Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF
MNDC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for a loss of rental income and damages to the rental unit and to recover the filing fee for this proceeding. The Tenants applied for a Monetary Order for compensation for damage or loss under the Act or tenancy agreement.

The Landlord's application in this matter was originally scheduled for hearing on July 27, 2010. On that date the Landlord was granted an Order of Possession and the balance of his application was adjourned to today's date. The Tenants were given leave to file an application to be heard with the Landlord's application provided they filed it no later than August 15, 2010. The Tenants filed their application on August 13, 2010 however, they did not serve the Landlord with their hearing package until September 13, 2010. Section 59(3) of the Act says that a copy of a party's application for dispute resolution must be served on the other party within 3 days of making it or within a different period specified by the director. The Landlord's agent waived reliance on the Act and agreed to proceed with the Tenants' application.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to a loss of rental income and if so, how much?
3. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
4. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on June 15, 2010 and expired on June 30, 2010. The Parties agree that while the Tenants moved most of their possessions from the rental unit at the end of July 2010, they spent additional time thereafter cleaning and making repairs to the rental unit and did not return the keys to the Landlord or do a move out condition inspection report until September 13, 2010. Rent was $1,800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $900.00 at the beginning of the tenancy.

The Landlord's Claim:

The Parties agree that at the beginning of the tenancy, the Tenants gave the Landlord post-dated rent cheques which included a post-dated cheque for July 2010. The Parties also agree that the Tenants put a stop payment on their rent cheque for June 2010 shortly after the Landlord listed the rental property for sale. The Landlord subsequently cashed the Tenants' July 2010 cheque. Consequently, the Landlord claims that the Tenants have rent arrears of $1,800.00. The Landlord also sought to recover a late payment fee of $25.00 pursuant to a term of the Parties' tenancy agreement. The Landlord admitted that he was not charged by his financial institution for the Tenants' returned cheque.

The Parties completed a move in inspection report on June 15, 2009 and a move out inspection report on September 13, 2010. The Landlord said that the Tenants damaged 2 bi-fold doors and one interior door and he sought compensation of $40.00 per door for those repairs. The Landlord also said that the Tenant removed a piece of wall-to-wall carpeting in the living room during the tenancy and replaced it with laminate but then removed the laminate at the end of the tenancy leaving only the bare plywood. The Landlord estimated that the carpeting was 3-4 years old at the beginning of the tenancy and that it would cost approximately $400.00 to replace. The Landlord further said that the Tenants did not clean the basement carpet at the end of the tenancy and he sought $75.00 for that expense.

The Tenants did not dispute the damages alleged by the Landlord but estimated that the carpeting that they removed from the living room was approximately 8 to 10 years old and that they removed it because it smelled.

The Tenants' Claim:

The Tenants said that on May 7, 2010 a listing realtor came to the rental unit to take measurements. The Tenants also said that on May 13, 2010, they received official notice from the Landlord that he was listing the rental property for sale. The Tenants argued that their right to quiet enjoyment of the rental unit was breached by the Landlord doing showings to prospective purchasers. The Tenants said that they were away from time to time during the period May 13 – July 31, 2010 but during that time there was one showing in May, 2010 for which they were present.

The Tenants also said that their son and daughter-in-law resided in the rental property for May and June 2010 as well. The Tenants' witness gave evidence that she was present for one showing in May, 2010 and for three showings in June (2 of which occurred close in time on the same day). The Tenants admitted that they agreed to the

scheduled showings and the Tenants' witness admitted that she received 24 hours written notice of the showings. The Tenants' claimed however, that on one occasion, she was asked to vacate the rental unit for a showing. The Tenants said they were also concerned about the security of their belongings in a shop on the rental property because people drove onto the isolated property without notice. The Tenants said they believed this was in part due to the Landlord advertising the property as vacant as of July 6, 2010.

The Tenants also claimed that at the beginning of the tenancy the Landlord's agent advised them that the heat pump did not work. Consequently, the Tenants said they had their son put in a new compressor. The Tenants admitted that they did not advise the Landlord that they were making the repair nor did they ask for his permission. The Tenants sought to recover $500.00 for this repair or alternatively an order permitting them to "undo the repairs."

The Tenants further claimed that some time during the tenancy they had a carpenter ant and roach infestations. The Tenants said they incurred expenses of $141.75 for an exterminator. The Tenants said two elements did not work on a stove and that they brought this to the Landlord's attention on June 10, 2010 but nothing was done to fix it by the end of the tenancy.

The Landlord argued that the Tenants were not entitled to compensation simply because the rental property was shown to prospective purchasers. The Landlord said the listing for the property described it as "tenant occupied" and not as vacant. The Landlord denied that he told the Tenants the heat pump did not work at the beginning of the tenancy but claimed instead that he told the Tenants they would have to check it out because he was unfamiliar with the house. The Landlord said that had the Tenants advised him that the heat pump didn't word he would have had a *certified* tradesman look at it. The Landlord also said that the heat pump was not the primary heat source and that the existing furnace would have operated without it. The Landlord also claimed that the Tenants never advised him about an ant or roach infestation during the tenancy. The Landlord said he paid an exterminator on retainer so that it would have cost him nothing more to have that exterminator treat the rental unit.

