

DECISION

Dispute Codes MNR, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent and to recover the filing fee. The landlord has also applied for other issues.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenants, to the forwarding address provided by the tenants, by registered mail on November 06, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent for November 2009?

Background and Evidence

This tenancy started on September 01, 2009. The tenants entered into a fixed term tenancy with the landlord for one year which was due to expire on August 31, 2010. Rent for this unit was \$900.00 per month and was due on the first of each month. The tenant's paid a security deposit of \$450.00 on August 20, 2009. The tenants moved from the rental unit on November 01, 2009.

The landlord testifies that a flood occurred to the rental unit on September 29, 2009. The tenants contacted him and the landlord went to the rental unit to assess the damage. When the landlord arrived he found that his caretaker of the building had cleared the drain which had become clogged with leaves and debris after a recent wind and heavy rain storm. The landlord

found that water had entered the unit and caused wet conditions to an area of the carpet in the hall and bedroom to a total of approximately 2 feet by 10 feet. The landlord states that he asked the female tenant to put a towel down by the door and he moved the tenant's bookcase away from the water damage to prevent it becoming damaged. The landlord called the restoration company who arrived the next day on an emergency basis to deal with the water damage. The landlord also contacted a company to inspect the drains and clear them if required.

The restoration company lifted the carpet and removed a section of the wet underlay. The carpet was dried out with fans and a dehumidifier. This work took four days and the restoration company replaced the underlay and reset the carpet after they ascertained that the floor was dry. The landlord claims that as the work was dealt with by his insurance he did not cut any corners. No damp or mould was found in the walls of the unit according to the restoration company report (included as evidence).

The landlord states that the baseboards needed to be replaced and he arranged for a carpenter to carry out this work. The landlord states that the carpenter had trouble accessing the tenants unit as they were not available to let him in so the landlord made an arrangement with the tenants that he would get someone acting on his behalf to let the carpenter in and stay with them while the work was taking place in order to protect the tenants belongings. This final work was not completed until the end of October, 2009.

The landlord claims that on October 29, 2009 he attended the unit to collect the tenants rent cheque and found a note on the door from the tenants giving him notice to end the tenancy on November 01, 2009. The landlord returned to the unit on November 01, 2009 and found the tenants had left the keys and vacated the unit. The landlord states that he attempted to re-rent the unit and advertised the unit on the internet site and with a sign outside the building. The unit was re-rented for December 01, 2009. The landlord claims a loss of rental income of \$900.00 for November 2009.

The landlord also states that the tenants have caused some damage to the rental unit and he wishes to make a claim to keep the security deposit for costs relating to these damages.

The tenants testify that there are some discrepancies in the landlords' statements. The tenants claim the flood came through the walls of the unit not the door as claimed by the landlord. This

water soaked a pile of clothes and some handmade bags which were on the floor. The tenants also claim the fans and dehumidifier were very noisy and created a lot of dust in the unit. The tenants claim that the workmen who came to test for moisture told the tenants the walls were still not dry and there was mould present. The tenants claim half the room was unliveable due to the water damage and they had to move their furniture away from the area.

The tenants claim that the baseboards were not replaced until 27 days after the flood. The tenants claim that they received very little information from the landlord about the repairs and contractors turned up to do work without any notice from the landlord. The tenant's claim that on October 12, 2009 the carpenter turned up early in the morning as this was thanksgiving the tenants were home. The tenants state that the carpenters said they did not know what needed to be done but would go and get their tools and come back. The tenants claim they did not return and at 2.30pm the tenants called the landlord to ask him when the carpenters would return. The tenants claim the landlord was angry and this upset the female tenant. The tenants raised other issues concerning the carpenters not coming to do the work. They state that on one occasion the carpenter told the tenants that the landlord asked them to carry out other work on the outside of the building before doing the work in their unit.

