



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

AMENDED DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for a loss of rental income, for cleaning and repair expenses, 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 his agent served the Tenant in person at his residence on December 16, 2010 with a copy of the Application, Notice of Hearing and evidence package (the "hearing package"). 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.

Issue(s) to be Decided

1. Are there rent arrears 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 compensation for cleaning and repair expenses and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on February 1, 2008 and ended on October 26, 2010 when the Tenant moved out pursuant to an Order of Possession that was granted to the Landlord on October 19, 2010. Rent was \$1,300.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$650.00 on January 18, 2008.

The Landlord said the Tenant paid only \$500.00 for rent for June 2010 leaving a balance owing of \$800.00 for that month and did not pay rent for July, August, September or October 2010. The Landlord also claimed that he had an agreement with the Tenant that the Tenant would not have to pay rent for December 2009 if the Tenant installed new windows in the rental unit. The Landlord said the Tenant did not pay rent for December 2009 and did not install the windows, consequently, the Landlord argued

that the Tenant owed rent for December 2009. The Landlord also sought a loss of rental income for November 2010. The Landlord said he advertised the rental unit for availability in a local newspaper for November 2010 but was unable to re-rent it until December 2010.

The Landlord also claimed expenses for cleaning and repairs. The Landlord said the Tenant broke a glass panel in a free standing gas fireplace and it cost him \$327.60 to replace it. The Landlord also said the Tenant taped a piece of styofom to a window in one bedroom with red tape so that when the tape was removed, it left a red stain on the window sills. The Landlord said the Tenant also caused damage to walls in the rental unit where he removed tape that had held pictures and where he had scratched the walls. The Landlord also said that the Tenant left a number of belongings in the rental unit that he had to remove and that the Tenant did not leave the rental unit (including the carpets) reasonably clean at the end of the tenancy.

In support of his claim, the Landlord provided correspondence between himself and the Tenant regarding the unpaid rent, photographs of the rental unit that he said he took at the end of the tenancy and copies of receipts for the cleaning and repair expenses.

Analysis

Based on the documentary and oral evidence of the Landlord and in the absence of any evidence from the Tenant to the contrary, I find that there are rent arrears for December 2009 of \$1,300.00, for June 2010 of \$800.00 and for July, August, September and October 2010 of \$1,300.00 for each of those months for a total of \$7,300.00.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice they are ending the tenancy. Given that the Tenant was served an Order of Possession on or about October 19, 2010, I find that the earliest the Tenant could have ended the tenancy (had he given notice that day) would have been **November 30, 2010**. I further find that the Landlord took reasonable steps to re-rent the rental unit as soon as possible and therefore he has satisfied the requirement under s. 7(2) of the Act to mitigate his losses. Consequently, I find that the Landlord is entitled to recover loss of rental income for **November 2010** in the amount of \$1,300.00.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the 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."

The Landlord admitted that he did not complete a condition inspection report at the beginning or at the end of the tenancy. However, the Landlord claimed that the damages to the walls and fireplace occurred during the tenancy and were not the result of reasonable wear and tear. The Landlord also claimed that the Tenant did not leave the rental unit reasonably clean and that all of this was evident from his photographs. In the absence of any evidence from the Tenant to the contrary, I find on a balance of probabilities that the Tenant was responsible for the damages to the walls, window frames and fireplace glass and that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy.

As a result, I find that the Landlord is entitled to recover the following amounts:

Unpaid rent December 2009:	\$1,300.00
Unpaid rent June 2010:	\$800.00
Unpaid rent July 2010:	\$1,300.00
Unpaid rent August 2010:	\$1,300.00
Unpaid rent September 2010:	\$1,300.00
Unpaid rent October 2010:	\$1,300.00
Loss rental income Nov. 2010:	\$1,300.00
Wall repairs:	\$400.00
Fireplace glass replacement:	\$327.60
General cleaning:	\$80.00
Carpet cleaning:	<u>\$159.94</u>
Subtotal:	\$9,567.54

As the Landlord has been successful in this matter, I also find pursuant to s. 72(1) of the Act that he is entitled to recover the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72(2) of the Act to keep the Tenant's security deposit and accrued interest of \$9.30 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing of \$9,008.24.

Conclusion

A Monetary Order in the amount of **\$9,008.24** 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: March 02, 2011.

Residential Tenancy Branch

NOTE: THIS DECISION CORRECTS AND REPLACES THE ONE I ISSUED ON MARCH 2, 2011.