

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from December 1, 2008 to August 31, 2009. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$1,400.00 was payable in advance on the first day of each month. A security deposit of \$675.00 was effectively collected from this tenant on October 28, 2008.

Prior to this particular tenancy, the subject tenant shared the unit with another tenant. A walk through of the unit related to the previous tenancy was undertaken on or about April 30, 2006. While a checklist was completed at that time, it is limited to setting out certain general obligations on the part of the tenants and does not constitute a proper move-in condition inspection report; this checklist is titled "TENANTS – Move In / Move Out."

By letter dated November 23, 2009, the tenant gave notice of his intent to end the tenancy effective December 1, 2009. A walk through of the unit was completed on

December 3, 2009, however, a proper move-out condition inspection report was not completed. Instead, the landlord set out details related to “damages,” “cleaning” and “painting” in a form resembling a memorandum titled “Repairs to Suite” which is dated December 3, 2009.

Various reasons were cited by the landlord in relation to a delay in advertising for new tenants. Only a portion of this delay was related to cleaning, painting and repairs required in the unit at the end of this tenancy. Ultimately, new renters were found effective mid May 2010.

Documentary evidence submitted by the parties includes, but is not limited to, various photographs and receipts. During the hearing the parties exchanged views on circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed that the tenant will pay the following amounts to the landlord:

\$33.60 – repair window pane on back door

\$135.00 – repair cracked window in yellow bedroom

\$1.52 – replace electrical covers for plug-ins

\$4.44 – replace dimmer switches

\$48.00 – replace mini blinds

\$10.73 – key replacements

\$11.19 – replace light bulbs

Sub-total: \$244.48

Below, I make findings with respect to the balance of the landlord's claims:

\$80.00*: 4 hours @ \$20.00/hour for cleaning oven, fridge and patio. The tenant did not deny that the above cleaning was required but undertook to offset this aspect of the landlord's claim by describing other unrelated work he had undertaken on the landlord's behalf without compensation. Cleaning required of the oven, the fridge door and the patio are documented on the "Repairs to Suite" document. Following from the above I find that the landlord has established entitlement to the full amount claimed.

\$1,426.60: painting. The tenant acknowledged that he did not have the landlord's consent to proceed to paint the unit, let alone in combinations of bold colours such as black, yellow, orange, blue, red and green. The landlord testified that the entire unit was last painted in beige tones in April 2005. While Residential Tenancy Policy Guideline # 37 establishes the useful life of interior paint as 4 years, I find that the nature of colours chosen by the tenant, and paint splattered on the white ceilings, led to more extensive labour and materials than would normally be required. Further, the landlord's concern about the paint is noted on the "Repairs to Suite" document. Following from all of the above I find the landlord has established entitlement to **\$1,141.28*** which is 80% of the amount claimed.

\$402.10: replacement of carpet, which represents 25% of the total cost of \$1,608.40 (3 bedrooms, hallway(s) & living room). Residential Tenancy Policy Guideline # 37 establishes the useful life of carpet as 10 years. The landlord testified that the carpets were installed sometime in 2002, therefore, the carpets were approximately 6 years old at the start of this particular tenancy (from 2002 to late 2008). While I find on a balance of probabilities that paint and wax were left on the carpets as a result of the tenant's actions, and that this contributed significantly to the need for the carpets to be replaced,

in the absence of a proper move-in condition inspection and report I find that the landlord's entitlement is limited to **\$201.05***, which is half the amount claimed.

\$1,400.00: loss of rental income for December 2009. Section 45 of the Act speaks to **Tenant's notice**. In part, this section of the Act provides that the effective date of the notice must not be earlier than one month after the date the landlord receives the notice, and 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. Clearly, the tenant's notice does not comply with these statutory provisions. On the other hand, the landlord's reasons for delaying the search for new tenants were not limited to time required to bring the unit into a satisfactory state of repair. Indeed, it was more than 5 months after the end of this tenancy before the landlord advertised for new tenants. As there is insufficient evidence that the landlord undertook to mitigate the loss of rental income as a result of the tenant's insufficient notice to end tenancy, I hereby dismiss this aspect of the landlord's claim.

\$60.00: hydro utilities for December 2009. In the absence of any supporting documentary evidence, such as an invoice or receipt, I hereby dismiss this aspect of the landlord's claim.

\$50.00*: filing fee. As the landlord has achieved some success in this application, I find that the landlord is entitled to the full recovery of this fee.

Sub-total: \$1,472.33

As for the monetary order, I find that the landlord has established a claim of \$1,716.81. This is comprised of the amount agreed to between the parties of \$244.48, in addition to amount resulting from the findings set out above of \$1,472.33. I order that the landlord retain the security deposit of \$675.00 plus interest of \$1.80, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$1,040.01** (\$1,716.81 - \$676.80).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,040.01**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

Date: June 2, 2010

Dispute Resolution Officer