 of the Act by failing to repair the shed after it had been damaged by the snowstorm early in 2008 and I find that this may have possibly had the effect of escalating the final decay of the structure. I need not make any conclusions about whether or not this shed was deficiently-built in the first place.

In regards to the claims for cleaning, lawn mowing and loss of blinds, I find that the landlord has not adequately proven these expenditures.

Under the Act, a condition inspection report requires input from the two parties who have entered into the tenancy agreement. Section 23(1) and section 35 of the Act requires that the landlord and tenant <u>together</u> must inspect the condition of the rental both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In regards to the landlord's allegation that the tenants did not cooperate with a move-out inspection, the Act actually anticipates such situations. Section 17 of the Regulation states that:

(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.

Section 35(5)) of the Act states that the landlord must make the inspection and complete and sign the report *without the tenant* if : (a) the landlord has complied with the provisions above, and (b) the tenant does not participate on either occasion.

I find that an inspection conducted by one party is not adequate if completed after-the-fact. It must be done contemporaneously with the vacating of the unit as required by the Act and must be signed by the tenant or the landlord must prove that it followed the proper process described above. I find that, by conducting the move out inspection in the absence of the tenant, the evidentiary weight of the move-out inspection report was negated. In addition to the above, the landlord did not provide a copy of the tenancy agreement specifying that the tenant was responsible for lawn care, nor adequate receipts and invoices containing sufficient detail to verify these expenditures.

In regards claim for the one-day late move-out, I find that there was a violation of the Act by the tenant. However, the landlord has not sufficiently proven that this contravention resulted in a loss to the landlord of $40.00 and therefore I find that element three of the test for damages has not been met.

Based on the testimony and the evidence discussed above, I find that the test for damages was not satisfied. I find that the landlord has not sufficiently met the burden of proof to the extent required to support any of the landlord's claims against the tenant

and I therefore I find that the landlord is not entitled to monetary compensation or to retain the tenant's security deposit. I find that the landlord's claim must be dismissed.

Conclusion

Given the above, I find that the tenant is entitled to a refund of the security deposit of $600.00 plus interest of $8.24 for the total amount of $608.24.

I hereby issue a Monetary Order in favor of the tenant in the amount of $608.24 pursuant to section 38(10)(c) of the *Act*. The landlord must be served with the monetary order. Should the landlord fail to comply with the order, the order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I hereby dismiss the landlord's application for a monetary order, in its entirety, without leave to reapply.

January 2010
Date of Decision

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Dispute Resolution Officer