

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call this date to deal with the landlord's application for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The landlord called a witness, and the tenant was assisted by another party. The parties and the witness gave affirmed testimony, and were subject to cross examination.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on November 1, 2009 and was to expire on April 30, 2010. Rent in the amount of \$850.00 was payable in advance on the 1st day of each month. On October 15, 2009, the landlord collected a security deposit from the tenant in the amount of \$425.00.

The landlord testified that in December, 2009 the tenant spoke to the manager of the complex and told him she was moving at the end of January, 2010. The manager reminded the tenant that she had signed a tenancy agreement for a fixed term, but she moved out anyway at the end of January and did not return the keys. On February 16, 2010 the landlord received a letter with the forwarding address for the tenant.

The landlord stated that the unit was not re-rented until April 1, 2010 and is therefore claiming \$1,700.00 for loss of revenue for the months of February and March, 2010, as well as \$895.00 for painting the unit and \$635.00 for advertising. The landlord stated that the painting was done "in-house" and therefore there are no receipts. The landlord also failed to provide receipts or copies of the advertising and stated that was an oversight on his part. He further stated that no move-in or move-out condition inspection reports were completed.

The landlord's witness testified that the fixed-term tenancy agreement was signed by the tenant in his presence. He also testified that after the tenant vacated the suite, there were holes in the walls from posters as well as some tape, and that because the tenant had not returned the keys when she moved out, he was required to change the locks. He testified that the locks were provided "in house", and therefore there are no receipts to corroborate that evidence or prove the amounts, but he believes them to be worth \$50.00. The tenant did not provide a forwarding address when she moved, just verbal notice in December, 2009 that she would be moving.

The witness further testified that he did not complete a move-in condition inspection report when the tenant moved in, but told her to make a list of any concerns. He stated that the condition was good when she moved in. He further testified that no move-out condition inspection report was completed.

He stated that the last time he spoke to the tenant was when she returned the keys on February 16, 2010.

When asked about renting the unit, he testified that he advertised on Craig's List, in the Vancouver Sun and in a local paper that he does not know the name of. He further stated that he did not know how much the advertisement costs were because the head office pays on account with the newspapers, and there is no fee for advertising on Craig's List. The unit was not re-rented until April 1, 2010. Today, there are no vacant suites in the building.

The tenant testified that the condition when she moved into the unit was really dirty, but she needed to move out of the residence she was currently staying at, and this was her first home. She stated that the manager witness was present when she viewed the suite and that he told her to get Windex from the former tenant if she wanted it cleaned. She found glass and food in the cupboard and many cockroaches that eventually she found crawling on her 1 year old child.

The tenant further testified that she contacted an outreach worker from RAIN, who assisted in enabling her to find suitable accommodation into BC Housing, but the landlord's manager witness told her that if she wanted to move out early, she would have to advertise the unit herself. The outreach worker sent 7 other clients to view the unit.

She further testified that she did give written notice to vacate the unit on December 23, 2009, but did not keep a copy. She testified that she cleaned the unit thoroughly before departing, and that the condition of the unit when she left was far better than the condition when she moved in. Also, she was told by the manager witness that the unit was not painted and the locks had not been changed, and she had asked him to give her a letter to that effect, and that the unit was left in a clean state, but he declined to do so because he thought he'd get fired. She also asked the same of a cleaning lady employed by the company, but received the same response.

The tenant further testified that she went to the suite to see if there was any mail for her in February, and heard music, saw a bicycle on the balcony, but no one answered the door. She is certain that the unit was rented prior to April 1, 2010.

Analysis

Firstly, dealing with the claim for damages, the landlord has the burden of proving those damages. In order to be successful for such a claim the party claiming it must be able to prove:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party breaching the *Act* or the tenancy agreement;
3. The amount;
4. What steps were taken to mitigate those damages.

I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. The landlord had submitted no Move-In Inspection Report however, according to the landlord, was left to the tenant to make a list. A list was never signed or given to the landlord by the tenant and as such the weight of this evidence is not consequential. Under the *Act*, a condition inspection report requires input from the two parties who have entered into the tenancy agreement. Section 23(1) on the *Act* requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection when the tenant vacates the unit. The *Act* places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 23(6) of the *Act* states that the landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Both sections 25 and 35 which deal with the Start of Tenancy, and the End of Tenancy Condition Inspection Report requirements contain similar provisions as outlined above.

An inspection must be done contemporaneously with the vacating of the unit as required by the *Act* and by engaging in an alternate procedure not sanctioned by the legislation, the evidentiary weight of the move-out inspection report was negated. The landlord's methodology also created a credibility problem in that the landlord was seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act*.

With respect to the claim for damages for painting, advertising and changing the locks, I find that the landlord has failed to prove the elements required. The claiming party provided no receipts, no photographs, no condition inspection reports, nor any copies of advertisements. The landlord, I find, has not only failed to prove the damages, but has failed to prove any mitigation of loss of revenue due to the fact that the tenant left the unit before the date permitted on the fixed term tenancy agreement.

Conclusion

For the reasons set out above, the landlord's application is dismissed in its entirety, and is therefore not entitled to the recovery of the filing fee for the cost of this application.

I order that the landlord return the security deposit to the tenant in accordance with Section 38 of the *Residential Tenancy Act*.

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