Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for reimbursement of the security deposit / and compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original 6 month fixed term of tenancy was from January 1 to June 30, 2010. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of $950.00 was due on the first day of each month, and a security deposit of $475.00 was collected at the outset of tenancy. Both parties participated in completing a move-in condition inspection and report on December 15, 2009.

By way of e-mail dated August 18, 2010, the tenants gave notice to the landlord of their intent to end the tenancy effective September 1, 2010. While the landlord's agent did a walkthrough of the unit with the tenants on September 1, 2010, the parties did not complete a move-out condition inspection report at that same time. Subsequently, a move-out condition inspection report was completed by the landlord without the participation of the tenants on September 4, 2010.

The tenants' decision to vacate the unit was the result of interactions with other tenants of the landlord's ("MW" & "BW") who moved into the property next door on or about May 1, 2010. The tenants felt threatened by the behavior and conduct of neighbour "MW" in particular, and considered that the safety of their family depended on them being able to relocate.

Acknowledging the tenants' concerns, the landlord reduced the tenants' rent for August in the amount of $300.00, and filed an application with the residential tenancy branch for dispute resolution, seeking an early end to tenancy for "MW" & "BW." However, as the landlord considered that things had settled down between the neighbours, she later withdrew her application for an early end to tenancy.

Despite efforts by the parties to reach a settlement of the dispute during the hearing, a resolution was not achieved. The parties presented varying perspectives as to the condition of the carpets at the end of tenancy, who said what to whom during the walkthrough of the unit at the end of tenancy by the landlord's agent and the tenants, and what events transpired / what understandings were reached between the parties within the final weeks of the tenancy where it concerned the status of the tenancy for "MW" & "BW."

Analysis

While I have turned my mind to all aspects of the evidence presented, not all particulars of the arguments or submissions are reproduced here. Additionally, for the information of the parties, 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/

The attention of the parties is specifically drawn to the following sections of the Act which speak to the move-in and move-out condition inspection reports:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, the attention of the parties is directed to section 45 of the Act which speaks to **Tenant's notice**, and to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**.

LANDLORD'S CLAIM:

$286.72: *carpet cleaning*. Pursuant to the above legislation, with respect to both the move-in and move-out condition inspections, the "landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection." Where this offer has not been made, "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished."

While there is no evidence of the landlord having specifically offered at least 2 opportunities for the completion of a move-out condition inspection and report, the landlord's agent completed a walkthrough of the unit with the tenants on September 1, 2010. However, a move-out condition inspection report was not completed at that time, and it was apparently after that walkthrough when the tenants undertook to clean the carpets.

The tenants testified that the landlord's agent expressed his satisfaction with the condition of the unit when the walkthrough was completed. However, the landlord's agent was not present to testify at the hearing, and neither does the landlord's evidence include any written submission from the landlord's agent in regard to either the general condition of the unit, or the specific condition of the carpets.

The parties agree that a move-out condition inspection and report undertaken by the landlord on September 4, 2010 did not involve the participation of the tenants. While the landlord testified that she was unable to contact the tenants to participate since it

was not until September 10, 2010 when she was informed of their forwarding address, I am unable to conclude that the tenants had abandoned the unit.

Following from all of the above, this aspect of the landlord's claim is hereby dismissed.

$950.00*: *loss of rental income for September 2010*. Section 45 of the Act provides that a tenant may end a periodic tenancy by giving notice to end effective on a date that is first, "not earlier than one month after the date the landlord receives the notice" and, second, "is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement." I find that the tenants' notice to end the tenancy effective September 1, 2010, which was given by e-mail dated August 18, 2010, does not comply with the legislation. The landlord testified that new renters were found effective October 1, 2010, and based on the testimony of the parties, I find on a balance of probabilities that the landlord undertook to mitigate her loss by advertising for renters in a timely fashion beginning in late August 2010. Accordingly, I find the landlord has established entitlement to the full amount claimed.

$50.00*: *filing fee*. As the landlord has mainly succeeded with her application, I find she has established entitlement to the full amount claimed.

Total entitlement: **$1,000.00** ($950.00 + $50.00)

TENANTS' CLAIM:

$400.00: *moving expenses*. Relevant documentary evidence to support this aspect of the claim includes credit card information showing payment of $300.00 as a "deposit," and a manual notation of "+ 22.52." While I find that the circumstances of the dispute entitles them to some compensation for moving expenses, in the absence of documentary confirmation of the final cost of the truck rental, but in consideration also of taxes, fuel and labour, I find that the tenants have established entitlement limited to **$150.00***, which is half the amount shown as having been paid for "deposit."

$1,000.00: *loss of quiet enjoyment*. The series of events leading to a breakdown in the relationship between the subject tenants and tenants "MW" & "BW," began in the first half of July 2010. As earlier noted, while these events led the landlord to make application for an early end to tenancy for "MW" & "BW," the landlord later withdrew her application. This served to strengthen the tenants' resolve to vacate the unit as soon as they could find appropriate alternate accommodation.

I find that the landlord's acknowledgment of the seriousness of the situation is reflected in her application for dispute resolution on July 23, 2010 (later withdrawn on or about July 29, 2010), as well as her voluntary reduction in rent for August of $300.00. However, I also note that the level of the tenants' upset appears to have been exacerbated by unrelated personal family matters and, further, that the tenants' concerns did not apparently come to the landlord's attention until on or about July 19, 2010 when police came to her door. Further, I note the landlord's claim that by way of registered mail dated on or about August 12, 2010, she instructed "MW" & "BW" not to have any further contact with the tenants. Thereafter, "MW" & "BW" also vacated their rental unit.

On balance, I find that the tenants have established entitlement to compensation for breach of the right to quiet enjoyment in the limited amount of $475.00, which is half of one month's rent. As the landlord already allowed a reduction in rent of $300.00, I find the balance of the tenant's entitlement is limited to **$175.00*** ($475.00 - $300.00).

Total entitlement: **$325.00** ($150.00 + $175.00)

Offsetting the respective claims, I find that the landlord has established entitlement to compensation of **$675.00** ($1,000.00 - $325.00). I order that the landlord retain the security deposit of $475.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **$200.00** ($675.00 - $475.00).

Following from the above, the tenants' application for reimbursement of the security deposit is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$200.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 14, 2011

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Dispute Resolution Officer