

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This is the Landlord's application for a Monetary Order for damages to the rental unit and compensation for damage or loss under the tenancy agreement, Residential Tenancy Act (the "Act"), or regulation; to apply the security deposit towards his monetary award; and to recover the cost of the filing fee from the Tenants.

I reviewed the documentary evidence prior to the Hearing. All parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for damages to the rental unit and compensation for early termination of the tenancy by the Tenants?
- Is the Landlord entitled to apply the security deposit towards satisfaction of his monetary award?

Background and Evidence

The following facts are not in dispute:

- The Tenants paid a security deposit in the amount of \$1,150.00 on July 2, 2009;
- The tenancy agreement was a fixed term agreement, commencing August 1, 2009, and ending April 30, 2010. Monthly rent was \$2,300.00 per month, due on the last day of each month for the following month.
- The tenants moved out of the rental unit on February 28, 2010.
- At the move-out inspection, the Tenant's agent SA was present. He agreed that the Tenants were responsible for replacing the spent light bulbs; cleaning and sealing the concrete floors at \$16.00 per hour plus materials; and that the Tenants only returned one of the two sets of keys.
- The Tenants have not filed an application for dispute resolution against the security deposit.

The Landlord testified that he was able to re-rent the rental unit effective March 1, 2010, at a reduced rent of \$2,100.00 per month. The Landlord provided a copy of the tenancy agreement with the new tenants in evidence. The Landlord seeks compensation for the difference between what he received in rent for March and April, 2010, and what the Tenants had agreed to pay to the end of the tenancy, in the amount of \$400.00.

The Landlord testified that there was a paragraph in the tenancy agreement with respect to administrative costs in the event the Tenants ended the tenancy early. The Landlord provided a copy of the tenancy agreement in evidence. The Landlord seeks compensation under that clause of the tenancy agreement in the amount of \$500.00.

The Tenants' agent SA stated that the paragraph containing that provision should not be upheld, as it included a statement that the amount would automatically be deducted from the security deposit, in contravention of the Act. The Tenants' agent submits that therefore the paragraph is unenforceable, pursuant to the provisions of Section 6(3)(a) of the Act.

The Landlord testified that the walk through at the end of the tenancy was difficult because the Tenants' agents wanted to hurry through the inspection. The Landlord testified that after the Tenants' agents left, he discovered damage to the front of the cupboard drawers in the kitchen which cannot be repaired. The Landlord testified that the drawers were made by a company which is no longer in existence. The Landlord was able to find similar drawer fronts elsewhere, but the hardware does not match the drawers. The Landlord testified that there was no guarantee that refitting the drawer fronts with matching hardware would not compromise the integrity of the drawers. In addition, the colour of the drawer fronts does not match the remainder of the cabinets and therefore the drawer fronts would have to be repainted. The Landlord provided photographs of the damaged drawer fronts. The Landlord provided two quotes for replacing the drawer fronts:

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|---|------------|
| • Custom made drawer fronts with matching hardware | \$1,064.00 |
| • Similar style drawer fronts requiring paint matching,
and changing the hardware at additional cost | \$547.88 |

The Landlord also seeks his labour costs for disassembling, reassembling the drawers, transportation, researching options for replacement, preparing detailed drawings and shipping costs in the total amount of \$270.00.

The Tenants' agent SA testified that the Tenants did not damage the drawer fronts, and that the inspection report makes no mention of damage to the drawer fronts at the end of the tenancy. The Tenants' agent stated that the Landlord did not advise the Tenants of any damage to the drawer fronts immediately after the Tenants moved out. The Landlords' agent stated that the Landlord had a right to inspect everything at the move out inspection and chose not to. The Tenants' agent submitted that the damage to the drawer fronts may have been caused by the new tenant.

The Landlord testified that the photographs of the damaged drawer fronts were taken on March 1, 2010 and emailed to the Tenants at 6:53 on the same day. The Landlord testified that the new tenant in the rental unit and the cleaning service who cleaned the rental unit at the end of the Tenants' tenancy both saw the damage to the drawer fronts immediately after the Tenants moved out. The Landlord provided their written statements in evidence.

The Landlord's witness testified that he cleaned the fridge and stove after the Tenants moved out. He stated that the kitchen drawers were damaged. The Witness stated that he also cleaned the rental unit before the Tenants moved in and that there was no damage to the drawer fronts.

Analysis

The Tenants do not dispute the Landlord's claim for the cost of replacing light bulbs; cleaning and sealing the concrete floors and replacing one of the keys. Therefore, the Landlord has established his claim with respect to these items.

The Tenants' agent SA submitted that a paragraph in the tenancy agreement with respect to damages for ending the tenancy early and administrative costs for re-renting the rental unit should not be enforceable, because it contained a provision that the security deposit would be automatically applied against damages, which is contrary to the Act. Section 6(3)(a) states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulation. The paragraph containing the provision states:

- iii) In the case of early termination of tenancy by tenant(s) the tenant is responsible for the cost of re-rental of suite and any rental income lost in the interim and will be automatically deducted from your security deposit. A five hundred dollar fee for the labor involved in re-renting (answering calls and showing the suite to prospective tenants) the suite will also be deducted from the security deposit, or agency fee if agent is used to rent suite.

Security deposits are held in trust by landlords, to be applied in accordance with Section 38 of the Act. Section 38 of the Act does not allow for automatic deduction of any portion of a security deposit. Therefore, I find that the above paragraph is unenforceable with respect to administrative costs (liquidated damages) and loss of rental income. However, with respect to loss of rental income, the Landlord still has relief under the Act. The Tenants moved out of the rental unit before the end of the term of the lease. Pursuant to the provisions of Sections 7 and 67 of the Act, I find that the Landlord is entitled to compensation of any loss of rent up to the earliest time that the Tenants could have legally ended the tenancy. The Landlord provided evidence to confirm that the new tenant paid \$200.00 less a month than the Tenants paid in rent. The remaining term of the tenancy was 2 months. Therefore, the Landlord has established his claim in the amount of \$400.00 for loss of rent. The Landlord's claim with respect to liquidated damages is dismissed.

Based on the testimony of both parties, the Landlord's witness and the two letters entered into evidence by the Landlord, I find on the balance of probabilities that the Tenants damaged the drawer fronts. The Landlord provided two estimates for the cost of replacing the drawers. One of the estimates is for identical drawer fronts. The other estimate is for similar drawer fronts, but with hardware that does not match the hardware for the drawers. The Landlord testified that fitting new hardware to the drawer fronts might compromise the integrity of the drawers. I allow the Landlord's claim with respect to replacing the drawer fronts in the amount of \$1,064.00. The Landlord's claim

for his time in disassembly and reassembly of the cabinets and shipping costs is dismissed.

The Landlord's application had merit and he is entitled to recover the cost of the filing fee from the Tenants.

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of their monetary award. No interest has accrued on the security deposit.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Cost of replacing light bulbs	\$48.05
Cost of clean and refinishing stone floor	\$53.05
Cost of replacing key	\$3.00
Compensation for loss of rental income	\$400.00
Cost of replacing damaged drawer fronts	\$1,064.00
Recovery of filing fee	\$50.00
Less security deposit	<u>-\$1,150.00</u>
TOTAL AFTER SET OFF OF SECURITY DEPOSIT	\$468.10

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of \$468.10 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: July 21, 2010.

Dispute Resolution Officer