

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with applications by the Tenant and Landlord respectively for compensation for damage or loss under the Act or tenancy agreement. The Landlord also applied to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenant claimed that he had served the Landlord with his hearing package (including his evidence) however during the course of the hearing, the Tenant admitted that he had not served the Landlord with his evidence package. Given that the Landlord has had no opportunity to respond to the Tenant's documentary evidence, I excluded that evidence pursuant to RTB Rule of Procedure 11.5(b).

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Tenant entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on July 1, 2008. Rent was \$1,000.00 per month payable in advance on the 1st day of each month.

The Tenant's Claim:

The Tenant claimed that on November 15, 2009, the rental unit was flooded due to heavy rain. The Tenant said that water entered the rental unit through the ceiling and floors so that the floors throughout the rental unit were covered in approximately 8 centimeters of water. The Tenant said that the Landlord was overseas at the time so he could not contact her but did manage to contact her spouse who contacted the Landlord and who in turn contacted her brother for assistance. The Tenant said that he spent 5 hours helping the Landlord's brother to get rid of the flood water and as a result he sought compensation of \$200.00 for that work.

The Landlord claimed that as soon as she knew about the flooding, she made arrangements for her brother to clean up the water in the rental unit. The Landlord said her brother was the one who removed the water from the rental unit and she never asked the Tenant to do it or agreed to compensate him for assisting.

The Tenant also claimed that on November 18, 2009, the Landlord asked him to move out so that she could make repairs or renovations so that a new tenant could move in on December 1, 2009. The Tenant said that the Landlord agreed (in writing) to reimburse him for one-half of a month's rent if he moved out early.

The Landlord denied that she told the Tenant she would reimburse him for one-half of a month's rent if he moved out early. The Landlord also said that the Tenant had already given her his notice that he was ending the tenancy at the end of November 2009 because he had purchased a residence. The Landlord said the Tenant refused to move out until she returned his security deposit on November 23, 2009.

The Landlord's Claim:

The Landlord admitted that another tenant was supposed to move in on December 1, 2009, however, she claimed that tenant refused to move in because the Tenant left the rental unit in need of cleaning and repairs.

The Landlord admitted that she did not do a move in or a move out condition inspection report. The Landlord initially said the Tenant left on November 23, 2009 without advising her. The Landlord then said the Tenant returned the rental unit keys and garage remote control to her on November 23, 2009 and she returned his security deposit without doing a move out inspection. The Landlord said it was not until November 25, 2009 that she went to the rental unit and discovered that the garage door and remote were damaged and asked the Tenant to come to the rental unit.

The Landlord also claimed that the Tenant left the rental unit dirty (including a rug), damaged a bedroom door and lock as well as a bathroom vanity. In support of her position, the Landlord provided photographs of the rental unit that she said she took on November 25, 2009. The Landlord said that due to the condition of the rental unit, her new tenant would not rent the rental unit and she was unable to re-rent it for a number of months. The Landlord admitted that she did not try to re-rent the rental unit until sometime in February 2010.

The Tenant disputed the accuracy of the Landlord's photographs and noted that some of them (of the living room) were taken after repairs to the floor and ceiling had been made. The Tenant denied that he left the rental unit dirty or that he damaged the garage door. The Tenant argued that the damages to the bathroom vanity were caused by the flooding. The Tenant admitted that he changed a lock on a door but said he did so because he did not have a key that worked on the lock and the Landlord refused to have the lock re-keyed. The Tenant claimed that he did not have the use of an area rug that the Landlord claimed he was responsible for.

Analysis

The Tenant's Claim:

The Tenant has the burden of proof and must show (on a balance of probabilities) that there was an agreement that the Landlord would compensate him for $\frac{1}{2}$ of the rent for November 2009 if he moved out early. However, the Landlord claimed that there was no agreement, that the Tenant was moving out anyway and that he did not move out

until November 23, 2009. Given the contradictory evidence of the Landlord and in the absence of any corroborating evidence from the Tenant, I find that the Tenant has not provided sufficient evidence to show that the Landlord agreed to reimburse one-half of his rent for November 2009 and that part of his claim is dismissed.

I also find that there was no agreement that the Landlord would reimburse the Tenant for his assistance in cleaning up the water or that she asked him to do so. Instead, I find that the Landlord took immediate steps to have her brother remove the water from the rental unit and that the Tenant volunteered to assist. In the circumstances, I find that the Tenant is not entitled to compensation for his efforts in helping to remove the water from the rental unit and this part of his claim is also dismissed.

The Landlord's Claim:

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

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 used but is not likely to carry the same evidentiary weight especially if it is disputed.

I find that the Landlord's photographs of the condition of the rental unit are of little assistance (or unreliable) as it is clear that the photographs of the living room were taken after repairs were made to the ceiling and floor as there is new flooring and construction dust throughout the unit. Consequently, I conclude that many of the photographs the Landlord alleged were taken on November 25, 2009 were in fact taken much later, after repairs or renovations were made. Furthermore, the photographs were taken in the absence of the Tenant and there is no other evidence to verify that they were taken when the Landlord said she took them.

The Landlord has the burden of proof and must show on a balance of probabilities that the Tenant left the rental unit dirty and in need of repairs. The Tenant claimed that the rental unit was cleaned at the end of the tenancy. The Tenant also claimed that the garage door and remote were in good working order and undamaged on November 23, 2009 and that the Landlord also used the garage to keep a vehicle. The Tenant said he did not have the use of an area rug that the Landlord claimed he was responsible for cleaning. The Tenant also said that the vanity was damaged by water when the rental unit flooded. In the absence of any reliable, corroborating evidence from the Landlord

to support her position, I find that she has not provided sufficient evidence to show that the rental unit (including a rug) was dirty at the end of the tenancy or that the Tenant was responsible for damaging a garage door and remote or the bathroom vanity and as a result, those parts of her claim are dismissed.

The Landlord claimed that the Tenant lost a key to a bedroom door and should have been responsible for having it re-keyed but instead damaged the lock and door frame when the lock set was replaced poorly. The Tenant claimed the door and lock set were old at the beginning of the tenancy, that the key provided by the Landlord at the beginning of the tenancy did not work and that the Landlord refused to do anything about it. Given the contradictory evidence of the Tenant and in the absence of any reliable, corroborating evidence of the Landlord, I find that the Landlord has provided insufficient evidence that the Tenant is responsible for repairing a door and lock. In particular, the Landlord has not shown that the door and lock were operational at the beginning of the tenancy. Consequently this part of the Landlord's claim for repair expenses is dismissed.

As there is insufficient evidence that the Tenant was responsible for cleaning and repairs at the end of the tenancy, I find that there are no grounds for awarding the Landlord a loss of rental income for December 2009. In any event, I note that the repairs to the rental unit would not have started until November 25, 2009 or later and therefore I conclude that repairs from the flooding were probably not complete by December 1, 2009 when the new tenant was supposed to move in and likely contributed to their decision not to move in. Furthermore, s. 7(2) of the Act requires that a Party take reasonable steps to mitigate their damages by, for example, trying to re-rent a rental unit as soon as possible. In this case, the Landlord admitted that she did not try to re-rent the rental unit for almost 3 months and as a result, I find that she did not take reasonable steps to mitigate her damages.

As the Landlord has been unsuccessful on her claim, I find that she is not entitled to recover the filing fee for this proceeding or her expenses for photographs and that part of her claim is also dismissed.

Conclusion

The Tenant's and the Landlord's claims are both dismissed without leave to reapply. 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 19, 2010.

Dispute Resolution Officer