DECISION

Dispute Codes MNR, MND, MNDC, 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 Tenant's security deposit.

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 Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2004 and ended on February 19, 2010 when the Tenant's personal representative returned the keys to the rental unit. Rent was $730.00 per month. The Tenant paid a security deposit of $330.00 at the beginning of the tenancy.

The Landlord said she received a written notice from the Tenant's granddaughter on February 12, 2010 which indicated that the tenancy would end on February 28, 2010. The Landlord said she left a note in the Tenant's mail box on February 12, 2010 advising the Tenant's representatives that she needed a document called a "Termination Notice" signed by the Tenant or her Power of Attorney. The Landlord said on February 13, 2010 she noticed the Tenant's granddaughter and other people moving things out of the Tenant's rental unit and asked them to show her a copy of the Tenant's Power of Attorney. When they failed to do so, the Landlord called the RCMP and the Tenant's Power of Attorney later arrived with proof of his appointment.

The Tenant's agent said she was advised by the Landlord that she was not authorized to have a key to the building and that if she attended again the Landlord would contact the RCMP. Consequently, the Tenant's agent said she advised the Landlord that the suite would be ready for a preliminary inspection later in the day on February 13, 2010 but the Landlord said she wasn't prepared for it.

The Tenant's agent said she also received a copy of a Notice from the Landlord dated February 12, 2010 (which was put in the Tenant's mailbox) which indicated that the Landlord would do a preliminary inspection on February 15, 2010 between 10 am and 5 pm. The Tenant's agent said a family member (a Power of Attorney) was at the rental unit during that time to ensure the carpets were cleaned and that the Landlord did not attend. Consequently, the Tenant's agent said her family member left a note in the

Landlord's office mail slot stating that they would assume that the condition of the rental unit was satisfactory unless the Landlord contacted them to advise them otherwise.

The Landlord said she attended the rental unit sometime in the mid-afternoon on February 15, 2010 but no one was there and the carpet cleaner had left the patio doors open. Consequently, the Landlord said she posted on the rental unit door a move out cleaning list which also stated that the Landlord had done a preliminary inspection and proposed a time for a final inspection on February 18, 2010. The Landlord said that later in the day on February 15, 2010 she posted on the rental unit door a Final Opportunity to Schedule a Condition Inspection for February 19, 2010. The Landlord said the Tenant's representative did not attend the move out inspection.

The Tenant's agent argued that the Landlord knew or ought to have known after she received their letter dated February 15, 2010 that they would not be back to the rental unit to receive her notices. The Tenant's agent said the Landlord could have easily contacted them by telephone (as they requested) to advise them of any remedial cleaning that was necessary but she failed to do so. The Landlord admitted that she made no attempt to contact the Tenant's representatives by telephone after February 13, 2010. On February 19, 2010, one of the Tenant's family members dropped off the key to the rental unit with a letter in the Landlord's drop slot. The letter stated that as the Landlord had not responded to the Tenant's agent's letter of February 15, 2010, she assumed that no remedial cleaning or repairs were required and also advised the Landlord that the Tenant had passed away on the 18th.

On February 20, 2010, the Landlord sent the Tenant's representative a letter stating that she considered the rental unit to have been abandoned after the Tenant's agent dropped off the key and failed to attend the move out inspection on February 19, 2010.

The Landlord said she tried to re-rent the rental unit for March 2010 but was unable to do so until May 2010. The Landlord said there are signs on the rental unit property and newspaper and online advertisements are run continuously. In support, the Landlord provided newspaper advertising invoices. The Landlord admitted that there were other vacancies in the rental property and that she gave priority to re-renting those for which she had received "proper notice." The Tenant's agent argued that the Landlord did not try to re-rent the rental unit for March 2010 and that her invoices show an ad was not placed until the end of February. The Landlord claimed that the rental unit could not be painted until the end of February.

The Landlord said that at the end of the tenancy the rental unit was not reasonably clean and the carpet was damaged. In particular, the Landlord said the oven was dirty as was the fan hood and side of the stove. The Landlord also said the kitchen cupboards and floors behind appliances needed cleaning. The Landlord claimed that the carpet had stains in the living room, bedroom and hallway that could not be removed by cleaning and had to have sections replaced. The Landlord further claimed that the drapes had to be cleaned.

The Tenant's agent argued that the stains in the bedroom and living room carpet existed at the beginning of the tenancy according to the move in condition inspection report. The Tenant's agent also argued that the carpet was old and worn. The Tenant's agent said the curtains were cleaned in 2009. The Landlord's agent further argued that if the Landlord had contacted her or another family member as they had requested, they would have had an opportunity to take care of any cleaning issues.

Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give a Landlord one clear month's notice in writing to end the tenancy. As a result, I find that the Tenant or her authorized representative was required to give one month's written notice as required by the Act and the earliest the Notice dated February 11, 2010 could have taken effect would have been March 31, 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. The Tenant argued that the Landlord did not take reasonable steps to re-rent the rental unit for March 2010 because she did not provide evidence of any advertisements until the end of February 2010. The Landlord claimed that there were ongoing advertisements for vacancies at the rental property but admitted that the rental unit was not painted until the end of February 2010 and that she gave priority to re-renting vacant suites for which she had received proper notice.

