

DECISION

Dispute Codes

MND MNSD FF

Introduction

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

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 4, 2009. The Tenant confirmed receipt of the hearing package.

The Landlords, Landlord's Witness, the Tenant, and the Tenant's Witness, appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order a) for damage to the unit, site or property, and b) to keep all or part of the security deposit, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included the written fixed term tenancy agreement began on May 26, 2009 and was set to expire on November 25, 2009 with the option "will renegotiate for the next term" (written as displayed on the tenancy agreement) . The monthly rent was payable on the 26th of each month in the amount of \$900.00 and the Tenant paid a security deposit in the amount of \$900.00 on approximately May 26, 2009. Neither a move-in inspection report nor a move-out inspection report was completed in writing by either party.

The Landlord testified that he submitted evidence to the Residential Tenancy branch requesting to add loss of December 2009 rent to his claim in the amount of \$900.00.

The Landlord confirmed that he did not provide the Tenant with a copy of this amendment request.

The Landlord's Witness testified that he was in attendance at the rental unit on either November 25 or 26, 2009 to assist his father-in-law, the Landlord, in keeping the peace while the Tenant moved out of the rental unit. The Witness stated there were three people assisting the Tenant with moving out and when they were finished the Landlord and Tenant engaged in a heated argument regarding the return of the security deposit. The Landlord's Witness argued the Tenant left the rental unit a mess, did not clean the stove or bathroom and he was leaving articles behind that needed to be disposed of. The Landlord's Witness testified he saw the Landlord and Tenant both sign a document which stated the Landlord was able to make claim against the security deposit for damage to the rental unit.

The Tenant's Witness testified in dispute of the Landlord's statements that the Tenant's parents arrived in July 2009 when they did not arrive until August 7, 2009 as supported by the Tenant's documentary evidence. The Tenant's Witness argued that the Tenant kept the rental unit clean, as supported by the Tenant's photos, and they assisted the Tenant in trying to remove the bathtub stain, which was present at the onset of the tenancy, while they were there for their visit but that the stain could not be removed.

The Landlord testified that he is seeking \$350.00 which is comprised of \$220.00 for cleaning the rental unit and the cost to rent the carpet cleaner, \$30.00 to have the Landlord's friend dispose of the Tenant's articles that were left behind, \$80.00 to have the six year old blinds repaired so they would open and close, and \$20.00 to have the Landlord's friend install a new thermostat. The Landlord referred to his photos to support the condition of the rental unit on November 25, 2009, and confirmed that he did not provide copies of receipts in his evidence to support of his claim.

The Tenant testified the Landlord requested a meeting with him on October 25, 2009, to discuss the continuation of the tenancy. The Tenant stated that the Landlord told him that if the Tenant wished to continue living in the rental unit past the end of the fixed term of November 25, 2009, the Tenant's rent would be increased by 5% and hydro would be charged separately. The Tenant stated that he told the Landlord during this meeting that he could not afford a rent increase and that he would be looking for a new place to live and would be out of the rental unit no later than December 1, 2009. The Tenant testified that the Landlord responded to the Tenant by saying okay and told the Tenant to be prepared that the Landlord will need to show the unit to prospective tenants.

The Tenant argued that on November 25, 2009 at approximately 10:00 a.m. he called the Landlord to discuss their previous conversation about the Tenant moving out on December 1, 2009, to work out additional money for rent for the extra days, and to request permission to stay until December 15, 2009 because that is when the Tenant was getting occupancy of his new unit. The Tenant argued that the Landlord became very upset during this conversation and the Landlord insisted that the Tenant be out of the rental unit that day. The Tenant testified that he had to leave work to quickly gather some friends to assist him move out of the unit that day not allowing the Tenant time to clean the rental unit.

The Tenant testified that the blinds were in good working condition when he left the rental unit, that he did leave a few rubbish items behind such as a chair and a bbq, the thermostat was in the same condition as it was at the onset of the tenancy, and that he had no choice but to leave the rental unit without doing the move out cleaning as the Landlord demanded the Tenant return the keys that day. The Tenant referred to his documentary evidence of the document the Landlord tried to force him to sign and noted that neither he nor the Landlord signed the document in question as stated by the Landlord's Witness.

The Landlord confirmed that he had a meeting with the Tenant on October 25, 2009 to discuss the tenancy and that the Tenant told the Landlord during that meeting that he could not afford a rent increase. The Landlord argued that he discussed the Tenant's use of hydro and requested that the Tenant conserve his hydro use. The Landlord initially denied that the Tenant told him he would be moving out by December 1, 2009 and later changed his testimony to confirm the Tenant told him he would be moving out by December 1, 2009 when the Tenant found a place but that the Landlord requested the Tenant provide the Landlord with one months notice.

When I questioned the Landlord about the Tenant calling him on the morning of November 25, 2009 the Landlord claimed he did not recall the Tenant calling him that day and did not recall telling the Tenant he had to be out of the rental unit that day. When I asked how the Landlord new to arrange to have the Landlord's Witness at the house that day or that the Tenant was moving out that day the Landlord stated that he did not recall and then stated the Tenant was moving out because it was the end of the lease.

Analysis

All of the testimony and documentary evidence was carefully considered.

A significant factor in my considerations is the credibility of the Landlord's testimony. I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Landlord contradicted his own testimony during the hearing and later replied that he did not recall when asked about specific situations that were substantiated by his previous testimony.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Tenant to be highly probable given the conditions that existed at the time.

Based on the aforementioned and the evidence before me I find the Landlord summarily ended the tenancy on November 25, 2009 and demanded the Tenant vacate the rental unit that day, in contravention of section 44 of the Act which provides in the case of a fixed term tenancy agreement that on the date specified as the end of the fixed term tenancy that does not require the tenant to vacate the rental unit on that date and the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord is seeking a monetary order for \$350.00 which is comprised of \$220.00 for cleaning the rental unit, \$30.00 to dispose of articles that were left behind, \$80.00 to have the six year old blinds repaired, and \$20.00 to install a new thermostat. In the absence of receipts for expenses incurred and move-in and move-out inspection reports, I find the Landlord has breached sections 23 and 35 of the Act and has failed to prove the test for damage or loss as listed above; therefore I dismiss the Landlord's claim for damages.

The evidence supports that the Landlord did not provide the Tenant with notification of his claim of \$900.00 for loss of rent for December 2009, and having found that the Landlord summarily ended the tenancy in contravention of the Act; I hereby dismiss the Landlord's claim of \$900.00 for loss of December 2009 rent, without leave to reapply.

The Landlord has not been successful with his application therefore I decline the award the Landlord recovery of the filing fee.

The Landlord is hereby ordered to return the Tenant's \$900.00 security deposit plus \$0.00 of interest.

I have included a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his obligations as set forth under the *Residential Tenancy Act*

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$900.00. The order must be served on the Landlord 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: April 15, 2010.

Dispute Resolution Officer