

DECISION

Dispute Codes OPB, OPR, MNR, MND, MNSD, FF
CNR, CNC, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid Rent or Utilities as well as for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 19, 2010 and that the Tenants received it on May 20, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

At the beginning of the hearing the Landlord said that the Tenants had moved out of the rental unit and as a result, the Landlord's application for an Order of Possession and the Tenants' application to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid Rent or Utilities are dismissed without leave to reapply.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Are the Tenants entitled to compensation and if so, how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on August 1, 2009 and ended on June 3, 2010 when the Tenants moved out. Rent was \$1,700.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$850.00 at the beginning of the tenancy.

The Landlord said the Tenants withheld \$400.00 from their rent for March and April 2010 because there was flooding in the lower suite at the end of February or beginning of March. The Landlord said he did not consent to the Tenants deducting these amounts but claimed that he has been compensated for that loss of rental income from

his insurance company and therefore he withdrew that part of his claim. The Landlord said, however, that he did agree to the Tenants paying a reduced rent for May 2010 in the amount of \$1,300.00 but they have not paid it and he sought to recover that amount.

The Landlord said he did a move in condition inspection report with the Tenants at the beginning of the tenancy. The Landlord said the rental property contains an upper and a lower suite, both of which were rented by the Tenants and as a result he completed a report for each suite. The copy of the move in condition inspection report(s) provided by the Landlord, however, do not identify the rental unit address, nor the parties, nor are they dated or signed by either of the Parties. The Landlord said he posted a Notice of Final Opportunity to Schedule a Condition Inspection on the rental unit door "sometime" before May 30, 2010. The copy of the Notice submitted by the Landlord sets out 2 proposed dates and times for scheduling a condition inspection, however it does not set out the names of the Parties or the rental unit address.

The Landlord said the Tenants left the rental unit full of garbage and they had not made any repairs or cleaned. The Landlord said that when he advertised the suite for rent, it was advertised as "no smoking" and the Tenants verbally agreed not to smoke inside, however at the end of the tenancy, the Landlord said the rental unit smelled of cigarette smoke and the walls had nicotine residue on them. Consequently, the Landlord sought to recover expenses for re-painting the rental unit (14 hours at \$20.00/hour), and having the ducts and furnace cleaned. The Landlord argued that in any event, the Tenants were supposed to repair and maintain the rental property.

The Landlord also said that the Tenants deliberately damaged a dishwasher, and a cupboard door (which had been ripped out of the cabinet) and were also responsible for clogging a sink drain in the lower suite with hair and damaging a kitchen sink faucet (or sprayer). The Landlord said the Tenants also put holes in the walls without his authorization however he withdrew his claim for those repairs. The Landlord said that it took him a total of 16 hours to remove garbage left behind by the Tenants and to then clean the rental unit to a standard where it could be re-rented. The Landlord also sought to recover photocopying expenses.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears of \$1,300.00 for May 2010 and I award the Landlord that amount.

Section 32 of the Act says that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. A tenant is responsible for repairing any damage caused by his or her actions or neglect but is not responsible for reasonable wear and tear.

RTB Policy Guideline #1 (Responsibility for Residential Premises) says at p. 1 as follows:

“Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant can not be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

Consequently, I find that a term in the written tenancy agreement (or a verbal agreement) that requires the Tenants to repair and maintain appliances or any other part of the rental unit that is damaged for reasons other than the Tenants' actions or neglect is contrary to the Act and unenforceable.

I also find that the move in condition inspection reports provided by the Landlord has no evidentiary value because they are missing significant information and are not dated or signed by any of the Parties. For similar reasons, I find that the Landlord's Notice of Final Opportunity to Schedule a Condition Inspection is of little assistance. However, the Landlord provided photographs of some of the damages for which he has made a claim.

In the absence of any evidence from the Tenants to the contrary, I find that damages to a dishwasher, a cupboard door and a kitchen faucet were caused by the actions or neglect of the Tenants rather than due to reasonable wear and tear. Consequently, I find that the Landlord is entitled to recover his **reasonable expenses** to repair them. The invoice for the dishwasher repair indicates that other appliances were also serviced during that service call and therefore I cannot conclude that the Tenants should be responsible for the whole bill. As a result, I award the Landlord \$120.00 rather than the total bill of \$161.70. I find that the Landlord's claims for \$140.00 to repair a cupboard door and for \$80.00 to repair a faucet are reasonable and I award him those amounts. I cannot conclude, however, that a clogged drain was due to neglect rather than reasonable wear and tear and that part of the Landlord's claim is dismissed without leave to reapply.

I also find that there is insufficient evidence to support the Landlord's claim for 16 hours of cleaning at \$25.00. The Landlord provided one photograph showing bags of items left in a storage room. Given also that the condition inspection report is of no assistance, I find that there is only sufficient evidence based on his photograph to award the Landlord an amount for garbage removal and I award him 4 hours at \$25.00 per hour for a total of \$100.00.

The Landlord based his claim for painting and duct and furnace cleaning expenses on his argument that it was a term of the tenancy that the Tenants would not smoke in the rental unit. However, there is no term in the written tenancy agreement to that effect notwithstanding that there were other terms hand-written into that agreement. Although the Landlord also claimed that he advertised the rental unit as non-smoking, he provided no evidence of that either. RTB Policy Guideline #1 says that a Landlord is responsible for re-painting a rental unit at reasonable intervals. The Landlord admitted

that the rental unit was not newly painted at the beginning of the tenancy. In support of his claim for painting expenses, the Landlord provided only one photograph of a bedroom wall. I find that this alone is insufficient to support his claim for painting expenses of \$400.00 and instead I award him \$100.00.

As indicated above, s. 32 of the Act says that a Landlord is responsible for maintaining a rental unit. The Landlord argued that he had to clean the furnace and ducts because the Tenants smoked inside. However, I find that there is little evidence to support this argument and in the circumstances this part of his claim is dismissed without leave to reapply. I also find that there is no evidence such as receipts to support the Landlord's claim of \$50.00 for photocopy expenses and as a result, I award him \$10.00 for his copying expenses for these proceedings only. As the Landlord has been successful in this matter, he is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Tenants.

In the "Details of Dispute" portion of the Tenants' application, they state that they were seeking \$525.00 to compensate them for their electric bill charges while construction was taking place in the lower suite and \$425.00 for storage expenses. However, in the absence of any evidence from the Tenants I find that there is insufficient evidence to support these claims and the Tenants' application is dismissed without leave to reapply.

In summary then, I find that the Landlord has made out a monetary award as follows:

Unpaid Rent:	\$1,300.00
Dishwasher repair:	\$120.00
Cupboard repair:	\$140.00
Faucet repair:	\$80.00
General cleaning:	\$100.00
Painting:	\$100.00
Photocopies:	\$10.00
Filing fees:	<u>\$50.00</u>
Subtotal:	\$1,900.00

I order the Landlord pursuant to s. 38(4) and 62(3) of the Act to keep the Tenants' security deposit in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$1,050.00.

Conclusion

A Monetary Order in the amount of **\$1,050.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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 18, 2010.

Dispute Resolution Officer