

DECISION

Dispute Codes MNR, MNDC, MNSD

Introduction

This matter was convened to hear the Landlord's application. The Landlord applied for a Monetary Order for unpaid rent and compensation for damage or loss; and to apply the security deposit towards partial satisfaction of her monetary award.

Both parties signed into the conference and provided affirmed testimony.

Background and Evidence

The following facts were not in dispute:

- This tenancy started on June 15, 2009. The tenancy agreement, a copy of which was entered in evidence, was a one year term lease.
- Monthly rent at the beginning of the tenancy was \$900.00. The Landlord issued a Notice Terminating or Restricting a Service or Facility on November 25, 2009, indicating access to the garage would be terminated effective January 1, 2010. As a result of the termination, rent would be reduced by \$50.00 effective January 1, 2010.
- The Tenants paid a security deposit in the amount of \$450.00 on May 11, 2009.
- No written Condition Inspection Report was prepared when the tenancy began, or when the tenancy ended.
- The Tenants moved out of the rental unit on December 30, 2009.

The Landlord gave the following testimony:

The Landlord testified that the Tenants broke the lease, and the Landlord was not able to re-rent the rental unit until January 11, 2010. The Landlord testified that the Tenants threw away some curtains that were provided by the Landlord and damaged the laminate floors in the rental unit.

The Landlord is seeking a monetary award, calculated as follows:

Description	Amount
Loss of rent for the month of January, 2010	\$850.00
Cost of heating the rental unit for the month of January, 2010	\$146.64
Cost of advertising the rental unit for new tenant	\$50.00
Cost of replacing curtains the Tenants threw away	\$100.00
Cost of repairing floors damaged by the Tenants	<u>\$200.00</u>
Total	\$1,350.00

The Landlord seeks to apply the security deposit in partial satisfaction of her monetary award.

The Tenants gave the following testimony:

The Tenants testified that they moved into the rental unit on the understanding that use of the garage was included in the tenancy agreement, and that the Landlord was aware that they intended to use the garage as storage. They stated that the garage was in need of repair when they moved in, due to a leaky roof, and that the Landlord had given assurances that the roof of the garage would be fixed. The Tenants testified that they would not have moved into the rental unit if the garage (storage) was not included in the tenancy agreement. The Tenants testified that mould and mildew had started to grow on the walls and the ceiling of the garage and therefore they could not store anything in the garage. The Tenants provided photographs of the mouldy walls, ceiling and wet concrete floor of the garage in evidence.

The Tenants testified that they provided the Landlord with verbal notice that they would be ending the tenancy because of their inability to use the garage, and that the Landlord

issued the Notice of Terminating or Restricting a Service or Facility after the Tenants gave their verbal notice. The Tenants testified that they provided the Landlord with written notice on November 30, 2009, that they would be ending the Tenancy on December 31, 2009, because of the Landlord's failure to fix the garage and provide them with storage. The Tenants provided a copy of the written notice in evidence. wards.

The Tenants testified that they did not dispose of the curtains, and left them in the garage. The Tenants testified that the curtains were damaged when the Tenants moved into the rental unit and therefore they bought their own curtains, which they took with them when they moved out.

The Tenants testified that the damage to the laminate floors was normal wear and tear.

Analysis

This is the Landlord's Application, and as such the onus is on the Landlord to prove her claim. Based on the testimony and evidence of both parties, I find that the Landlord has not proven her claim for loss of rent for the month of January, 2010. The Landlord testified that she re-rented the rental unit on January 11, 2010. The Landlord did not dispute that the garage roof was leaking. In fact, the Landlord issued a Notice on November 25, 2009 terminating the Tenant's use of the garage and providing a reduction in rent of \$50.00 effective January 1, 2010. Section 27 of the Act states:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The tenancy agreement indicates that storage is a material term of the tenancy.

Pursuant to the provisions of Section 27 of the Act, the Landlord was therefore barred from terminating this facility.

Section 45 of the Act states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

(emphasis added)

I find that the letter provided to the Landlord, dated November 30, 2010, complies with Section 45(4) of the Act, and that the Landlord failed to comply with a material term of the tenancy agreement. Therefore, I find that the Landlord is not entitled to loss of rent for the month of January, 2010, and this portion of her claim is dismissed. Likewise, the Landlord is not entitled to compensation for the cost of heating the rental unit from January 1, 2010 to January 11, 2010. Similarly, the Landlord is not entitled to recover the cost of advertising the rental unit for new tenants at the end of the tenancy.

The Landlord provided no documentary evidence to support her claim for damages to the laminate floor; or for the cost of replacing curtains, the age of the curtains, or whether or not the Tenants had disposed of them. The Landlord did not arrange for a Condition Inspection with the Tenants, either at the beginning or the end of the tenancy, in contravention of the provisions of Sections 23 and 35 of the Act.

The Landlord's claim is dismissed in its entirety. I order the Landlord to return the security deposit to the Tenants. No interest has accrued on the security deposit. Accordingly, I hereby provide the Tenants with a Monetary Order against the Landlord in the amount of \$450.00, representing return of the security deposit.

Conclusion

The Landlord's application is dismissed in its entirety.

I hereby grant the Tenants a Monetary Order in the amount of \$450.00 against the Landlord. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (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 25, 2010.
