

Decision

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

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for damage to the unit, unpaid rent, damage or loss under the Act, regulation or tenancy agreement, 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 under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to two separate written residential tenancy agreements, the respective terms and relevant details of tenancy are as follows:

#1. Term: October 1, 2007 to September 30, 2008

Monthly rent: \$2,300.00

Security deposit: \$1,150.00 collected on September 12, 2007

#2. Term: October 1, 2008 to September 30, 2009

Monthly rent: i) \$2,300.00 from October 1 to December 31, 2008

ii) \$2,431.10 from January 1 September 30, 2009

Security deposit: \$1,150.00 carried forward, as above. An additional \$65.55 collected on October 16, 2008.

Total security deposit: \$1,215.55 (excluding accrued interest)

There is neither a detailed form of move-in condition inspection report, nor a detailed form of move-out condition inspection report in evidence. Related evidence is comprised of very limited hand written notations on the first residential tenancy agreement, and a one page hand written summary of some remedial work required in the unit at the end of the term of the second tenancy agreement.

In summary, the particular claims comprising the dispute are as follows:

\$200.00 – carpet cleaning & repair

\$784.00 – wardrobe repair

\$200.55 – repair of marks and nail holes in walls

\$2,000.00 – loss of one month's rental income

\$50.00 – filing fee

Total: \$3,234.55

During the hearing the parties very respectfully exchanged views on the several matters of dispute and undertook to achieve a resolution. Details of the partial resolution achieved are set out below.

Matters unable to be resolved between the parties are limited to the landlord's claim in the amount of \$2,000.00 for loss of rental income for November 2009, in addition to the \$50.00 filing fee.

There are varying accounts between the parties as to how / why it was agreed that the tenancy would finally end at the close of the second term which was September 30, 2009. In any event, the parties appear to have reached a mutual agreement that the tenants would vacate the unit by no later than September 30, 2009. The tenants undertook to remove their possessions from the unit during the week of approximately September 14 to 18, 2009. The landlord visited with them in the unit on September 24, 2009 and noted that some cleaning and repair work was required. Thereafter, the

tenants completed some of the cleaning but acknowledged that further work was required. There appears to have been a misunderstanding around whether the parties were to meet and complete a move-out condition inspection and report on September 30, 2009. In any event, a meeting between the parties in the unit did not actually take place until October 7, 2009, at which time the parties agreed in very general terms as to the work that remained to be completed in the unit. Following this, the landlord had the remedial work completed and submitted related receipts into evidence.

Evidence submitted by the tenants includes copies of the landlord's newspaper advertisements showing the unit for rent. The first advertisement appeared on October 16, 2009 and showed monthly rent of \$2,700.00. The second advertisement appeared on October 25, 2009 and showed monthly rent of \$2,400.00. Following this, it is understood that monthly rent was reduced to \$2,000.00, which is the same amount of lost rental income being claimed by the landlord. The landlord testified that new renters were found for the unit effective November 1, 2009.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

carpet cleaning and repair: the tenants agree to accept full responsibility for the landlord's claim in the amount of **\$200.00**;

wardrobe repair: the parties agree that the tenants will accept partial responsibility for the landlord's claim in the amount of **\$496.00**;

repair of marks and nail holes in walls: the parties agree that the tenants will accept partial responsibility for the landlord's claim in the amount of **\$50.00**;

Total agreed to: **\$746.00** (\$200.00 + \$496.00 + \$50.00)

The attention of the parties is drawn to section 23 of the Act which speaks to **Condition inspection: start of tenancy or new pet**, as follows:

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually the day the tenant is entitled to possession of the rental unit or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

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

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) 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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Further, section 35 of the Act speaks to **Condition inspection: end of tenancy**, and provides as follows:

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.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Residential Tenancy Policy Guideline # 3 addresses “Claims for Rent and Damage for Loss of Rent,” and provides in part as follows:

This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Residential Tenancy Policy Guideline # 5 speaks to "Duty to Minimize Loss," and provides in part as follows:

The Legislation requires 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.

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.

Based on the documentary evidence and testimony of the parties, I find that the landlord initially became aware of the general nature of cleaning and remedial work required in the unit when he met with the tenants on September 24, 2009. I find that the landlord came to an understanding that a significant portion of the cleaning and repairs would be undertaken by the tenants and completed by September 30, 2009. However, when the landlord next met with the tenants at the unit on October 7, 2009, he found that the cleaning and other remedial work still required exceeded his expectations.

I note that the initial advertisement of the unit showed monthly rent of \$2,700.00, which was \$289.90 more than rent being paid by the subject tenants. The advertisement which appeared approximately one week later showed a reduction in monthly rent to \$2,400.00. As previously stated, the understanding is that the monthly rent ultimately settled on by the landlord was \$2,000.00.

It appears it was little more than one week between the time when the landlord made himself aware of the final condition on the unit on October 7, 2009, and the time when the first advertisement appeared on October 16, 2009. I have concluded, therefore, that all of the necessary cleaning and repairs had been undertaken within that relatively short time.

Further, I find that while some of the cleaning and wall repairs necessary were the result of aging of the unit (paint, for example) and normal wear and tear, the tenants acknowledged some limited responsibility. As previously stated, while the parties undertook to complete cursory inspections at the very beginning and at the very end of the 2 year tenancy, there is an absence of detailed evidence in regard to the condition of the unit at both of these times. Further, there is no documentary evidence of the condition of the unit at the time when the first year long period of tenancy ended, and the second year long period of tenancy began.

Following from consideration of all of the above, on a balance of probabilities I find that the landlord has established a claim for loss of rental income in the amount of \$500.00, which is approximately one week's rent. As the landlord has succeeded in his application, I also find that he is entitled to recover the \$50.00 filing fee.

In summary, in combination with the amount agreed to between the parties of \$746.00, plus the above entitlement found of \$500.00 and the \$50.00 filing fee, I find that the total amount of the landlord's entitlement is \$1,296.00.

I order that the landlord may withhold the combined total security deposit of \$1,215.55 plus combined total interest of \$22.79, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$57.66 (\$1,296.00 - \$1,238.34).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$57.66**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 9, 2010

Dispute Resolution Officer