

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated 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 May 5, 2009 to April 30, 2010. Rent in the amount of \$1,550.00 was payable in advance on the first day of each month. A security deposit of \$775.00 was collected at the outset of tenancy. The unit was said to be in new condition at the start of tenancy, however, there is no copy of a move-in condition inspection report in evidence.

On October 24, 2009, a fire sprinkler in the unit was activated when one of the tenant / residents accidentally broke the sprinkler head. Subsequently, that same day a restoration company attended the unit to undertake emergency repairs. More extensive preliminary work was undertaken in the unit by a restoration company during early December 2009.

The strata corporation filed an insurance claim with its own insurance provider and assessed the deductible for this claim against the landlord in the amount of \$5,000.00. The tenant / parent claims that restoration work in the unit did not proceed in a timely

fashion, in part at least, as a result of the landlord's failure to sign off on the release form required by her own insurance provider. Signing off on the release would have had the result of reimbursing the landlord for the full amount of the deductible. During the hearing the landlord and an agent representing the tenant / parent's insurance provider had a conversation pursuant to which the landlord agreed to proceed to sign the release and obtain full reimbursement of the deductible. This aspect of the landlord's claim for compensation was effectively therefore dealt with at the hearing, however, it remains unclear why the landlord delayed in signing the release.

As a result of the disheveled condition of the unit after the preliminary work undertaken by the restoration company in early December 2009, one of the two tenant / residents vacated the unit, while the other continued to reside there and pay full rent.

Independent of the fire sprinkler incident and the involvement of the restoration company, by letter to the landlord dated November 2, 2009, the strata council informed the landlord that as a result of the conduct of the tenant / resident(s) and / or persons permitted on the property by them, the council had levied 2 x \$50.00 fines against the landlord for "violations of the strata corporation's nuisance and noise bylaws."

Later, the landlord issued a 1 month notice to end tenancy for cause dated January 25, 2010. Following this, the remaining tenant / resident vacated the unit on or about February 26, 2010. The parties agree that no rent was paid for February 2010.

The agent for the tenant / parent's insurance provider testified that the restoration work required in the unit was such that it could have been completed by the end of January 2010. However, for reasons that are not fully apparent, restoration work was not completed until months later. The landlord testified that he advertised for renters following completion of the restoration work, however, there is no evidence of such advertising. Further, the landlord testified that he sold the unit in or around July 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/

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.**

Section 16 of the Regulation addresses **Scheduling of the inspection** and provides as follows:

16(1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Section 17 of the Regulation addresses **Two opportunities for inspection**, and provides as follows:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to scheduled a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

While I have turned my mind to all the documentary evidence, including photographs, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The specific aspects of the landlord's claim and my findings around each are set out below:

UNDISPUTED BY THE PARTIES

\$1,550.00: *unpaid rent for February 2010.*

\$520.00: *cleaning in the unit.*

\$510.00: *rubbish removal.*

Sub-total: \$2,580.00*

MATTERS IN DISPUTE

RENT

\$7,750.00: *loss of rental income for the 5 months from March to July 2010.* On the basis of the documentary evidence and testimony I find that, separate from the restoration work, cleaning and repairs were required after the end of tenancy as a direct result of the tenancy. Accordingly, I find that the landlord has established entitlement to loss of rental income limited to one month's rent for March 2010 in the amount of **\$1,550.00***.

As to the remaining months leading up to the time when the landlord eventually sold the unit, there is no evidence of efforts that may have been undertaken by the landlord to

advertise the unit for rent. In this regard, 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.

In the absence of any evidence that the landlord undertook to mitigate the loss of rental income beginning one month after the end of tenancy (following the completion of cleaning and repairs), the balance of the claim for 4 months is hereby dismissed.

\$258.33: *loss of interest on rental income, as above, for the 5 months from February to June 2010.* For reasons related to the reasons set out above, and in the absence of any evidence there was a particular lost investment opportunity as a result of a loss of rental income, this aspect of the claim is hereby dismissed.

REPAIR AND DAMAGES

\$5,000.00: *strata deductible.* Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord failed to exercise due diligence in signing the release and obtaining reimbursement of this amount through the tenant / parent's insurance coverage. As set out earlier, this matter was addressed during the hearing, and it is incumbent upon the landlord to take the necessary steps to recover the deductible. In the result, this aspect of the application is hereby dismissed.

\$250.00: *interest on strata deductible @ 10% per year for 6 months from February to July 2010.* In view of an apparent absence of due diligence on the part of the landlord to take the steps necessary to recover the \$5,000.00 deductible, this aspect of the application is hereby dismissed.

\$100.00: *lawyer consultations.* In the absence of any documentary evidence that this cost was incurred by the landlord, such as an invoice or receipt for example, and that if

it was incurred it was in some manner associated with the tenancy, this aspect of the application is hereby dismissed.

\$250.00: replacement of keys and fobs x 2. Further to the testimony of the tenant / residents that all keys and fobs were returned to the building manager at the end of tenancy, there is no evidence of cost incurred by the landlord such as a receipt. Accordingly, this aspect of the claim is hereby dismissed.

\$100.00*: penalties assessed by strata council (2 x \$50.00). Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant / residents and / or persons permitted on the property by them were responsible for the assessment of these penalties against the landlord. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$8,274.00: labour and materials except items listed below. Further to the absence of move-in or move-out condition inspection reports in evidence, there is no clear accounting of the extent to which any of these costs pertain to restoration work versus wear and tear by the tenant / residents; neither is there any indication as to which of these costs may be covered by insurance. Additionally, while there is a global overview of costs set out on an invoice, there are no receipts in evidence to show conclusively what amount(s) may have actually been paid by the landlord. Accordingly, in the absence of sufficient evidence, this aspect of the claim is hereby dismissed.

\$1,791.99: replacement of Electrolux Gastop. Further to the absence of move-in or move-out condition inspection reports in evidence, Residential Tenancy Policy Guideline # 37 provides that the “useful life of work done or thing purchased” for a stove is 15 years. The stove was new at the time tenancy began, and the tenancy effectively spanned a period limited to only 10 months. For all of these reasons, this aspect of the claim is hereby dismissed.

\$1,299.99: replacement of Jenn Air Dishwasher. Further to the absence of move-in or move-out condition inspection reports in evidence, Residential Tenancy Policy

Guideline # 37 provides that the “useful life of work done or thing purchased” for a dishwasher is 10 years. The dishwasher was new at the time tenancy began, and the tenancy effectively spanned a period limited to only 10 months. For these reasons, this aspect of the claim is hereby dismissed.

\$1,106.70: *replacement of marble in the 2nd bathroom*. Further to the absence of move-in or move-out condition inspection reports in evidence, I find it is likely that the “useful life of thing or work done” for marble is in excess of at least 15 years. The marble was new at the time tenancy began, and the tenancy effectively spanned a period of time limited to only 10 months. For these reasons, this aspect of the claim is hereby dismissed.

\$100.00*: *filing fee*. As the landlord has achieved some success with his application, I find he has established entitlement to recovery of the full amount of the filing fee.

In summary, I find that the landlord has established entitlement to \$4,330.00*. I order that the landlord retain the security deposit of \$775.00, and I grant a monetary order under section 67 of the Act for the balance owed of \$3,555.00 (\$4,330.00 - \$775.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of \$3,555.00. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 24, 2010

Dispute Resolution Officer