

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

This hearing was originally convened on April 26, 2010 but it was adjourned until the landlord could provide a witness confirming the tenant was served with the notice of hearing documents and evidence or for the landlord to re-serve the tenant directly with the notice of hearing documents and evidence.

The landlord subsequently submitted an application for substituted service to allow him to serve the tenant's employer with the notice of hearing documents and evidence. This application was denied.

The hearing was reconvened on June 21, 2010 at which time the landlord testified that he served the tenant in person at his place of employment. I accept the landlord's testimony and find the tenant has been served in accordance with the *Residential Tenancy Act (Act)* for the purposes of this hearing.

At the end of the hearing, I requested the landlord provide to me confirmation from his restoration contractor when the work was completed and if it was the entire scope of the estimate and confirmation from his insurance provider of his claim no later than the end of business on Thursday, June 24, 2010.

The landlord submitted, on June 21, 2010, a copy of a proof of loss statement from his insurer showing the landlord had claimed \$19,756.26 that included amounts directly related to the landlord's restoration contractor for work completed (\$14,316.26) and to the landlord for loss of rent (\$5,400.00) less \$500.00 deductible.

The landlord also submitted on June 24, 2010 a letter increasing his claim to a total of \$34,843.65. As this submission was not responsive to my specific request and because it would mean an amendment to the landlord's application after the hearing had occurred I have not considered any of this letter's content in reaching this decision.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the *Act*, regulation or tenancy agreement; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 7, 37, 38, 44, 45, 67 and 72 of the *Act*.

Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by both parties on April 15, 2009 for a one year fixed term tenancy beginning on May 1, 2009 with an end date of April 31, 2010 for a monthly rent of \$1,350.00 due on the 1st of the month and a security deposit of \$675.00 was paid on June 1, 2009;
- A copy of a document entitled "Appendix Household Notes and Contents" signed by both parties and dated April 27, 2009 with specific clauses regarding home maintenance including a clause that states "Please take care not to bump the water filter under the kitchen sink to ensure no leaks" and a listing of the condition of furniture and appliances in various rooms throughout the rental unit and property;
- A copy of a Condition Inspection Report completed sometime in April 2009 signed by both parties that indicates the condition of the rental unit to be generally in good condition. There is a notation for the dishwasher, water filter, and fireplace that states "see attached note" but there is no attached note within the evidence package;
- A copy of a "Rental Property Inventory and Condition Form" dated August 23, 2009 and signed by both parties that states all items are in good condition unless otherwise noted. A specific notation indicates a satellite dish is to be removed and the tenant agrees to costs being taken from the security deposit and a couple of other minor notations that do not pertain to the landlord's application;
- A copy of a cheque payable to the landlord from the tenant dated December 1, 2009 returned to the landlord as the tenant's account was closed;
- A copy of an undated letter from the landlord to the local R.C.M.P. requesting that the tenant be charged with fraud;
- A summary of the landlord's claim dated April 15, 2010 that increased the landlord's claim of \$9750.00 from his original application to \$15,646.01;
- Copies of price quotes from the following suppliers:
 - Flooring supplier – dated January 13, 2010 for laminate flooring in the amount of \$4,939.28;
 - Restoration contractor #1 – dated January 21, 2010 for repairs to the kitchen, living room, dining room and hallway in the amount of \$12,160.30;
- Copies of bills/invoices from the following suppliers:

