

Decision

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee.

Both parties participated or were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from November 1, 2008 to October 31, 2009. The tenancy agreement is silent on whether the tenancy continues on a month-to-month basis at the end of the fixed term, or whether the tenancy ends and the tenant must move out of the unit.

Rent in the amount of \$1,600.00 was payable in advance on the first day of each month. A security deposit of \$800.00 was collected on October 23, 2008. There was no move-in condition inspection report completed.

The tenant gave the landlord written notice dated October 6, 2009 of her intent to end the tenancy effective October 31, 2009. Thereafter, the tenant vacated the unit on or about October 31, 2009. There was no move-out condition inspection report completed.

There is no evidence that the landlord undertook to advertise the unit for rent following the end of this tenancy. The landlord's agent testified that the landlord moved into the unit herself in approximately March 2010.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

The various aspects of the landlord's claim and my findings around each are set out below. These findings are based on the documentary evidence and testimony of the parties.

\$1,600.00: *one month's loss of rental income for November 2009.* As previously noted above, the tenancy agreement is silent on whether the tenancy continues on a month-to-month basis at the end of the fixed term, or whether the tenant must vacate the unit. However, evidence includes e-mail exchanges between the parties, pursuant to which the landlord consented to the tenant's continuing the tenancy on a month-to-month basis until the end of November before moving into her own newly purchased unit. But, subsequently, the tenant informed the landlord by way of e-mail dated October 6, 2009, that she would be vacating the unit effective October 31, 2009, as her own unit would be available by that time.

Residential Tenancy Policy Guideline # 5 addresses "Duty to Minimize Loss," and provides in part as follows:

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy;

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at reasonably economic rent.

While notice given by the tenant to end the tenancy does not comply with the statutory provisions set out in section 45 of the Act (**Tenant's notice**), there is no evidence of any efforts made by the landlord to mitigate the loss of rental income. Further, I note that the landlord later moved into the unit herself. In view of all the above, this aspect of the application is hereby dismissed.

\$90.00: *penalty assessed by strata*. The landlord's agent testified that this penalty was assessed against the landlord by the strata council as a result of a second visit to the unit being required for inspection of the fire alarm(s). The second visit was required as the tenant was not present on the first occasion to provide access to the unit for those undertaking the inspection. The tenant testified that she was not provided with proper notice of the inspection of the unit. Related evidence is limited to a receipt issued to the landlord for payment in the amount of \$90.00. In the absence of sufficient evidence from the landlord concerning the inspection, this aspect of the claim is hereby dismissed.

\$60.00: *cleaning required in the unit*. Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Section 23 of the Act addresses **Condition inspection: start of tenancy or new pet**.

Section 24 of the Act addresses **Consequences for tenant and landlord if report requirements not met**.

Section 35 of the Act addresses **Condition inspection: end of tenancy**.

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**.

Related evidence includes a photograph allegedly taken on February 4, 2010, which shows an oven in need of cleaning, and the copy of a cheque written in the amount of \$60.00 for “cleaning.” However, in the absence of the comparative results of a move-in and move-out condition inspection report, this aspect of the application is hereby dismissed.

\$1,207.50: *painting undertaken in the unit following the end of tenancy*. The parties do not appear to disagree that the landlord gave the tenant consent to undertake some painting in the unit during the tenancy. However, there is disagreement around whether or not the landlord instructed the tenant to repaint the unit at the end of tenancy in order to restore the original colour to the walls. The tenant states that there was no such requirement, whereas the landlord’s agent disagrees. The dispute arises principally out of the tenant’s introduction of comparatively strong colours into the unit, and the

resulting need for extra coats of paint in order to provide coverage for a return to more neutral colours. I find, however, that there is insufficient evidence of any agreement either way in regard to the painting. In the result, the landlord has failed to meet the burden of proving entitlement to the subject costs and this aspect of the application is therefore dismissed.

\$50.00: *filing fee*. As the landlord has not succeeded in this application, the aspect of her application concerning recovery of the filing fee is hereby dismissed.

Conclusion

Following from all of the above, the landlord's application is hereby dismissed.

DATE: September 28, 2010

Dispute Resolution Officer