DECISION

Dispute Codes MND MRN MND MNDC FF

Introduction

This hearing convened on August 24, 2010, and reconvened for two hours for the present session on October 14, 2010. This decision should be read in conjunction with my interim decision of August 25, 2010.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

At the onset of the reconvened hearing all the participants were given the opportunity to raise any concerns, errors, or omissions relating to my interim decision of August 25, 2010. After canvassing each participant there were no comments, errors, or questions raised regarding the interim decision.

The hearing resumed with the Tenants' testimony as follows:

4) The Tenants accepted responsibility for the cost to replace the broken refrigerator parts of $94.84.

5) The windows in the rental unit were original, single pain, and their breaking was beyond the Tenants' control. The windows were swollen due to their age and the latches would drag across the windows when they were opened. The Tenants do not accept responsibility for the cost of the broken windows.

6) In response to the Landlord's estimated cost of $400.00 to dispose of the pea gravel the Tenants requested to see receipts. They confirmed they brought the pea gravel onto the rental unit property but that it was not contaminated. The male Tenant stated that he had a verbal agreement with the Landlord to complete landscaping on the property for which he would require the pea gravel. He confirmed that he did not complete the landscaping and there is approximately one yard of pea gravel not three or four remaining at the rental property.

7) The Male Tenant confirmed he left roofing materials at the property which include flashing, cedar shakes, shingles, and scrap metal. He is of the position that he would like to keep these items and when asked why he made no effort to remove them from the property he stated that he was not comfortable coming back to the rental unit.

8) They confirmed the Landlords and their friend assisted in moving articles to their new residence on June 20, 2010 and that they transported some articles to the dump on their behalf. They did not have a mutual agreement to pay the Landlord for this and were under the impression the Landlord was simply offering their assistance to complete the move.

I heard undisputed testimony that the Tenants did not pay the full rent for May 2010; that a 10 Day Notice to End Tenancy was issued May 25, 2010 and claimed to be received by the Tenants May 27, 2010; the move-out inspection report was completed and signed by both parties on June 2, 2010, the Tenants had secured a new residence and moved the majority of their possessions on or before June 1, 2010; the Tenants did not spend any time residing at the rental unit after June 1, 2010 however they had numerous possessions at the rental unit; the Landlords assisted the Tenants move more of their possessions off of the rental property on June 20, 2010.

The Landlords advised that they did not enter into a verbal agreement for the Tenants to complete landscaping. The Landlords' photos numbered 96 and higher represent the Tenants' possessions which remained at the rental unit as of August 8, 2010. The Landlord has discarded the majority of the items since the August 24, 2010 hearing when he incurred additional landfill charges of $149.86 on September 27, 2010 and $33.00 on October 5, 2010. There is still the pile of pea gravel, shingle shakes, a piece of plywood, and some windows that remain to be disposed of. The Landlord estimates that it will cost approximately $50.00 plus his time to remove the remaining items except for the pea gravel. The pea gravel would be approximately $400.00 to remove if he hired a dump truck and machine to remove it and he does not know how much of his time or at what cost it would be if he chose to remove the pile of gravel himself.

The Tenants argued that their tenancy did not end until June 7, 2010 which would be the effective date of the 10 Day Notice and argued that most of the Landlords' photos were taken prior to this date and that they had removed most of their possession by June 7, 2010. The Landlords provided disputed testimony and confirmed that their photos were taken on various dates as documented on the photo backs and include dates of June 2, 2010, June 10, and August 8, 2010.

The female Tenant read a portion of a letter they had received from the Landlords' insurance company which confirms that claims had been filed through the Landlords' insurance for vandalism and that the date of loss was recorded as June 2, 2010.

A discussion followed where the parties attempted to reach a settled agreement. Prior to reaching an agreement the male Landlord decided that he wanted to proceed with his application as filed and that he wanted to include the costs of his insurance deductible of $2,000.00 plus the cost of the $1,000.00 security deposit in his claim. He stated that he was of the impression that he could not discuss these amounts because of my previous instruction that amounts claimed through insurance could not be claimed at dispute resolution. The Landlords advised that the damages being claimed could not be put through as one insurance claim but rather as four separate claims, one for each room of the house, and they were charged $500.00 deductible per claim. Their insurance company also considered that the Landlords had possession of the security deposit of $1,000.00 so that amount was deducted off of their total claim as well.

Analysis

In response to the Landlords' concerns that they did not receive the Tenants' evidence until August 19, 2010, I have reviewed the evidence in question and have given consideration to the fact that the first hearing was adjourned and reconvened seven weeks later. Based on the aforementioned I find the Landlords had ample time to review and consider the evidence provided by the Tenants. Therefore I will consider the Tenants' evidence in my decision in accordance the *Residential Tenancy Branch Rules of Procedure # 11.5.*

In addition to the testimony I have considered the following documentary evidence provided by the Landlords in reaching my decision: photos of the interior and exterior of the rental unit taken between July 2, 2010 and August 8, 2010; the move-out inspection reported dated June 2, 2010; a written statement; copies of 10 Day Notices to end Tenancy; an invoice for oil delivery; a copy of a past due water bill; various receipts for materials purchased to repair the rental unit, and quotes for suggested repairs.

