

DECISION

Dispute Codes MNR, MND, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim against the tenant due to unpaid rent. The landlord filed a proposed amendment to this application seeking additional damages from the tenant due to cleaning and repairing the rental unit. The landlord seeks a total sum of \$7,900.00 from the tenant in the amended application for Dispute Resolution.

The landlord filed their proposed amendment on September 7, 2010, the landlord failed to serve the tenant with the amended application and evidence until September 21, 2010. The *Residential Tenancy Branch Rules of Procedure*, section 2.5, required that the tenant be served with a copy of the proposed amended application at least 7 days before the scheduled hearing and all the supporting evidence at least 5 days before the hearing.

I find that the landlord's service of the amended application and evidence was within the minimum days required by the rules; it is highly prejudicial to the tenant as it has not provided the tenant with reasonable time to respond to the landlords' evidence.

Therefore, I offered the tenant the tenant with the following options:

1. I could deny the landlords' request for amendment and the landlords would be open to file their claim again and I would proceed to solely consider the landlords' application seeking loss of rent;
2. I could adjourn the hearing to provide the tenant with more time to respond to the landlords' application and evidence; or
3. I could proceed with the landlords' amended application and the tenant would have the opportunity to respond to the landlords' evidence during the hearing.

The tenant decided that he was prepared to proceed with the amended hearing and able to respond to the landlords' claim during the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* or regulations entitling the landlords to monetary relief?

Background and Evidence

The parties entered into a fixed term tenancy beginning March 1, 2010 and ending on February 28, 2011. The rent of \$2,000.00 was due on the 1st of each month and a security deposit of \$1,000.00 was paid on March 1, 2010. There was a one page addendum to the tenancy agreement which required that the tenant be responsible for lawn maintenance and garden maintenance.

The parties did not complete a written move in condition inspection of the rental unit at the start of this tenancy. The landlords submitted that the tenant refused to complete the move in condition inspection and the tenant submits that the landlord never provided the opportunity.

This tenancy ended on August 30, 2010 after the tenant was served with a 10 day Notice to End Tenancy Due to Unpaid Rent on August 1, 2010 and again on August 20, 2010. The second notice to end tenancy was served as the landlords' application for an Order of Possession through the Direct Request Process has been rejected on the basis that the notice to end tenancy dated August 1, 2010 was not valid.

According to the landlords the tenant agreed to vacate the rental unit by August 15, 2010. In response to this the landlords placed an advertisement to rent the unit on August 9, 2010. The landlords stated that on August 15 it appeared that the tenant was still occupying the rental unit. The tenant was to pay the outstanding rent on August 20 but failed to pay the rent as agreed to do. By August 30, 2010 the tenant vacated and returned the keys to the landlords.

During August 2010 the parties ended up having several major verbal altercations that resulted in the police being called. Both the landlords and the tenant claim that the other party verbally threatened them. As a result of these events the tenant chose not to attend the move out condition inspection which the landlords arranged on September 4, 2010. The tenant did not send a representative on his behalf. The landlords

acknowledged that they filled out the move in condition based on their memory of the condition of the rental unit. The landlords stated that the move out condition was documented as discovered on September 4, 2010. The landlords placed a second advertisement to rent the unit on September 6, 2010.

The landlords argue that the condition of the rental unit at the start of the tenancy was documented in the addendum to the tenancy agreement. This document was provided in the evidence submitted by the landlords and it has two notations at the bottom of the page which read:

- *No damage to property*
- *Minor wear & tear*

The tenant stated that these notations were put on the document after the addendum was signed. The tenant testified that the condition of the rental unit when they move in was terrible. The previous tenant had just vacated a couple of hours earlier and nothing was clean. The tenant stated that there was food in the cupboards and the carpets were not cleaned.

