DECISION

Dispute Codes MNR, MND, MNSD, FF
MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in payment of those amounts. The Tenants applied for the return of their security deposit and pet damage deposit and to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenants admitted that they had not served the Landlord with their evidence package as they mistakenly believed that they did not have to. As the Landlord has not had an opportunity to respond to the Tenants' evidence package, it is excluded pursuant to RTB Rule of Procedure 11.5(b). In any event, I note that with the exception of some photographs, most of the Tenants' documentary evidence is made up of the same documents as those contained in the Landlord's evidence package.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This month-to-month tenancy started on December 1, 2008 and ended on January 15, 2010 when the Tenants moved out. Rent was $1,200.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $600.00 and a pet damage deposit of $600.00 at the beginning of the tenancy.

The Landlord said he received written notice from the Tenants on February 1, 2010 that they had moved out. The Landlord said the Tenants left the rental unit in need of cleaning and repairs and as a result, he could not rent the rental unit for the month of February 2010. The Landlord said he spent most of the month of February patching some scratches in a hallway and re-painting a few walls. The Landlord said he also incurred expenses for cleaning the floor in the laundry room and cleaning the carpets. The Landlord admitted that he did not do a move in or a move out condition inspection report with the Tenants.

The Tenants claimed that there had been 3 floods in the rental unit during the tenancy. The Tenants also claimed that an Inspector for the Municipality viewed the rental unit and advised them that it was an illegal suite and that they would probably have to move out. The Tenants said that one of them had been hired for a job in northern British Columbia and the other had just become pregnant, consequently, they did not think it was a good idea for the pregnant Tenant to stay in the rental unit in the event of another flood. The Tenants also said they believed the rental unit was unsafe because the windows were not to Code. The Tenants further said that repairs following the floods had taken a long time and they did not want to reside in the rental unit and deal with intrusions while the Landlord made repairs to bring the renal unit up to Code. Consequently, the Tenants said they told the Landlord 3 days before they moved out that they were ending the tenancy and left their written notice with their forwarding address in the Landlord's mailbox on January 17, 2010.

In their (undated) letter to the Landlord, the Tenants agreed that he could retain $50.00 of their security deposit for damage to a refrigerator shelf. The Tenants also admitted at the hearing that they were responsible for scratches to a hallway wall and agreed to compensate the Landlord $150.00 to repair it. The Tenants admitted that they did not clean the carpets at the end of the tenancy but said that they were reasonably clean when they moved out and had not been cleaned by the Landlord at the beginning of the tenancy. The Tenants denied that the laundry room needed to be cleaned due to their act or neglect. The Tenants said the smell in that room was the result of the floor rotting from prolonged leaking from the hot water tank and not from cat urine.

The Landlord argued that there was no evidence that the rental unit was unsafe. The Landlord also argued that he was never advised by the City Inspector that no one could occupy the rental unit but instead was given permission to bring the unit up to Code while tenants continued to reside there. The Landlord said the carpets did not need to be cleaned at the beginning of the tenancy because they were reasonably clean but that they were stained at the end of the tenancy.

Analysis

I find that there is no evidence that the tenancy was frustrated because the rental unit was not up to Code or that it was not safe to occupy. There also was no evidence that the Landlord was ordered by the City to have the rental unit vacated until it could be brought up to Code.

Consequently, s. 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one clear month's notice in writing that they are ending the tenancy. The exception to this rule is set out under s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given ***written***

notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

Although the Tenants had a number of complaints about the safety of the rental unit and the inconvenience they would endure from further construction, I find that they did not give the Landlord written notice that they would end the tenancy if the Landlord failed to rectify those issues. As a result, I find that the Tenants were required to give one month's written notice as required by the Act. The Tenants said they put their notice in the Landlord's mailbox on January 17, 2010. The Landlord claimed that the Tenants put it in his mail box on February 1, 2010. However, the Landlord also claimed that he was not always present on the rental property. Consequently, I prefer the Tenants evidence on this point. Section 90 of the Act states that a document put in a mail box is deemed to be received by the recipient 3 days later. As a result, the earliest the Tenants' Notice could have taken effect would have been February 28, 2010. Consequently, I find that the Tenants are liable for a loss of rental income for February 2010.

However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. I find that the Landlord took an unreasonable amount of time to make a small number of repairs for which the Tenants were responsible. In particular, I find that the Landlord could reasonably have completed the repairs and cleaning by the end of January 2010 and started advertising it for availability for February 2010. Instead, the Landlord admitted that he spent much of February 2010 doing the work himself when he was available and did not start to look for a new tenant until March 2010. In the circumstances, I find that the Landlord did not take reasonable steps to minimize his loss of rental income and must bear responsibility for part of that loss. Consequently, I award the Landlord compensation for one-half of a month's loss of rental income or $600.00.

Section 37 of the Act says that at the end of a tenancy, a tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. As the Tenants have agreed to compensate the Landlord $150.00 for repairing scratches to a hallway wall and $50.00 for a broken refrigerator shelf, I award the Landlord those amounts. Given the contradictory evidence of the parties as to the source of the smell in the laundry room, I find that there is insufficient evidence to hold the Tenants responsible for cleaning expenses in that room and that part of the Landlord's claim is dismissed.

RTB Policy Guideline #1 (Responsibility for Residential Premises) states at p. 2 that the landlord must ensure carpets are clean and in a reasonable state of repair at the beginning of a tenancy. It also states that a Landlord is responsible for cleaning carpets during a tenancy if there has been a water leak or flooding that was not caused by the tenant. A tenant is responsible for cleaning carpets after a tenancy of about a year but may also have to clean them during a tenancy of a shorter duration if the tenant has had pets or smoked in the rental unit.

In this case, the Landlord claimed that the carpets were clean at the beginning of the tenancy. However, both Parties' evidence was that there were at least 2 floods during the tenancy that were not caused by the Tenants. The Tenants admitted that they had a pet during the tenancy but argued that the carpets were reasonably clean at the end of the tenancy. The Landlord claimed that the carpets were stained at the end of the tenancy but provided no corroborating evidence of that. In the circumstances, I find that the Parties should equally share this expense. Although the Landlord claimed that his actual expense was $130.00, he provided no evidence of that and I find that it is unreasonable for cleaning the carpets in only 2 rooms. Consequently, I award the Landlord one-half of the amount he claimed on his application or $35.00.

I find that each of the Parties are entitled pursuant to s. 72 of the Act to recover their respective filing fees for this proceeding and since they would be offsetting, I make no award for that part of either Party's claim. Consequently, the Landlord has made out a monetary claim as follows:

Loss of rental income:	$600.00
Wall Repair:	$150.00
Refrigerator repair:	$50.00
Carpet cleaning:	$35.00
Subtotal:	$835.00

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report at the end of a tenancy and provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report, the Landlord's right to claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. I find however, that sections 38(4), 62(3) and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit or pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep $835.00 from the Tenants' security deposit and pet damage deposit to compensate him for the monetary claim.

I order the Landlord to return the balance of the deposits and accrued interest to the Tenants as follows:

	Security deposit:	$600.00
	Accrued interest:	$0.76
	Pet deposit:	$600.00
	Accrued interest:	$0.76
	Subtotal:	$1,201.52
Less:	Monetary award:	($835.00)
	Balance owing:	$366.52

Conclusion

A monetary order in the amount of **$366.52** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 28, 2010.

Dispute Resolution Officer