In addition to the testimony I have considered the following documentary evidence provided by the Tenants in reaching my decision: photos of the interior and exterior of the rental unit; copies of utility bills, statements issued in support of the Tenants, and a written statement from the Tenants. The female Tenant confirmed the utility accounts were in her maiden name which has been added to the style of cause of this decision.

Section 44 of the Act provides how a tenancy may be ended. After careful consideration of the evidence and testimony I find this tenancy ended June 2, 2010, after the Tenants vacated and abandoned the unit, pursuant to section 44(1)(d). In addition I find that the property that was left at the rental unit after June 2, 2010, is deemed to have been abandoned property. The items that still remain at the property, one hundred and forty days after the tenancy has ended, may be disposed of by the Landlord in accordance with section 25 of the *Residential Tenancy Regulation.*

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

I do not accept the Tenants' testimony that they gave the Landlords $800.00 as payment towards May 2010 rent. There is insufficient evidence to support the Tenants statements and in the presence of the Landlord's opposing testimony and evidence in the form of a 10 Day Notice to End Tenancy issued in May 2010, I find the Tenants violated section 26 of the Act which states a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I approve the Landlords' claim of $1,800.00 for May 2010 rent.

Having ended the tenancy effective June 2, 2010, above, I interpret the Landlord's claim for June 2010 rent to be a loss of rent for June 2010. Given the volume of abandoned property and the level of damage supported by the evidence I find the Tenants breached section 37(2) of the Act which states that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged. It is this breach which prevented the Landlords from re-renting the unit for the remainder of June 2010

therefore causing the Landlords to suffer a loss in the amount of $1,800.00. Based on the aforementioned I approve the Landlords' claim of loss of rent for June 2010.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlords and Tenants agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Based on the aforementioned I find the Landlords have failed to provide sufficient evidence to support their claim that the Tenants were required to provide $300.00 worth of oil at the end the tenancy and the claim is hereby dismissed.

The evidence supports the tenancy agreement did not include the cost of water and that the Tenants were required to pay for the cost of utilities. The Tenants failed to pay the past due invoice for water causing the Landlords to suffer a loss of $342.14. Based on the aforementioned I find the Landlords have proven the test for damage or loss, as listed above and I approve their claim of $342.14 in accordance with section 67 of the Act.

The Tenants acknowledged that they were responsible for the $94.82 paid by the Landlords to repair the broken refrigerator parts. Therefore I approve the Landlords' claim of $94.82

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. The Landlords have claimed $600.00 to replace four broken windows which were original windows installed in approximately 1947. The *Residential Tenancy Branch Rules of Procedure* provide the useful life of a window to be approximately 15 years therefore the depreciated value of the broken windows would be zero. In addition, the Landlords chose not to repair the windows rather to remove all the windows and upgrade the rental house with brand new windows instead of mitigating their loss to repair the broken existing windows at the time they were damaged. Based on the aforementioned I find the Landlords are not entitled to $600.00 for broken windows and I dismiss this claim.

The evidence supports the Tenants moved pea gravel onto the property and roofing materials (cedar shakes, shingles, and scrap metal) and then left it there at the end of the tenancy. The opposing testimony relates to the amount or weight of the gravel and whether the gravel is contaminated gravel previously used in the roofing industry.

Given the preponderance of evidence before me I prefer the Landlords' evidence to that of the Tenants' as to the condition of the gravel. The Tenants have failed to comply with section 37(2) of the Act by leaving the gravel on the property at the end of the tenancy and section 32 (3) of the Act which states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In the absence of the actual cost and in accordance with section 67 of the Act I hereby award the Landlords $250.00 for costs to remove the pea gravel and remaining roofing material.

I heard undisputed testimony that the Landlords and their friend offered to move some of the Tenants' possessions to their new rental unit or landfill and that this occurred on June 20, 2010. In the presence of disputed testimony pertaining to whether the verbal agreement involved payment for this offer of service, I find the Landlords have provided insufficient evidence to support this claim. Therefore I dismiss the Landlord's claim of $200.00 for labour charges.

The evidence supports the Landlords removed the other articles from the property on September 27, 2010 for $149.86 and on October 5, 2010 for $33.00 for a total cost of $182.86. Based on the above I find the Landlords have proven the test for damage and loss and I approve their claim in the amount of $182.86.

Insurance deductibles and amounts removed from the insurance claim, such as security deposits held in trust by the Landlords, are not amounts being reimbursed to the Landlords by their insurance, rather they are amounts or losses being charged to the Landlords as a result of the damages caused by the Tenants. The evidence supports the Landlords have suffered the loss in the amount of $3,000.00 which is comprised of four insurance deductibles at $500.00 each (4 x $500.00) plus the deduction from their claim of $1,000.00, an amount equal to the security deposit. These amounts fall within the $21,318.80 monetary claim applied for by the Landlords therefore I hereby approve their claim of $3,000.00.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlords are entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for May 2010	$1,800.00
Loss of Rent for June 2010	1,800.00
Water Bill	342.14
Refrigerator parts	94.82
Removal of Pea Gravel and Roofing Material	250.00
Removal of the remaining articles	182.86
Insurance Deductibles and Deductions	3,000.00
Filing fee	100.00
Subtotal (Monetary Order in favor of the landlord)	**$7,569.82**
Less Security Deposit of $1,000.00 plus interest of $12.34	- 1012.34
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$6,557.48**

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **$6,557.48**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court 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 18, 2010.

Dispute Resolution Officer