The landlords are seeking costs to clean and repair the rental unit in addition to unpaid rent and loss of rental income. The landlords seek the sum of \$250.00 to clean the rental unit, \$1,000.00 to repair holes in the walls and do touch up painting, \$150.00 to have the locks changed and \$500.00 to complete the yard maintenance and remove debris left by the tenant. The landlord submitted photographs which document the damage to the rental unit. The landlords provided quotes to support the amounts being claimed; however, they have not had the actual work completed.

The landlords testified that the rental unit was not cleaned at the end of the tenancy to a standard they expected. Although some cleaning appeared to have been completed, they submit the unit requires about 4 more hours of cleaning by two professionals. In addition, the landlords testified that the walls of the rental unit have been significantly damaged. There are loads of scratches, nicks and holes in the walls that go beyond normal use. The landlords acknowledged that there were some previous scratch and rub marks on the walls at the start of the tenancy but nothing in comparison to the condition of the walls at the end of the tenancy. The landlords argued that the tenant should be found responsible for 60 to 70 percent of the cost to repair the walls. The landlords testified that the tenant breached his requirement to complete the yard maintenance and they submit that it will cost \$500.00 to complete the weeding and remove the yard debris. The landlords testified that they had a verbal discussion with the tenant about what they expected to be done with the yard maintenance and submit

that the tenant was excited to have a yard to maintain. Finally, the landlords seek the sum of \$150.00 to replace the locks on the rental unit. Although the landlords acknowledge that the tenant returned the keys on August 30, 2010, they submit that they do not work. As a result the landlords submit that the locks require changing.

The landlords also seek the rent for August and loss of rental revenue for September and October 2010 for the sum of \$6,000.00. In total the landlords seek the sum of \$7,900.00 from the tenant.

The tenant rejects the landlords' claims, except for the loss of rent for August 2010. The tenant testified that he offered to pay the landlord the sum of \$1,000.00 towards rent and allow the landlord to retain the security deposit to pay the remaining portion of the rent owed. When the landlords rejected this offer the tenant stated that he used the money to secure his new residence. The tenant argued that he vacated the rental unit as of August 14, 2010 and the landlords could have been actively finding new tenants. The tenant does not feel responsible for the landlord's loss of income for September and October 2010. The tenant argued that the landlords have failed to mitigate their loss as they have not done any of the cleaning and repairing of the damage which they allege the tenant caused.

The tenant testified that he cleaned the rental unit to the best of his ability and had the carpets cleaned. The tenant discussed how he took out shelves from the fridge and left them on the kitchen counter as part of his cleaning of the rental unit. The tenant also stated that the walls were left in the same condition as when he took possession of the rental unit and questioned when the landlord's photographs were taken and whether the photographs were valid evidence.

The tenant rejects that there is any damage to the yard or any failure to maintain the yard. The tenant stated that he last cut the grass on August 15, 2010 and any maintenance required is from the three weeks since he vacated the rental unit. The tenant also rejects the claim to pay for new locks to the rental unit as he returned the keys on August 30, 2010 as the landlords have acknowledged.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the landlords' application in part. I find that the tenant has breached the tenancy agreement and the *Act* by failing to pay the rent owed, by failing to properly give notice

to end the tenancy and by failing to return the rental unit in a clean and undamaged condition.

I find that the landlord is entitled to the following:

Outstanding Rent for August and September 2010	\$3,000.00
Repairs to walls and touch up painting	\$160.00
Recovery of the filing fee paid by the landlords for this application	\$50.00
TOTAL	\$3,335.00

I find that the landlord has failed to meet the burden of proof required to establish the remainder of their claims against the tenant.

This dispute has largely resulted due to the parties' failure to comply with the *Act*. The *Act* requires that a landlord conduct move in and move out condition inspection reports of the rental unit so that there is evidence of what the condition of the rental unit was at the start of the tenancy. Although damages can be established in the absence of the written condition inspection reports, it is very difficult to establish when contested by the other party.