The tenants state that on October 26 or 27 they decided to move their furniture back into place and try to get back to normal living. Two days later some workmen entered their unit while they were out with an agent of the landlord. They carried out some work but left debris on the tenants bed and floor. The tenants state that the carpenters turned up on other dates but the final work to repair the threshold was not completed until October 31, 2009. The tenants claim that as the landlord has violated the section 32 of the *Residential Tenancy Act* they decided to move out.

The tenants claim the landlord did not mitigate his loss of rent for November by re-renting the unit promptly. They claim the landlord posted one notice which he cancelled and then on November 10, 2009 he re-posted the notice. The tenants claim the landlord also increased the monthly rent by \$40.00 in his advertisements.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 32 of the Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find in this instance that the landlord acted promptly when notified by the tenants that a flood had occurred at the rental unit. The landlord came the same day to establish the damage caused. I find the landlord contacted his restoration company and a drain company to come and assess and repair damage to the rental unit and inspect the drains to ensure they were clear of blockages to prevent this flooding occurring again. The invoice from the drain company indicates that the drains were clear and no blockages found. The invoice from the restoration company details the work carried out in the unit and the follow up service to determine that the carpets and flooring were dry. In this case I find the flood did not occur through any fault of the landlords as the drains were not blocked and I find the landlord acted diligently to ensure the rental unit complied with the health, safety and housing standards required by law.

I further find that as the carpets were dry after four days the tenants could have resumed normal living in the rental unit as the remaining work to replace the baseboards could have been done with minimal disruption to the tenant's living space. I find that the landlord acted diligently in employing carpenters to carry out this remaining work and find that although this work was required to be completed, unfitted baseboards would not have minimised the tenant's use of the living space and would not constitute a reason to end the tenancy.

The tenants claim that the landlord did not mitigate his loss by advertising the unit in a manner to attract potential tenants. However in this instance I find the landlord did advertise the unit diligently on an internet site and by posting a board at the front of the building and the unit was rented on December 01, 2009. The tenants state that the landlord re-rented the unit for an increase in rent of \$40.00 per month but have not provided any evidence or questioned the landlord as to the amount of rent the landlord eventually received for the unit.

Section #3 of the Residential tenancy Policy Guidelines states:

Claims for Rent and Damages for Loss of Rent:

Where a tenant has ended a fixed term tenancy the damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenants could legally end the tenancy. As this tenancy was a fixed term tenancy until August 31, 2010 the tenant would be legally bound to end the tenancy on this date.

A landlord's claim for unpaid rent is subject to his statutory duty to mitigate his loss by re-renting the unit at a reasonable economic rent, attempting to re-rent the unit at a greatly increased rent will not constitute mitigation. In this instance I find the landlord re-advertised the unit for rent at an increase of \$40.00 per month and I find this amount does not constitute a greatly increased rent for this unit. As the landlord did not disclose how much he did re-rent the unit for nor did he dispute that he advertised the unit for rent at \$940.00 I find that he was successful in re-renting this unit for a higher rent of \$940.00 over the remaining term. Consequently, I have offset this increase against the amount owed to the landlord by the tenants. I find the landlord is entitled to recover a loss of rental income for November, 2009 of \$900.00. This amount has been reduced by \$400.00 for the increase of \$40.00 per month for the 10 months remaining on the fixed term agreement.

The landlord asked to keep the tenants security deposit and make a claim for damage to the rental unit. However the landlord did not make an application for damages or to keep the security deposit when he filed his application. 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 \$450.00 from the tenants' security deposit to compensate him for the loss of rent for November, 2009.

I find the landlord is entitled to recover the filing fee of \$50.00 for this proceeding from the tenants. The landlord is entitled to a Monetary Order as follows:

Loss of revenue for November, 2009, less	\$500.00
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\$400.00 for new rental increase	
Subtotal	\$550.00
Less security deposit	(-\$450.00)
Total amount due to the landlord	\$100.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: March 08, 2010.

Dispute Resolution Officer