

DECISION

Dispute Codes MNSD, MNDC, FF, O
 MND, MNDC, MNDS, FF

Introduction

This matter dealt with an application by the Tenant for the return of his security deposit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord applied for compensation for damages to the rental unit, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Landlord entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This fixed term tenancy started on October 16, 2007 and expired on October 30, 2008 but was renewed for a further one year term that ended on October 30, 2009 at which time the Tenant moved out. Rent was \$820.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$410.00 at the beginning of the tenancy. The rental unit is a one bedroom suite approximately 460 square feet in size.

Landlord's Claim:

The Landlord admitted that he did not do a move in condition inspection report with the Tenant but claimed that at the end of the previous tenancy, he had the previous tenant sign a document attesting to the rental unit being clean and in a good state of repair. The Landlord provided a copy of a move out check list that he and the Tenant signed at the end of the tenancy which states that the "the property was agreed to be in perfect condition (move in)." The Landlord also submitted copies of photographs of the rental unit that he said he took on October 30, 2009 during the move out inspection with the Tenant.

The Landlord claimed that the Tenant damaged the following items for which he sought compensation:

- Repairs to holes and scratches on walls;
- Re-painting the rental unit;
- Repairing and painting damaged doors;
- Replacing damaged casing (ie. rubber mouldings);

- Replacing 2 missing light covers and 1 plug face plate;
- Replacing a broken mirror;
- Replacing a missing smoke detector;
- Repairing a strip on the outside of the dishwasher;
- Replacing a cover on the stove fan;
- Carpet cleaning;
- Replacing damaged carpeting with laminate;
- Cleaning of the bathroom and kitchen;

The Landlord also sought a loss of rental income for approximately 16 days during which repairs were made to the rental unit and the laminate flooring was installed. The Landlord claimed that it took approximately 11 days to repair the walls and repaint after the tenancy ended. The Landlord admitted that the laminate was installed in February 2010 while another tenant was living in the rental unit and that he did not lose any rental income for that month.

The Tenant said that when he moved in the rental unit, it already had the damages complained of by the Landlord. The Tenant said the Landlord tried to repair the strip peeling off the door of the dishwasher during the tenancy but it was not fixed properly. The Tenant said the Landlord was also supposed to fix a closet door during the tenancy but did not do so.

The Tenant claimed that the only thing that he forgot to clean was a water mark on the bathroom vanity and dust in the bathroom fan. The Tenant said that although the carpets were not cleaned at the beginning of the tenancy, he agreed to have them cleaned at the end of the tenancy but did not do so. The Tenant also claimed that the Landlord approached him at some point during the tenancy and said he wanted to replace the carpets in the rental unit with laminate and wanted to know if the Tenant would pay for part of the cost.

The Tenant said that during the move out inspection, he brought a standard form of Condition Inspection Report, had the Landlord sign it and the Tenant indicated on this copy that he did not agree with the damages alleged by the Landlord. The Tenant did not provide a copy of this document as evidence at the hearing.

Tenant's Claim:

The Parties agree that the Tenant did not give the Landlord written authorization to keep the security deposit and that the Landlord has not returned the deposit. The Tenant also claimed that the Landlord sent him a text message on October 17, 2009 which stated that as long as the Tenant had the unit cleaned by noon on that day, the Landlord would return his security deposit. The Tenant argued that the Landlord only asked him to repair a tile on the fireplace which he did to the Landlord's satisfaction.

The Tenant also sought compensation equivalent to one month's rent because he claimed that the Landlord interfered with his use and enjoyment of the rental unit during the last month of the tenancy. In particular, the Tenant claimed that the Landlord failed to repair an exterior glass window that was broken by someone throwing a rock and as a result, his safety and security was compromised. The Tenant also claimed that during the last week of the tenancy, the Landlord entered the rental unit without notice and without his consent and had to be removed by the RCMP on one of these occasions. The Tenant also claimed that on one occasion when the Landlord entered the rental unit, he took the Tenant's key that accessed the laundry room and garbage area and therefore he did not have access to those areas for one week.

The Tenant also applied for the return of a key deposit. The Tenant said the Landlord did not give him any keys to the rental unit so he had to pay \$120.00 to the manager of the rental property for 2 keys. The Tenant said he returned the keys to the Landlord but has not received his deposit back. The Tenant said he had a receipt for his payment of one key deposit but he did not provide a copy of it as evidence at the hearing.

The Landlord said that he got a text message from the Tenant on October 16, 2009 saying he had moved out of the rental unit and wanted to arrange an inspection. The Landlord claimed that he heard from the property manager that the Tenant had been subletting the rental unit without his consent so he gave the Tenant a 24 hour notice that he would be inspecting the rental unit. The Landlord said he retained a copy of this Notice but did not submit a copy of it as evidence at the hearing.

