DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. On March 22, 2010, the Landlord amended his application to include a claim for compensation for damages to the rental unit. At the hearing of this matter the Landlord further amended his application to include a claim to keep the Tenant's security deposit. As s. 72(2)(b) of the Act permits the Director to make such an order where the Landlord is entitled to a monetary award, I allowed the Landlord to amend his application to include a claim for the security deposit.

The Landlord said he served his application and Notice of Hearing (the "hearing package") on the Tenant by registered mail to the rental unit address on March 9, 2010. The Landlord said the Tenant did not pick up that mail and it was returned to him. The Landlord said he served his amended application and evidence package on the Tenant by registered mail to the rental unit address on March 22, 2010. The Landlord said the Tenant did not pick up that mail and it was also returned to him. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package and amended application as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the beginning of the hearing, the Landlord confirmed that the rental unit is situated on property he leases for a 99 year term from Indian and Northern Affairs. The Landlord argued that notwithstanding the lease, the Residential Branch has jurisdiction to hear his application. RTB Policy Guideline #27 (Jurisdiction) states at p.1 to 2 as follows:

> "The case law makes it clear that provincial legislation cannot affect the "use and occupation" of Indian Lands because that power belongs to the federal government under section 91.
>
> Since a tenancy agreement is an interest in land, any part of (provincial) Legislation which affects the use and occupation of Indian Lands does not apply to the rental unit which is in dispute.
>
> The situation is less clear for disputes which do not affect the use and occupation of Indian Lands but which are nonetheless governed by the Legislation. A monetary claim for damages or rent arrears under the Legislation may not affect the right to the use and occupation of Indian Lands, particularly if the tenancy agreement has ended."

As the tenancy in this matter has ended, I find that the nature of the relief sought by the Landlord does not affect the use and occupation of the rental property and as a result, I further find that the Act applies to this dispute.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on November 1, 2008 and ended on or about March 31, 2010 when the Tenant moved out. Rent was $1,200.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $600.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for March 2010. The Landlord also said that the Tenant told him in February 2010 that she would be moving out at the end of March 2010 so he left messages for her asking to meet with her on March 9, 2010 to inspect the rental unit. The Landlord said the Tenant did not return his calls and that when he attended the rental unit on March 9, 2010, the Tenant had changed the locks without his approval. The Landlord said that the Tenant allowed new tenants to view the rental unit on March 20, 2010 and at that time they took photographs of the rental unit and made a list of damages. The Landlord said the Tenant did not leave him a forwarding address.

The Landlord admitted that he did not do a move in inspection report but claimed that the rental unit had been completely renovated 5 years prior to the tenancy and was in "pristine" condition at the beginning of the tenancy. The Landlord said the Tenant was responsible for the following damages which were not the result of reasonable wear and tear:

- Damaged smoke alarm;
- Ceiling fan dome broken or missing;
- Bathtub had some substance in it that could not be removed;
- Broken granite tiles around fireplace hearth;
- Broken outdoor light fixtures;
- Broken interior door bell mechanism;
- 5 damaged bi-fold closet doors;
- 6 damaged interior doors;
- Holes in the ceiling;
- Damaged kitchen countertop
- Damaged flooring transitions / moulding

The Landlord provided a written estimate showing that the cost of materials to repair the damages would be $2,194.77. The Landlord estimated that it would take approximately 79 hours of labour to make the repairs which at an hourly rate of $25.00 would amount

to $2,219.80 (including tax). The Landlord also sought to recover his fuel expenses for attending the rental unit on March 9, 2010 as well as his expenses for serving the documents for this proceeding.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears for March 2010 in the amount of $1,200.00 and I award the Landlord that amount.

Section 32 of the Act says that a Tenant is responsible for damages caused by her act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant. The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight if it is disputed.

In this case, the Landlord did not complete a move in condition inspection report but he claimed that there were no damages to the rental unit at the beginning of the tenancy. In the absence of any evidence from the Tenant to the contrary, I find on a balance of probabilities that the damages to the rental unit occurred during the tenancy. The Landlord also did not complete a move out condition inspection report however he relied on a list of damages and photographs provided to him by his new tenants. In the absence of any evidence from the Tenant to the contrary, I find that the damages to the rental unit are the result of the Tenant's act or neglect rather than reasonable wear and tear and that the Tenant is responsible for compensating the Landlord to repair them.

As a result, and based on the written estimate provided by the Landlord, I find that he is entitled to $2,194.77 for the cost of supplies and $2,219.80 for the cost of labour to repair the damages to the rental unit. I also find that the Landlord is entitled to recover his registered mail service expenses of $19.26. There was no evidence that the Landlord served the Tenant with a 24 hour Notice of Entry for March 9, 2010 or had an arrangement with the Tenant to inspect the rental unit that day as he is required to do under s. 29 of the Act or that he served her with a Final Opportunity to Schedule a Condition Inspection as required under s. 17(2) of the Regulations to the Act. Consequently, I find that the Landlord is not entitled to recover his fuel expenses for attending the rental unit on March 9, 2010 and that part of his claim is dismissed without leave to reapply.

As the Landlord has been successful in this matter, he is entitled pursuant to s. 72 to recover the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

	Unpaid Rent:	$1,200.00
	Repairs:	$4,414.57
	Registered Mail:	$19.26
	Filing Fee:	$50.00
	Subtotal:	$5,683.83
Less:	Security deposit:	($600.00)
	Accrued interest:	($1.50)
	Balance Owing:	$5,082.33

Conclusion

A Monetary Order in the amount of **$5,082.33** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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 29, 2010.

Dispute Resolution Officer