

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for damage to the rental unit, site or property and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were given in person to the tenant on November 26, 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 witness, 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 for damage to the carpets and lattice?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this was a month to month tenancy which started on or about April 01, 2007 and ended around the end of April 2009. The tenant paid a monthly rent of \$1,144.00 and rent was paid in full up to the end of April, 2009. The tenant paid a security deposit of \$550.00 on April 01, 2007. A move in condition inspection report was completed at the start of the tenancy however no move out condition inspection was carried out.

The landlords' agent testifies that the tenant did not give her written notice to end the tenancy. She claims the tenant gave her verbal notice to end tenancy sometime between the April 10 and 19, 2009. The landlords' agent states the tenant moved out sometime in the middle of April, 2009 but she is unsure of the exact date. The landlord seeks the equivalent of one months' rent in compensation for the loss of revenue for May, 2009 as the tenant did not give one clear month's written notice to end the tenancy.

The landlords' agent testifies that attempts were made to re-rent the unit. One person wanted to rent it in June but did not follow through. The unit was advertised for \$1,175.00 and was rented again on July 15, 2009, however, this new tenant did not move in as the unit smelt of dog urine due to the previous tenants dog having urinated on the carpets. The landlords' agent claims she removed the old carpets and cleaned the flooring with an anti-bacterial compound and replaced the carpets with new carpeting, however the smell came through from the flooring when the new tenant was due to move in. The landlords agent states that this smell has now dissipated.

The landlord seeks the cost of replacing the carpets and has provided a receipt for labour to do this at \$450.00 dated June 30, 2009, a receipt for new carpets at a cost of \$1031.19 and a receipt for carpet pads at a cost of \$29.63. The landlords' agent states she does not know how old the carpets are and would guess they were approximately 6 years old.

The landlords' agent testifies that the tenant removed some lattice from the property and put it on top of the carport. This lattice blocked the drain on the carport and caused water to enter the house. The landlord seeks the cost of \$100.00 to replace the lattice. The landlord has not provided any receipts for this cost.

The tenant testifies that she had to move from the rental unit due to the mould issues because the carport was leaking water into her unit and the adjoining unit. The tenant argues that she notified the landlords' agent about the mould in the wall and carpet and asked her to make the necessary repairs but the landlords' agent failed to do so. The tenant argues that maintenance was always an issue in all four of the unit's and the landlord never made any repairs to things that went wrong. At the end of March the tenant claims she had had enough and tried to get hold of the landlords' agent to give her Notice to end tenancy. The tenant claims that she did not have the landlords or the landlords agents address to put her notice in writing, everything was always dealt with verbally. The tenant testifies she eventually gave the landlords' agent her verbal notice to end tenancy on April 02, 2009 and moved out on April 14, 2009. The tenant testifies that she eventually got the landlords agents address in June, 2009.

The tenant testifies that the lattice blow down in the wind and the landlords' agent told her to put it to one side. She states that this was wooden lattice with hole and could not have blocked the drain on the carport. The drain was blocked by leaves which were never cleared. The carports construction caused it to lean towards the house and it was this that caused the damp and mould to get into her rental unit. The tenant claims it was the carpets smelling of mould and not dog urine as suggested by the landlord. The tenant claims she did not deny the landlords' agent access to the unit to do repairs she suggested to her that these repairs were done when she moved out on April 14, 2009.

The tenant argues that the carpet receipt provided by the landlord does not specify which units the carpets are for and has an address which is for the other building the landlords' agent manages.

The landlord argues that she collected the carpets from the retailers and that is why the address is different.

The tenants' witness, who was also a tenant in the Four-plex, gave testimony and states that she, was told by the previous property manager that the carpets were 15 years old. She also states that the tenants' carpets and walls had mould issues. She claims the landlords' agent never came quickly to do any maintenance and was always hard to get hold of. The witness claims that she recalls two men moving into the unit but was unsure if this was in May or July, 2009. The landlords agent cross examined this witness and asked if she could recall a dog urine smell in the unit. The witness stated that she could not smell dog urine but the unit did have an old smell the same as her own unit. The landlord asked the witness other questions which were not relevant.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses; with regard to the landlords claim for loss of rental income for May, 2009 due to the tenant not providing one clear month's written notice. I refer the Parties to s. 45(1) of the Act which states that a tenant may end a periodic tenancy by giving the landlord a notice to end tenancy effective on a date that is:

- a) not earlier than one month after the date the landlord receives the Notice and
- b) 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.

I find the tenant did not give the landlord written notice to end the tenancy and only gave the landlord verbal notice on April 02, 2009 and moved from the rental unit on April 30, 2009. Consequently, I find the landlord has established a claim for a loss of rental income for May, 2009 of \$1,144.00 and is entitled to a Monetary Order to recover this amount from the tenant.

With regards to the landlords claim for damage to the rental unit; I have applied a test for damage and loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In this instance I find the landlord has not met all the components of the test. The landlord has not provided sufficient evidence that the tenant was responsible for damage to the carpets, the landlord has provided insufficient evidence to support their claim that the tenants dog urinated on the carpet, the landlord has provided no evidence to determine that the tenant was responsible for the damage to the lattice or for the costs incurred to replace this. Consequently I dismiss the landlords claim for damage to the carpets and lattice without leave to reapply.

As the landlord has only been partially successful with the claim I find he is entitled to recover half the \$50.00 filing fee. A Monetary Order will be issued for the following amount:

Loss of rental income for May, 2009	\$1,144.00
Total amount due to the landlord	\$1,169.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,169.00**. The order must be served on the respondent 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 30, 2010.

Dispute Resolution Officer