



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 20, 2010 to a forwarding address provided by the Tenant. Section 90 of the Act says that a document delivered by mail is deemed to be 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 damages to the rental unit and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on July 1, 2009 and expired on June 30, 2010, however the Tenant and his family did not vacate the rental unit until July 2, 2010. Rent was \$1,250.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy. The Landlord did not do a move in or a move out condition inspection report.

The Landlord said he advised the Tenant in writing on June 4, 2010 that the tenancy would be ending effective July 1, 2010 and the Tenant said he would vacate by that time. The Landlord claimed, however that when he arrived at the rental unit on July 1, 2010 (with his agent, A.D.) to give possession of it to a new tenant, the Tenant was still there with all of his furnishings and belongings. The Landlord said the Tenant vacated the rental unit the following day but did not remove many of his belongings including

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beds, mattresses, other furnishings and clothing. The Landlord said he had to remove all of the Tenant's belongings and put them in storage. The Landlord said he contacted the Tenant to come to pick up his belongings but he advised the Landlord by e-mail that he was unwilling to do so. Consequently, the Landlord said many of the Tenant's belongings had to be disposed of.

The Landlord said it cost him approximately \$8,000.00 to repair the damages caused by the Tenant and his family and he sought to recover 25% of those expenses. The Landlord said the carpeting in the unit was 10 – 15 years old at the beginning of the tenancy but was in good condition and clean. At the end of the tenancy, the Landlord said the carpet was stained and soiled beyond repair so it was thrown out and replaced with hardwood flooring at a cost of \$3,700.00. The Landlord also said that the Tenant also damaged a tile floor in the bathroom which had to be completely re-tiled at a cost to him of \$1,850.00. The Landlord further claimed that the linoleum flooring in the kitchen was at least 10 years old at the beginning of the tenancy but in good condition. The Landlord said that at the end of the tenancy, the linoleum was torn and had pieces missing and had to be replaced at a cost of \$270.00.

The Landlord said he had to pay cleaners to spend a day cleaning the rental unit at a cost of \$225.00 and incurred landfill fees of \$200.00 to dispose of the Tenant's belongings and the damaged carpets. The Landlord said that because he could not give his new tenant possession of the rental unit on July 1, 2010, he lost that tenant and due to the need to remove the Tenant's belongings and do cleaning and repairs, the rental unit could not be rented for the month of July 2010. Consequently, the Landlord sought a loss of rental income for that month.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except 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."

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant. A condition inspection report is intended to serve as conclusive evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is

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disputed. The Landlord said he did not do a move in or a move out condition inspection report. The Landlord said he took photographs of the rental unit at the end of the tenancy but he did not provide them as evidence at the hearing. Consequently, the Landlord relied on his oral evidence and the evidence of his witnesses.

RTB Policy Guideline #37 (at Table 1) states that the expected lifetime of a carpet and tiles is 10 years. I also find that the expected lifetime of linoleum flooring is 10 years. Consequently, I find that most of the flooring in the rental unit had already exceeded its expected lifetime at the beginning of the tenancy and for that reason I find that the Landlord is not entitled to compensation for replacing the old flooring with new flooring. Furthermore, I find that there is insufficient evidence to conclude that the flooring had to be replaced due to an act of the Tenant as opposed to reasonable wear and tear given that the Landlord provided no corroborating evidence of the condition of the rental unit at the beginning of the tenancy (such as a condition inspection report). Consequently, this part of the Landlord's application is dismissed without leave to reapply.

I find on a balance of probabilities, however, that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and abandoned a number of furnishings and other personal belongings. Consequently, I find that the Landlord is entitled to recover cleaning expenses of **\$225.00** and landfill fees to dispose of the Tenant's belongings which I assess at **\$100.00**. I have not awarded the Landlord the total amount he claimed for landfill fees as the Landlord admitted that part of this amount was to dispose of the carpeting in the rental unit.

I also find that due to the Tenant's failure to vacate the rental unit when he agreed that he would the Landlord lost his tenant who was to take possession of it on July 1, 2010. Although the Landlord used part of this month to complete repairs or renovations, I find it unlikely that the Landlord would have been able to re-rent the rental unit for July even if he had not made those repairs. Consequently, I find that the Landlord is entitled to a loss of rental income for the month of July 2010 in the amount of **\$1,250.00**. I further find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant, the **\$50.00** filing fee for this proceeding. In summary, I find that the Landlord has made out a total monetary claim for **\$1,625.00**.

Sections 25 and 36 of the Act state that if a Landlord fails to complete a move in or a move out condition inspection report, his right to make a claim against the security deposit for damages to the rental unit is extinguished. However, the Landlord may set off the security deposit from other damages such as unpaid rent or a loss of rental income. Consequently, I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of his loss of rental income claim. The Landlord will receive a Monetary Order for the balance owing of \$1,125.00.



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Conclusion

A Monetary Order in the amount of **\$1,125.00** 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: December 21, 2010.

Dispute Resolution Officer