

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was originally set for February 9, 2011 but for medical reasons the tenant was not able to attend and the hearing was adjourned to this date. The hearing was conducted via teleconference and was attended by the male landlord; the tenant; and two of her witnesses.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in September 2008 as a fixed term tenancy that converted to a month to month basis for a monthly rent at the end of the tenancy of \$2,590.00 due on the 1st of each month. A security deposit of \$1,250.00 was paid. The tenancy ended on September 30, 2010.

The landlord testified that they started to try to sell the rental unit in April 2010 on their own and that at some point in May 2010 they listed with a rental agent. They chose an agent that the tenant had utilized in the past and who she had a business relationship with.

The landlord stated that they had original sought \$898,000 as a sales price based on the agent's advice and comparables in the area that had sold for \$865,000 and that ultimately their property sold for \$830,000. The landlord attributes some of this sales price reduction on issues that are unrelated to the tenant.

However, the landlord asserts that as a result of the condition the tenant kept the rental unit in the value of the sale was reduced by an additional \$6,930.00. The landlords break down this amount as follows, as estimated by the landlords' experience in making these repairs in other properties they have:

Description	Amount
Electrical	\$100.00
Hardwood floor (refinish – replacement)	\$1,500.00 - \$2,500.00

Carpet (clean – replacement)	\$200.00 - \$1,500.00
Walls	\$1,500.00 - \$2,000.00
Closets	\$150.00
Door knob replacement	\$30.00
Kitchen cupboard liners	\$100.00
Bathroom sink drain	\$75.00
Garage	\$100.00
Total	\$3,855 - \$6,930.00

The landlord asserts that as a result of these conditions during the period of time that the house was for sale the potential purchaser pool was impacted and limited those who may have otherwise been interested in purchasing the rental unit. The landlord provided no testimony or evidence that he had requested the tenant make any changes to the rental unit during this period of time.

The real estate agent that represented the landlords for the sale of the rental unit provided a letter to the tenant stating: "In summary, it is my professional opinion that the ultimate selling price of the home was not affected in any negative way by the Respondent. Again, if anything, the respondent was a positive impact on the sale of this home."

The landlord contends that they were not altogether happy with the results of their agent and in addition, because of the real estate agent's previous relationship with the tenant, the agent is siding with the tenant on these issues.

The landlord states they had one signed offer and the tenant asserts that there were three offers that were abandoned after a house inspection was completed, primarily, because of structural issues related to the location the house was built upon.

The landlord also asserts that he hauled garbage and junk left in the yard in the last month of the tenancy valued at \$100 - \$375.00. The landlord states that he had received complaints from neighbours regarding items left in the yard.

The tenant asserts the condition of the rental unit at the end of the tenancy had no impact on the landlord's ability to sell the rental unit. She states that of some of the items listed the landlords, such as removal of the baseboard heater; painting of some walls; and removal of the cupboard liners was known to the landlords prior to the end of the tenancy or the sale of the property.

Analysis

To be successful in an application where one party is claiming for compensation for loss or damage the applicant must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;

2. That the loss or damage results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any, to mitigate any damage or loss.

In this case the landlords assert that the loss or damage they have suffered was the loss in the value of the sale of the residential property resulting from the condition of the rental unit as it relates to the showing of the property. The landlords allege, from their written statement, that "The Buyers' inspector obviously took the damage done by the Tenant into consideration and this was reflected in their lowered offer."

As such, I find that the condition of the rental unit at the *end* of the tenancy is not relevant to this issue, but rather the condition of the rental unit *during* the tenancy is. The landlords have submitted evidence documenting primarily the condition at the *end* of the tenancy except for the baseboard heater; shoe racks; and kitchen cupboard liners.

The landlords have submitted no documentation regarding how the price for the sale of the rental unit was negotiated; what conditions were set; what results there were from any house inspections; or renegotiated terms after the completion of any home inspections, despite the landlords' claim that the price was reduced after an inspector had viewed the property.

The landlords have also failed to provide any evidence that they incurred any losses or damage resulting from the tenant leaving items out on the property. Even if I were to accept the landlords the landlord suffered any of these losses or that the sales price of the rental unit was impacted by the tenant's activities, I find the landlords failed to take any steps to mitigate any losses.

If the landlords truly believed that the items they have identified as causing a downward trend in the sales price of the rental unit, they should have taken steps prior to or during the period of time that the unit was advertised for sale. As the tenancy ended on the day the landlords gave up possession of the property I also find the landlords suffered no losses related to having to make any repairs to the rental unit.

While the landlords also assert that the bathroom drain was plugged with the tenant's hair they seek to claim \$75.00 as the minimum a plumber would charge, if they had called one. As the landlords did not call a plumber to do this work, I find that they have failed to establish the value of this loss.

Conclusion

For the reasons above, I dismiss the landlords' Application in its entirety.

I find that the tenant is entitled to the return of her full security deposit and interest held and I grant a monetary order to the tenant in the amount of **\$1,256.35**.

This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) 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: February 28, 2011.

Residential Tenancy Branch

Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at www.rto.gov.bc.ca for information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
 - How and when to enforce a monetary order:
Fact Sheet RTB-108: Enforcing a Monetary Order
 - How and when to have a decision or order clarified or corrected:
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca