Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income and damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and remote deposit in partial payment of those amounts.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail to the Tenant's forwarding address on June 18, 2010. Section 90 of the Act deems a document delivered by mail to have been received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 1, 2004 and ended on June 11, 2010 when the Tenant moved out. Rent was $1,764.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $732.00 on November 24, 2004 and also paid a remote deposit of $150.00.

The Landlord's agent said that the Tenant gave him written notice on June 3, 2010 that he was ending the tenancy. The Landlord's agent said the Landlord took all the usual steps of advertising the rental unit for availability in a local newspaper as well as having an onsite building manager show the suite to any interested person. Despite these measures, the Landlord's agent said that the rental unit could not be re-rented for July 2010 and he sought compensation from the Tenant for a loss of rental income for that month.

The Landlord's agent also claimed that Tenant damaged the hard wood flooring in the rental unit and it had to be refinished at a cost of $1,421.50 (although the Landlord's claim was for $500.00). The Landlord relied on a condition inspection report completed at the beginning of the tenancy that showed the floors were in satisfactory condition, and another report completed at the end of the tenancy that stated the living room and family room floor was damaged.

The Landlord's agent claimed that the Tenant did not object to the cost of refinishing the floors but claimed that he wrote "do not agree" on the condition inspection report because he didn't agree to a deduction from his security deposit for July rent. The Landlord's agent admitted, however, that the Tenant did not sign his acknowledgement or agreement on the condition inspection report where it states "the report fairly represents the condition of the rental unit."

Analysis

The remote deposit is not a security deposit that can be set off of amounts owed by the Tenant and as the move out condition report shows that the Tenant returned the same number of remotes that he received at the beginning of the tenancy, I order the Landlord pursuant to s. 6 of the Regulations to the Act to return the remote deposit of $150.00 to the Tenant forthwith.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

The move out condition inspection report does not specify the nature or extent of the damage to the hard wood floors and the Landlord provided no other evidence of it. In the absence of any evidence that the damage in question was the result of an act or neglect of the Tenant as opposed to reasonable wear and tear over a tenancy of 5 ½ years, I find that there is insufficient evidence to conclude that the Tenant should be responsible for the cost of refinishing the floors and that part of the Landlord's claim is dismissed without leave to reapply.

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give the Landlord one ***clear month's notice in writing*** that he is ending the tenancy. This means that if the Tenant wished to end his tenancy on June 30, 2010, he would have had to give the Landlord his written notice no later than May 31, 2010. Given, however that the Tenant gave his written notice to the Landlord on June 3, 2010, the earliest it could take effect would have been July 31, 2010.

However, s. 7(2) of the Act requires a landlord to mitigate his losses by showing, for example, that he took reasonable steps to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlord's agent claimed that the rental unit was advertised for availability in a local newspaper and that the resident building manager would have shown it to any prospective tenants. Based on this evidence, I find that the Landlord took reasonable steps to re-rent the rental unit for July 2010 but was unable to re-rent it for that month. Consequently, I find that the Landlord is entitled to recover a loss of rental income of $1,764.00.

I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and accrued interest in partial payment of the monetary award. The Landlord will receive a monetary order for the balance owing as follows:

	Loss of rental income:	$1,764.00
	Filing fee:	$50.00
	Subtotal:	$1,814.00
Less:	Security deposit:	($732.00)
	Accrued interest:	($25.90)
	Balance owing:	$1,056.10

Conclusion

A monetary order in the amount of **$1,056.10** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: November 03, 2010.

Dispute Resolution Officer