Analysis

The Landlord's Claim:

I find that the Tenants put a stop payment on their rent cheque for June 2010 and did not provide the Landlord with a replacement payment. As the Tenants were still residing in the rental unit in July, 2010, I find that their July cheque was in payment of

rent for that month. Consequently, I find that the Landlord is entitled to recover unpaid rent of **$1,800.00** for June 2010 plus a **$25.00** late payment fee pursuant to a term of the tenancy agreement to that effect. As the Landlord was not charged a fee by his financial institution for the returned cheque, I find that he is not entitled to recover any amount for that pursuant to s. 7 of the Regulations to the Act.

The Tenants did not dispute that they were responsible for damages to 3 doors and for carpet cleaning. Consequently, I award the Landlord **$195.00** for these items. The Tenants also did not dispute that they removed a carpet from the rental unit but argued that it was older than the Landlord estimated and that it smelled. While the move in condition inspection report states that the carpet was not cleaned at the beginning of the tenancy, there is no other evidence of its condition. Consequently, I find on a balance of probabilities that the carpet was approximately 6 years of age and in reasonable condition and given that the expected lifetime of a carpet is 10 years, I award the Landlord 40% of the value of a new carpet or **$160.00**.

Given that the Tenants had to be re-served with the Landlord's hearing package because they indicated their residence as their address for service then later claimed it was not, I find that the Landlord is entitled to recover service fees of **$39.80**. However, given that the Landlord's claim was, in fact, less than $5,000.00, I find that the Landlord is only entitled to recover one-half of the filing fee (or **$50.00**) from the Tenants. Consequently, I find that the Landlord has made out a monetary claim for $2,269.80.

The Tenants' Claim:

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment of the rental unit, including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the Landlord's right to enter in accordance with s. 29 of the Act. Section 29 of the Act says (in part) that a Landlord must not enter a rental unit for any purpose unless the tenant gives permission or the Landlord gives the Tenant at least 24 hours written notice.

I find that there are no grounds for this part of the Tenants' claim. In particular, the Tenants could only recall their being one showing while they were residing in the rental unit and 3 others while they were away (but their son and daughter in law were present). The Tenants admitted that they either gave the Landlord's agents permission to do the showings or that they were given 24 hours written notice. In the circumstances, I find that the Landlord complied with the Act, that there were not an unreasonable number of showings and that accordingly the Tenants' right to quiet enjoyment was not breached. Although the Tenants argued that the Landlord

advertised the rental property as vacant (which resulted in people driving onto the rental property without notice), they provided no evidence of that and it was denied by the Landlord. Consequently, this part of the Tenants' claim is dismissed without leave to reapply.

I also find that there is insufficient evidence to support the Tenants' claim for compensation for repairing a heat pump. In particular, the Tenants claimed that they did not advise the Landlord that the heat pump was not working or that they made repairs. The Tenants claimed that their son installed a new condenser at a cost of approximately $500.00. RTB Policy Guideline #1 says at p. 2 that a tenant must obtain the consent of the Landlord before making any changes to the property and at p. 8 that if a tenant removes a fixture at the end of the tenancy the tenant is responsible for repairing any resulting damage caused to the property. This means that the Tenants were not entitled to make any repairs to the heat pump without the Landlord's consent. This also means that if the Tenants did install a new part, they likely would not be entitled to remove those parts at the end of the tenancy because they would be unable to show what the original condition of the heat pump was. In any event, the Tenants provided no evidence that they installed a new condenser in the heat pump either by way of a receipt or any other evidence. Consequently, this part of the Tenants' application is dismissed without leave to reapply.

I further find that there are no grounds for the Tenants' application to recover the cost of an exterminator. The Tenants admitted that they did not advise the Landlord about an ant or roach infestation. Furthermore, the copy of the exterminator invoice provided by the Tenants is dated April 10, 2010 which was 10 months after the tenancy started. A Landlord is only responsible for this type of expense if it is *not* caused by an act or neglect of the Tenants. Furthermore, a Landlord must be advised of the infestation by a Tenant so that the Landlord can take steps to deal with the problem and try to minimize his expenses. In this case, there is no evidence how the infestations started, but because the Tenants failed to advise the Landlord and give him an opportunity to deal with it, I find that the Tenants are not entitled to recover this expense and as a result, this part of their application is also dismissed without leave to reapply.

As the Tenants have been unsuccessful on their claim, they are not entitled to recover their filing fee from the Landlord and that part of their claim is dismissed without leave to reapply.

Section 72(2) of the Act says that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit due to the Tenant. Consequently, I order the Landlord to keep the Tenants' security deposit in partial payment of the damage award. The Landlord will receive a Monetary Order for the balance owing as follows:

	Damage award:	$2,269.80
Less:	Security deposit:	($900.00)
	Balance Owing:	$1,369.80

Conclusion

The Tenants' application is dismissed without leave to reapply. A Monetary Order in the amount of **$1,369.80** 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: September 20, 2010.

Dispute Resolution Officer