- Restoration contractor #2 – dated December 17, 2009 for repairs to the living room in the amount of \$295.00;
- Restoration contractor #2 – dated December 17, 2009 for cleaning and removal of rubbish in the amount of \$1,512.50;
- Restoration contractor #2 – dated December 17, 2009 for changing a lockset including 3 hours labour in the amount of \$210.00;
- Upholsterer – dated December 10, 2009 for repairs to the leather sofa in the amount of \$179.20;
- Restoration contractor #2 – dated April 14, 2010 for repairs to the main bathroom in the amount of \$831.39 (no customer name or location on invoice);
- Hydro supplier – dated March 12, 2010 for service between January 13, 2010 to March 1, 2010 in the amount of \$161.67;
- Hydro supplier – dated January 13, 2010 for service between December 2, 2009 to January 12, 2010 in the amount of \$286.67;
- Invoice from the landlord's company for labour and materials to repair the deck roof dated April 15, 2010 in the amount of \$1,326.08;
- Copies of receipts from the following suppliers:
 - Insurance Broker – dated February 5, 2010 for payment of \$500.00 deductible;
 - Unknown plumbing supplier – dated March 5, 2010 for suppliers to re-install water filter in the amount of \$9.25;
 - Airline – dated November 27, 2009 for airfare from an out of province location to an airport closest to dispute address in the amount of \$274.75;
 - Airline – dated November 30, 2009 for additional baggage dated November 30, 2009 in the amount of \$315.00;
- Copies of 4 cheques from the tenant to the landlord dated January 1, February 1, March 1, and April 1, 2010;
- A copy of an unidentified floor plan with portions blacked out with a marker;
- A CD entitled "Original Photos – April 2009" containing 132 photographs of the condition of the rental unit prior to the tenancy;
- A CD entitled "2" – containing 147 photographs of the condition of the rental unit at the end of the tenancy;
- A CD entitled "3" – containing 68 photographs of the post restoration condition of the rental unit; and
- A copy of a Proof of Loss statement from the landlord's insurance broker indicating "a loss occurred on the 1st day of September 2009 caused by water escape" for a total claim of \$19,756.26

The landlord submitted that the tenant abandoned the rental unit in mid November 2009 and left the rental unit with severe damage and uncleaned. The landlord testified that he is unsure what the tenants had done but they had caused a leak from the water filter under the sink to flood the kitchen, living room and laundry area.

The landlord also testified the neighbours had informed him after the tenant moved out that they had witnessed the tenant being up on the roof partying with table and chairs and throwing debris into the neighbours' yards and as a result they damaged every corrugated panel in the roof over the deck. The landlord also stated the tenant had caused additional damage in the living room by installing (and subsequently removing) a dancing pole.

The landlord testified the tenant also failed to pay utility bills in accordance with the tenancy agreement including both hydro and water bills. The landlord also noted the tenant had installed a satellite dish without his permission and that the tenant had agreed to have the costs to remove deducted from his security deposit.

The landlord stated the tenant had a cat that clawed the corners of the leather sofa in the living room and that the tenant claimed to have lost the keys to the rental unit and the landlord was therefore required to have the locks changed.

The landlord submitted that he had to return from out of province to help the tenant find a new tenant as a potential subletting tenant and is therefore requesting compensation for those flights.

The landlord testified that he had been paying a premium on his insurance for loss of rental income protection. The landlord provided no indication in his testimony as to whether or not his insurance claim included compensation for the lost rental income from this tenancy.

Analysis

An applicant seeking compensation for damages or losses against another party must provide evidence and/or testimony that their claim confirms the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken to mitigate the damage or loss.

I accept the landlord has received written agreement from the tenant to cover the costs of removing the satellite dish that had been installed without the landlord's permission, however, the landlord has failed to show the value of that damage or loss, I therefore dismiss this portion of the landlord's claim.

Based, primarily on the photographic evidence provided, I find the tenant failed to comply with his obligations under Section 37 of the *Act* that requires a tenant, when vacating a rental unit to leave the unit reasonably clean and find the landlord's

documented costs in the amount of \$1,512.50 are reasonable. I find the landlord has sufficiently justified this portion of his application.

Based again on the photographic evidence, I find that the tenant failed to repair damage caused through the installation of a pole in the living in contravention of Section 37 that requires the tenant to leave the rental unit undamaged at the end of a tenancy. I also accept the documented costs for repair of this damage in the amount of \$295.00 to be reasonable, and therefore find the landlord has sufficiently justified this portion of his application.