I find on a balance of probabilities that the Landlord probably did have ongoing advertisements for the rental property. The advertising invoice provided as evidence by the Landlord, shows that it is for the billing period February 1 – 28, 2010 and the 28th is just the billing date. Furthermore, RTB Policy Guideline #3 (at p. 2) states that "even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued. Consequently, I find that the Landlord was entitled to give priority to re-renting other vacant suites in the rental property ***provided*** that she also made reasonable attempts to re-rent the rental unit. As a result, I find that the Landlord is entitled to a loss of rental income for March 2010 in the amount of $730.00 as well as a late payment fee of $25.00 pursuant to a term of the tenancy agreement to that effect.

The Landlord argued that the Tenant failed to participate in the move out inspection and as a result, she is entitled to keep the security deposit without having to set off her other claim for compensation for cleaning and repair expenses. Section 36 of the Act says that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord complied with section 35(2), and the tenant has not participated on either occasion.

Section 35(2) says that a landlord must offer a tenant at least 2 opportunities, as prescribed (by the Regulations to the Act) for the inspection. Section 17 of the Regulations to the Act states as follows:

> **17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),
> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
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> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
>
> (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the Landlord posted 2 written notices on the rental unit door on February 15, 2010 which proposed 2 different dates and times to schedule a condition inspection as required by s. 17 of the Regulations. However, I find that the Landlord knew or should have known that the Tenant or her authorized representative would not receive those notices and therefore would have not likely attend on the proposed days. In particular, I find that the Landlord was advised by the Tenant's representative on February 15, 2010 that the Tenant would not return to the rental unit do a final move out inspection unless the Landlord contacted her regarding deficiencies.

Although the Landlord argued that the Tenant's representative may have seen the notices posted on the rental unit door on the evening of February 18, 2010 or morning of February 19, 2010 when she dropped off the keys, I find that there is insufficient evidence to conclude that. Rather, the note left by the Tenant's representative was that she had not heard from the Landlord therefore she assumed that all was fine with the condition of the rental unit. It was only after the Landlord received this note that she performed the final inspection without contacting the Tenant's representative even though it appeared from her note that the representative was unaware of the proposed inspection that day. In short, I find that it was unreasonable for the Landlord to leave posted notices on the rental unit door when she knew that the Tenant's legal representatives were waiting for her to contact them by telephone to advise them of any deficiencies prior to a final inspection being done. As a result, I conclude that the only reason the Tenant did not participate in a move out inspection was because the Landlord failed to take reasonable steps to notify him about it.

In her submissions, the Landlord also argued that she was entitled to do the move out inspection without the Tenant because he "abandoned" the rental unit when he returned the keys and failed to attend the move out inspection. Notwithstanding the failure of the Landlord to give proper notice of the move out inspection discussed above, I find that the unit was not abandoned. Section 24 of the Regulations to the Act sets out the

circumstances under which a landlord may consider a tenant to have abandoned a rental unit and I find that none of the circumstances apply in this situation. In particular, I find that the Landlord knew or should have known from the Tenant's representative's letters dated February 15 and 18, 2010 that the Tenant's representatives would have returned to the rental unit to do remedial cleaning prior to the Landlord doing a final inspection had he or she been contacted about it by the Landlord in the manner they requested.

Consequently, I find that the Landlord is not entitled to keep the Tenant's security deposit without setting it off of the alleged damages. Furthermore, RTB Policy Guideline #17 (Security Deposit and Set Off) says at p. 3

> "In cases where the tenant's right to the return of a security deposit has been extinguished under s. 24 or 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished."

Section 37 of the Act says that at the end of a tenancy, the tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. I find that there is sufficient evidence that the carpet in the rental unit had pre-existing stains in the living room and bedroom. In the absence of any reliable evidence to the contrary, I further find that the carpet likely needed to be re-stretched because due to reasonable wear and tear given that it was nearing the end of its useful lifetime. Consequently, I find that the Landlord is only entitled to recover part of her claim for carpet repairs and I award her the amount of **$40.00**.

The Landlord also sought to recover expenses for drape cleaning and general cleaning. The Tenant argued that the Landlord did not give her a reasonable opportunity to address any remedial cleaning identified in the preliminary inspection. For the reasons set out above, I agree. In particular, I find that the Landlord knew that the Tenant's representative was waiting for the Landlord to contact her regarding any remedial cleaning following the Landlord's preliminary inspection on February 15, 2010 but that the Landlord chose instead to leave a note posted to the rental unit door. I further find that it was unreasonable for the Landlord to expect the Tenant's representative to receive this notice given that the unit had been permanently vacated and there was no other reason for the Tenant's representative to go to the rental unit. Consequently, I find that the Landlord has not mitigated her damages and for this reason, this part of her claim is dismissed without leave to reapply.

As the Landlord has been largely successful on her claim, I find that she is entitled to recover the $50.00 filing fee from the Tenant 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:

Loss of rental income:	$730.00
Late payment fee:	$25.00

	Carpet repair:	$40.00
	Filing fee:	$50.00
	Subtotal:	$845.00
Less:	Security deposit:	($330.00)
	Accrued interest:	($11.68)
	Balance Owing:	$503.32

Conclusion

A monetary order in the amount of **$503.32** 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 14, 2010.

Dispute Resolution Officer