The Landlord claimed that at the beginning of the tenancy he gave the Tenant one key and that the Tenant returned one key. The Landlord denied that he took a laundry room key from the Tenant's rental unit and suggested that one of the Tenant's sub-tenants had not returned it to him. The Landlord also argued that he reported the broken window to the Strata and it was up to them to repair the window. The Landlord further argued that he told the Tenant he would return his security deposit once he cleaned and made repairs.

Analysis

Landlord's Claim:

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

I find that the move out inspection list signed by the Landlord and his previous tenant on October 15, 2007 is not a move in condition inspection report as required under the Act in particular, does not contain any of the detailed information that must be included in a condition inspection report as set out under s. 20 of the Regulations to the Act. Furthermore, the Tenant did not participate in that move out inspection and for this reason, I find that the move out inspection report for the previous tenancy is unreliable.

I also find that the Move out Check List signed by the Parties on October 30, 2009 does not comply with the requirements of s. 20 of the Regulations to the Act because it lacks a great deal of detail that is supposed to be included as well as a section where the Tenant has the option of disagreeing with the report. Furthermore, I do not find the fact that the title says "the property was agreed to be in perfect condition (move in)" to be conclusive evidence that the rental unit was in pristine condition at the beginning of the tenancy as the Landlord suggested because the document is not clear as to what the Tenant was supposed to be attesting to by signing his name at the bottom of that document. This is apparent in that the Tenant claimed that on another Condition Inspection Report, he prepared and the Parties signed, he indicated that he did not agree that he was responsible for the damages because there was no move in report done.

For all of these reasons, I find that there is insufficient evidence that the Tenant is responsible for the cost of repairs claimed by the Landlord and those parts of his claim are dismissed. I also find that the only evidence of any cleaning that was necessary at the end of the tenancy was a dusty bathroom fan and a water mark on the bathroom vanity. Consequently, I conclude that the rental unit was reasonably clean at the end of the tenancy and the Landlord's claim for cleaning expenses is dismissed. However, the Tenant admitted that he was responsible for carpet cleaning and as a result, I find that the Landlord is entitled to recover \$50.00 for that expense.

As I have found that the Tenant is not responsible for repairing damages to the rental unit or for re-painting, I find that there is no basis for the Landlord's claim for a loss of rental income and that part of his claim is also dismissed. As the Landlord has been largely unsuccessful in this application, he is not entitled to recover the \$50.00 filing fee for this proceeding.

Tenant's Claim:

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including, but not limited to rights to reasonable privacy and exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with s. 29 of the Act.

I find that there is insufficient evidence to support the Tenant's claim for one month's rent. In particular, I find that there is conflicting evidence as to whether the Tenant had moved out of the rental unit after October 16, 2009 or whether he still resided there. I

also find that there is conflicting evidence as to whether the Tenant received a 24 Hour Notice of Entry from the Landlord for October 17, 2009 or not. I further find that there is conflicting evidence as to whether the Landlord took a key that gave access to the laundry room and garbage area or not.

Given that the Tenant has the evidentiary burden to prove these matters on a balance of probabilities and given that he has not provided any corroborating evidence to resolve the contradictory evidence, I find that he has not met the evidentiary burden. I also find that although there is evidence that an exterior window had a small break in it, I find that there is insufficient evidence as to how the Landlord's failure to fix this created a security risk especially when the rental unit is on the 7th floor of the rental property. Consequently, the Tenant's claim for one month's rent is dismissed.

For similar reasons, I find that there is insufficient evidence that the Tenant paid a key deposit of \$120.00 which the Landlord failed to return upon return of the key(s). The Landlord said the Tenant was given one key and returned one key. The Tenant was not clear on his evidence as to whether he paid \$60.00 or \$120.00 for additional keys. Consequently, this part of the Tenant's claim is also dismissed.

Section 24(2) and section 36(2) of the Act says that if a Landlord does not complete a move in or a move out condition inspection report that complies with the Regulations to the Act, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages, however, he may not offset those damages from the security deposit.

Consequently, I find that the Landlord must return the Tenant's security deposit to him with accrued interest of \$7.47. As the Tenant has been largely unsuccessful on his application, I find that he is not entitled to recover the filing fee for this proceeding. I order pursuant to s. 62(3) and s. 72 of the Act that the Parties' respective awards be offset and that as a result, the Tenant will receive a monetary order for the difference which is \$367.47.

Conclusion

A monetary order in the amount of **\$367.47** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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 04, 2010.

Dispute Resolution Officer