In regard to the landlord's claim for changing locks the landlord provided no testimony that indicated that he could not enter the rental unit due to his assertion that the tenant's lost the keys and there is no requirement under the *Act* that a tenant change the locks at the end of tenancy, I therefore dismiss this portion of the landlord's application.

From the photographic evidence, I accept the tenant was responsible for damage to the leather couch, with the tenant failing to repair the damage and find the repair costs of \$179.20 to be reasonable. I therefore find the landlord is entitled to this claim.

As the repairs to the bathroom that the landlord has claimed were completed by a separate contractor from the larger insurance claim contractor and in the absence of any description from the landlord as to what caused this damage, I find the landlord has failed to provide evidence that a loss or damage existed or that if there was a loss or damage it resulted from the tenant violating the *Act*, regulations or tenancy agreement. I therefore dismiss this portion of the landlord's application.

While the landlord testified the tenant had partied on the roof causing damage to the deck roof and despite the landlord's submission of 347 photographs there is no photographic evidence of damage to the roof. As a result, I find the landlord has failed to prove that a loss or damage exists to the deck roof and I dismiss this portion of the landlord's application.

In relation to the landlord's claim for damage caused by a flood that he contends was caused by the tenant's misuse of a water filter under the kitchen sink, there are a number of inconsistencies that I cannot reconcile.

In the document entitled "Appendix Household Notes and Contents" the landlord required the tenants "not to bump the water filter under the kitchen sink to ensure no leaks" which implies there was an existing problem with the water filter prior to the start of the tenancy. In addition the landlord notes on the condition inspection report completed prior to the start of the tenancy to "see attached note" for the water filter and the dishwasher, yet this additional note was not submitted into evidence.

I also note that the landlord completed another full inspection of the condition of the rental unit on August 23, 2010 and there is no mention of the water filter at all. Additionally, the landlord's insurance claim was made on September 1, 2010, according to the Proof of Loss statement submitted.

And finally, upon review of the 347 photographs submitted into evidence, I find that none of the photographs provide any evidence of flood damage to the rental unit. As a result I find the landlord has failed to provide sufficient evidence that a loss or damage exists and if it did that it resulted from the tenant's violation of the *Act*, regulation or tenancy agreement. I, therefore, dismiss the landlord's claim for any costs associated with the flood damage.

Based on the evidence and testimony provided by the landlord I accept that the tenant moved out of the rental unit prior to the end of November, 2009 in violation of the fixed term tenancy agreement that had an end date of April 31, 2010. I find the lost income to be in the amount of \$6,750.00. I also accept the landlord filed an insurance claim in the amount of \$5,400.00 to reducing that loss to \$1,350.00.

However, as I have determined that the landlord failed to provide confirmation, as requested at the hearing, of when the restoration activities were complete and in accordance with my finding that the landlord filed his insurance claim in September 2009, I find that the landlord should have had the rental unit available for rent long before the end of the fixed term and therefore could have mitigated the lost rent completely by renting the unit sooner than the end of the fixed term.

I accept that the tenant, in accordance with the tenancy agreement, was responsible for both hydro and water utilities and failed to pay these accounts. The landlord has failed to provide any documentation supporting the amount of his claim for water, I therefore dismiss this portion of his application.

In the case of the hydro account, I find the landlord has provided documentation to support a claim of \$448.34 for the period of December 2009 to March 2010. However, as I noted above, had the landlord completed the restoration activities prior to the end of the fixed term, he may have been able to rent the unit for the months he is claiming compensation for, thus mitigating any loss.

In relation to the landlord's claim for the costs associated with his flights and 20 hours of his "lost time....who had to take time away from his corporate business, I find that the time and travel a landlord spends dealing with issues related to tenancies that he is a party to are the costs associated with doing business and therefore not a loss or damage, I dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,036.70** comprised of \$1,512.50 cleaning, \$295.00 for repairs,

\$179.20 for repairs to the leather couch and \$50.00 of the \$100.00 fee paid by the landlord for this application as he was partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$675.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,361.70**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 30, 2010.

Dispute Resolution Officer