Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on November 17, 2010 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number was provided as evidence of service to the forwarding address provided to the landlord by the tenant.

These documents are deemed to have been served in accordance with section 89 of the *Act;* however the tenant did not appear at the hearing.

Preliminary Matters

On November 17, 2010, the landlord served the tenant with Notice of hearing for 2 different residential properties. Both hearings were set to be heard on today's date, at the same time. The landlord testified that several weeks ago the Residential Tenancy Branch (RTB) provided the landlord with an amended Notice of hearing, altering the hearing date for the second residential property. The landlord then served the tenant with that Notice of hearing; the hearing scheduled for today's date was not altered.

I determined that the tenant had been served with Notice of today's hearing, for the residential address indicated on the cover sheet of this decision. The tenant had responded to the Application by submitting a significant amount of evidence, which was served to the landlord. The landlord was informed that I would reference that evidence.

Within the tenant's evidence submission made to the RTB on March 18, 2011, the tenant enclosed a letter indicating he understood that there would now be separate hearings for each of the residential properties that are under dispute.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act in the sum of $1,387.65?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord has made the following claim:

- $357.65 cleaning;
- $80.00 additional cleaning; and
- $950.00 for loss of December 2009 rent revenue.

The tenancy commenced in July 2009, rent was $950.00 per month and a deposit in the sum of $475.00 was paid at the start of the tenancy. The tenant vacated the rental unit on November 15, 2009, at which time he moved to another rental unit owed by the landlord and signed a new tenancy agreement. The deposit transferred with the tenant to the new tenancy.

No condition inspection reports were completed.

The landlord stated that on November 29, 2009, they did walk through the rental unit with the tenant and pointed out the need for cleaning. The tenant was left with the keys to the unit for the month of December, during which time he was expected to clean the unit.

On December 29, 2009 the tenant sent the landlord an email indicating he was not able to “redo the carpet.” It is not clear from the evidence which property the tenant was referencing.

The landlord provided a copy of a December 1, 2009 email sent to the tenant in which the landlord pointed out the tenant had left some jackets in a closet. The note also indicated that when the tenant finished the cleaning he could remove the jackets and the cups left on a counter.

The landlord stated the bedroom carpets were new.

The landlord submitted an invoice for cleaning dated February 26, 2010, in the sum of $357.65. A second invoice dated March 30, 2010, in the sum of $80.00 was submitted for further cleaning and carpet cleaning costs.

The landlord's written submission indicated that on November 29, 2009, after walking through the unit with the tenant, they determined that it was "basically clean with the exception of the carpets."

A copy of a January 21, 2011, email from the landlord's realtor indicated that the rental property was listed for sale in April 2010, after the home had been vacant for several months. When the realtor first entered the home there was an apparent animal and urine odour which would be a deterrent to potential purchasers.

The landlord stated that the tenant had brought ferrets into the home, had promised they would remain caged, but that the tenant had obviously allowed the ferrets to roam about the house and defecate; resulting in the odours and need for cleaning.

The landlord provided copies of February 23 and May 30, 2010, emails from the new occupants of the home indicating that there was animal feces and odours as a result of the previous tenant's failure to clean.

The landlord provided copies of several photographs taken of the carpets at the end of March, 2010, which showed some sort of water damage along the edge of a wall.

The landlord has claimed loss of rent revenue for December, as the unit was too dirty to rent out. The tenant had the keys to the unit so he could clean it further, failed to do so, resulting in a loss to the landlord.

The tenant's evidence submission doubted the validity of the photographic evidence as the photos were undated. The tenant denied responsibility for any carpet stains and that the landlord had told him not to worry about the living room carpet as it was old and was to be replaced.

The tenant submitted that he had cleaned the unit and had no complaints from the landlord until the landlord attempted to withhold the deposits, 6 months later. The tenant pointed to the landlord's written submission that indicated the property was basically clean when he vacated.

Further, the tenant questioned why, if the landlord intended on immediately re-renting the unit, the landlord had not made efforts to clean the unit in order to install new tenants in December. The tenant submitted that the landlord failed to complete condition inspections and if there had been a need to rent the unit for December 1, 2009, the landlord did not take any steps to communicate issues related to cleaning, or take steps to ready the unit for new occupants.

Analysis

Evidence before me indicated that the tenant and landlord communicated regularly by email.

Section 35 of the *Act* and section 17 of the Residential Tenancy Regulations outline the obligations of the landlord concerning arranging a move out condition inspection report. The landlord's obligation is to provide the tenant with two opportunities.

Regulation 17 requires the landlord to offer a first opportunity to conduct the inspection. If the tenant is not available at the time offered the tenant may offer an alternative time which the landlord must consider. However, the obligation is on the landlord to propose the second opportunity and this second opportunity must be different time from the first offered appointment. Then the landlord is required to provide notice of this second opportunity by providing notice on the approved form.

The parties each submit that a "walk-through" of the unit was completed on November, 29, 2009, at the end of the tenancy; however, a report was not signed by the parties, agreeing on the state of the unit.

Section 37(2) of the Act provides:

> *(2) When a tenant vacates a rental unit, the tenant must*
>
> > *(a) Leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
> > *(b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property*.

Residential Tenancy Regulation section 21 provides:

> *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

I find that the absence of evidence of any communication between the parties at the time the tenancy ended which detailed concerns in relation to the state of the rental unit supports the tenant's submission that the landlord has failed to demonstrate he was responsible for additional cleaning of the unit. Even if the carpets had required vacuuming, that would not support the claim made by the landlord.

I find that the landlord has failed, on the balance of probabilities, to prove the tenant did not leave the rental unit reasonably clean. I base this on the receipts submitted, verifying costs; which were dated 3 and 4 months after the tenancy had ended. The

landlord failed to complete the required inspection reports and did not provide any evidence of failed attempts to have the tenant clean. The tenant was residing in another unit owed by the landlord, so was readily available to the landlord; should they have wished to discuss the need for cleaning.

The emails sent by the new occupants of the rental unit were written some time after the tenant had vacated. The landlord had a responsibility to ensure that the condition inspection report was completed at the end of the tenancy and, with the passage of time, I find, on the balance of probabilities, that the claim the tenant caused damage is unproven.

There is an absence of any evidence before me that the landlord made efforts to rent the unit effective December 1, 2009 and the communication with the tenant on December 1, 2009 simply indicated the landlord wanted the tenant to retrieve some jackets when he finished cleaning. The landlord did not provide the tenant with a list of deficiencies or any other indication of the level of cleaning expected and or any urgency due to new occupants moving into the unit. The tenant responded later on December 1 that he was unable to redo the carpet; a vague reference which fails to support cleaning costs incurred 3 months later.

Therefore, in the absence of a preponderance of evidence supporting the application I find that the landlord's claim for compensation for cleaning and loss of rent revenue is dismissed.

Conclusion

The application is dismissed.

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: March 22, 2011.

Residential Tenancy Branch