The landlords have the burden of proving their claim on the balance of probabilities. The only evidence the landlords have to demonstrate the condition of the rental unit is the photographs taken at the end of the tenancy. I do not accept the tenant's argument that the photographs could have been taken at anytime. Rather, I accept that the photographs accurately detail the condition of the rental unit on September 4, 2010 because the photographs show the items which the tenant testified he took out of the fridge in the process of cleaning the unit. This demonstrates to me that the photographs were taken recently.

Based on the photographic evidence I am satisfied that the rental unit was not sufficiently cleaned at the end of the tenancy. Although the tenant argues that the rental unit was not cleaned at the start of the tenancy this does not exclude the tenant from his obligation of returning the unit in a clean state. I do not accept the quote received by the landlord as being an accurate assessment of the cost to finish the required cleaning to the unit. The quote received is based on a unit that has not been partially cleaned and I find that the tenant did partially clean the rental unit. I find that the rental unit only

requires some additional touch up cleaning which could be completed by two people in an hour. Therefore, I accept the sum of \$125.00 as a reasonable estimate of the cost to clean the rental unit.

With respect to repairing the walls of the rental unit I accept from the photograph evidence that there is damage to the walls which the tenant did cause. I accept this on the basis that the tenant stated in the hearing that he would have been willing to patch some of the holes but he was denied access to the rental unit as the conflict between the parties escalated. Therefore, I find that some of the damage existed before hand and some of the damage is normal wear and tear and a small portion is due to the tenant causing damage. Specifically, there is a photograph of where a door knob has indented the drywall and a couple of photographs where holes have been made in the dry wall. On the balance of probabilities, I find that these areas of damage were caused by the tenants.

The landlords provided an estimate to repair the walls; however, this quote is not useful because it is based on repairing the whole unit. The landlords expectation that the tenant would be responsible for the all the damage was not reasonable and inconsistent with the *Act*. I direct the landlords to the *Residential Tenancy Branch Policy Guidelines Manual* which clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property. I find that 4 hours of labour at \$40.00 per hour is a reasonable estimate of the cost to repair the tenant's damage to the walls for the total sum of \$160.00.

I reject the landlords claim for the cost to replace the locks and to clean the yard. I accept the evidence before me that the tenant returned the keys. The landlords have not provided any evidence to establish that the keys are different or damaged. While it is strange that the keys apparently do not work, it is only the landlords' speculation that the tenant is responsible for the malfunction.

I reject the landlords claim for the cost to complete yard work on the grounds that the term in the addendum is not enforceable and the landlords have failed to demonstrate any breach of the term if it was enforceable.

The landlords and the tenant failed to document in the addendum what the tenant's responsibilities would be with respect to yard maintenance. There is no detailed list of obligations or expectations including how often and what exactly the tenant is required to weed, trim and maintain. Without these details I find it is impossible to enforce this term of the addendum. I deny the landlords' claim for damages related to yard clean up which the landlords allege was not completed.

Finally, with respect to the rent, I find that the landlords have established a total loss of \$3,000.00 comprised of the outstanding rent for August and September 2010. I reject the landlords claim for additional loss of rent for October 2010. I agree with the tenant's submission that the landlords have failed to mitigate their loss by failing to complete the cleaning and repairs to the rental unit. I do find it reasonable that the tenant pay for the landlord's loss in September 2010 since the tenancy ended due to the tenant's breach of the tenancy agreement. Given the tenant's failure to give proper notice in writing to end the tenancy I accept that the landlords had reasonable grounds to not find new tenants until they ended this tenancy by pursuing their application for Dispute Resolution.

As the landlords were partially successful with this application I Order that the tenant reimburse the landlords' half the cost of the fee paid to file this application for the sum of \$50.00.

Conclusion

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the sum of \$3,335.00. From this sum I Order that the landlords may retain the tenant's security deposit of \$1,000.00 in partial satisfaction of this claim.

I grant the landlords a monetary Order for the remaining sum of **\$2,335.00**. This Order must be served on the tenant. This Order may be filed with the Province 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: October 12, 2010.

Dispute Resolution Officer