

DECISION

Dispute Codes MNR, MNDC, (MNSD), FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for a loss of rental income, for compensation for damages to the rental unit and to recover the filing fee for this proceeding.

At the beginning of the hearing the Landlord applied to amend his application to include a claim to keep the Tenants' security deposit. As s. 72(2) of the Act provides that the directory may set off a Tenant's security deposit from a monetary order awarded to the Landlord, I permitted the Landlord to amend his application to include this claim. The Landlord admitted at the beginning of the hearing that the amount he was actually claiming as damages exceeded the amount set out on his application. The Landlord was advised that he could adjourn this matter to amend his application for the additional amount sought, pay the additional filing fee and serve the Tenants with the amended application. However, the Landlord said he wished to proceed with his application and would be limiting the amount of his claim to that set out on his application.

The Landlord said he served the Tenants with his Application and Notice of Hearing (the "hearing package") by registered mail on March 4, 2010 to a forwarding address provided by the Tenants. The Landlord said the Tenants the hearing package was returned to him unclaimed. Section 90 of the Act says that a document served by mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. 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.

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 damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on May 15, 2009 and was to expire on May 31, 2010 however it ended on February 4, 2010 when the Tenants moved out. Rent was \$900.00

per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$450.00 at the beginning of the tenancy.

The Landlord said that the Tenants told him on January 31, 2010 that they could not pay the rent for February and would be moving out on the 4th. The Landlord said the Tenants did not give him written notice and he has not yet been able to re-rent the rental unit. The Landlord said he has an agent that looks for new tenants for him by advertising in online publications and on local bulletin boards. The Landlord said he also tried to reduce the rent but still had no success finding a new tenant.

The Landlord said that during the tenancy the Tenants got a cat without advising him and that the cat damaged the carpet beyond repair. Consequently, the Landlord said he had to remove the carpeting (which was 2 years old at the beginning of the tenancy) and replace it with laminate. The Landlord also said that a fireplace remote was missing at the end of the tenancy and that the Tenants did not leave the rental unit reasonably clean. In particular, the Landlord said the Tenants failed to clean all of the appliances, a patio, windows and some floors.

The Landlord admitted that he did not do a move in or a move out condition inspection report. The Landlord also claimed that he did not take any photographs of the damages in question because the Tenants said they would pay him for the damages.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 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 Tenants did not give the Landlord written notice that they were ending the tenancy, however I also find that once the Landlord was aware that the Tenants had moved out, he had a duty to try to re-rent the rental unit as soon as possible. The Landlord claimed that he has been actively searching for a new tenant, however in an e-mail to the Landlord dated March 21, 2010, his floor installer wrote, "I'm glad all worked out after all the headaches with the materials....Now the realtors need to do their thing." Consequently, I find that there is evidence that the Landlord probably listed the property for sale shortly after the tenancy ended and did not try to actively re-rent it. Furthermore, the Landlord provided no documentary evidence to corroborate his claim that the property had been actively advertised for rent. In any event, I find it unreasonable that the Landlord had not re-rented the rental unit after 4 months and as a result, I find that he is entitled to recover a loss of rental income for only February and March 2010.

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 (within 7 to 15 days). 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 (especially if it is disputed).

In this case, the Landlord did not complete a move in or a move out condition inspection report nor did he provide any other evidence of the alleged damage to the carpet in the rental unit. As a result, I find that there is insufficient evidence to determine if the Tenants caused the alleged damages to the carpet and if they were extensive enough to warrant disposing of the carpet as the Landlord claimed or whether instead the carpet could have been salvaged. In the absence of any evidence of the condition of the carpet at the beginning and end of the tenancy, I cannot conclude that the Tenants should be responsible for the cost of replacing it with laminate flooring and accordingly, this part of the Landlord's claim is dismissed without leave to reapply.

For similar reasons, I find that there is insufficient evidence to conclude that the rental unit was not reasonably clean at the end of the tenancy or that the Tenants received a fireplace remote at the beginning of the tenancy that they failed to return at the end of the tenancy. Consequently, the Landlord's claims for cleaning supplies and a replacement fireplace remote are also dismissed without leave to reapply.

As the Landlord has only been partially successful in this matter, I find that he is entitled to recover one-half of the filing fee for this proceeding from the Tenants. I order the Landlord pursuant to s. 38(4) and s. 72 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 as follows:

Loss of rental income:	\$1,800.00
Filing fee:	<u>\$25.00</u>
Subtotal:	\$1,825.00
Less: Security deposit:	<u>(\$450.00)</u>
Balance owing:	\$1,375.00

Conclusion

A Monetary Order in the amount of **\$1,375.00** 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 30, 2010.

Dispute Resolution Officer