

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The tenant's application states that the monetary amount in the application represents double the monthly rent for compensation for the landlord not fulfilling his stated intent on a 2 Month Notice to End Tenancy, and for compensation for the landlord's failure to comply with Section 32 of the *Residential Tenancy Act*.

The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on March 1, 2002 and ended on September 30, 2009. Rent in the amount of \$565.00 was due on the 1st of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$247.00.

The tenant testified that she had asked the landlord for repairs to the unit and put it in writing on May 14, 2009 (the tenant testified that the date on the exhibit is incorrect and should read May 14, 2009, not May 14, 2008) and again on July 23, 2009. Copies of those letters were provided in advance of the hearing. She also testified that she recommended a tradesperson to the landlord to fix the problems in the bathroom and

the shower, but he declined to hire him or any other tradesperson. The tenant made an application for dispute resolution on August 17, 2009 requesting an order that the landlord comply with the *Act* and make repairs to the unit.

On August 21, 2010, the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which was provided in advance of the hearing. That notice states: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." She stated that the landlord had told her that his mother would be moving into the unit. The tenant vacated the unit on September 30, 2009 and cancelled the dispute resolution hearing stating that she could not give it her full attention.

The tenant testified that she went to the unit on February 15, 2010 looking for a vacuum cleaner attachment and a man answered the door who informed the tenant that the landlord's mother had not moved into the unit, and that he was the new tenant and had been residing there since January 1, 2010. The tenant has also provided copies of email exchanges between the landlord and a perspective tenant in May, 2010 from UsedVictoria.com that clearly show that the landlord is still renting the unit.

The tenant is claiming a monetary order in the amount of \$1,130.00 being double the monthly rent under Section 51 of the *Act*, and \$1,695.00 being a 25% loss of value of the tenancy for the last year of the tenancy due to the landlord's failure to maintain the unit. Photographs of the unit were also supplied as evidence in advance of the hearing.

The landlord testified that he has done repairs to the unit over the years. He testified that he did contact the tradesperson recommended by the tenant but he declined to accept the job, however the landlord admitted that he did not contact another tradesperson. He stated that the weather stripping didn't look pretty, but it did its job. He stated that the frayed carpets and weather stripping were the result of the tenant's 2 cats that had previously lived in the unit as well. The landlord also had at least one cat.

He also stated that the unit had been freshly painted before this tenant moved in, and that she needed to wash the walls, and the carpets were about 2 years old when she

moved in. He stated that he had the carpets cleaned within the first 2 or 3 years of the tenancy, and then told the tenant that she would be responsible for cleaning afterwards. He testified that the photographs provided by the tenant show that the carpets need cleaning, not replacing.

He stated that he has now rented the unit for \$675.00 per month, but also did some renovations expecting his mother to move in. He stated that his mother's house was listed in the fall, after he issued the notice to end tenancy, but her house has still not sold, and she won't move till it does sell. When asked if it was merely coincidence that the notice to end tenancy was issued 4 days after the tenant had applied for dispute resolution, the landlord confirmed that it was. Also, when asked when the landlord decided to move his mother in, he responded that it was ongoing.

The landlord also testified that a tenant had lived there for 3 weeks, and then another commencing in January this year.

Analysis

The *Act* specifically states that the landlord may end a tenancy if the landlord or a close member of the landlord intends in good faith to occupy the rental unit. I find that the landlord has failed to prove his good faith, in that he has rented the unit on 2 occasions since requiring this tenant to vacate and that his mother still does not reside in the unit. Therefore, I find that the tenant has proven her claim with respect to the landlord failing to fulfill the stated intent on the notice to end tenancy. I also find that the landlord is now renting the unit for more monthly rent than this tenant was obligated to pay under the tenancy agreement, and that was the more believable motivation for issuing the notice to end tenancy.

With respect to the repairs required to the unit, the tenant's letter to the landlord dated July 23, 2009 tells the landlord in clear terms what to do, how to do it, when to do it and when not to do it. It also demands that the landlord move the furniture or hire someone

to do that. I find that this is beyond the scope of what the legislation intended, however, the landlord did not answer or respond to any requests of the tenant for the repairs.

I find that section 32 of the *Act* imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

I have looked at the claims of the tenant and the requests for repairs that she has made, and I find that 25% is excessive in the circumstances. I accept the evidence of the landlord that the weather stripping didn't look pretty but it did its job, and that the tenant's cats, as well as the landlord's were the cause of the shredding. Therefore, the tenant's application with respect to the weather stripping is dismissed.

Further, I don't have any evidence before me that the tenant is a professional tradesperson that would know whether or not insulation was required between the garage and the kitchen and bathroom wall, or if there was any insulation there. I find that the tenant has failed to prove that the landlord is responsible for any damage award for insulation.

The landlord testified that the carpets were about 2 years old when the tenant moved into the unit, and I have no other evidence before me that would contradict this evidence. Evidence that is before me includes a promise by the landlord to replace the carpets at the time the tenancy agreement was entered into by the parties, however, I agree with the landlord that the photographs do not show that carpets needed replacing, but did require cleaning, and cleaning the carpet during the tenancy is the responsibility of the tenant.

I find that the landlord did neglect the missing tiles in the bathroom which justifies the tenant's application regarding the landlord's obligation to maintain the state of decoration and repair required under Section 32 of the *Act*.

With respect to the gap between the bottom of the baseboard and the linoleum, I find that no devaluation of the tenancy occurred and the tenant is not entitled to damages for that issue.

The landlord is responsible for painting the unit at reasonable intervals, and I find that 7 years is excessive. Therefore, the tenant is entitled to damages for devaluation of the tenancy.

The Residential Tenancy Policy Guideline #16 describes the types of damage claims that may be awarded. I find that the only damages that can be awarded in answer to the tenant's application for the landlord's failure to maintain the unit are nominal damages, which are awarded where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right, and I find that 5% of the monthly rent for the last year of the tenancy, or \$339.00 is warranted.

Conclusion

For the reasons set out above I hereby order that the landlord compensate the tenant the amount of \$339.00 for nominal damages and double the monthly rent, or \$1,130.00, for a total of \$1,469.00.

This order may be filed in the Provincial Court, Small Claims division 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: June 04, 2010.

Dispute Resolution Officer