

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 compensation for a loss of rental income, to recover cleaning expenses and the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

At the beginning of the hearing the Tenants claimed that they gave the Landlord their forwarding address (ie. the residential address of C.S's parents) at the end of the tenancy but told him that it would only be for approximately one month. Consequently, the Tenants said they received the Landlord's Application and Notice of Hearing that he sent by courier on June 16, 2011 but not his evidence package that he sent by registered mail on September 9, 2011. The Landlord said he did not recall the Tenants saying their forwarding address would only be effective for a month and argued that the Tenants did not provide him with another forwarding address. Section 88(d) of the Act says that a Landlord may serve a tenant documents at a forwarding address provided by the tenant. Given that the Landlord served the Tenants at the forwarding address provided by them and that they did not provide him with any other forwarding address, I find that the Tenants were properly served with the Landlord's evidence package.

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 recover cleaning expenses and if so, how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on July 1, 2010 and was to expire on July 1, 2011. The Parties agree that on May 19, 2011 the Landlord gave the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the Tenants vacated the rental unit on or about May 28, 2011. The Tenants said they left the keys in the mail box at the rental unit sometime during the 1st week of June, 2011. The Landlord said he received the keys to the rental unit on June 13, 2011.

Rent was \$915.00 per month. The Tenants argued that the rental unit was advertised as, and they agreed to pay, \$850.00 per month inclusive of utilities but at the last moment the Landlord changed this term of the tenancy agreement and required them to pay \$915.00 per month. The Landlord claimed that rent was \$850.00 per month which included hot water (heated by gas) but the Tenants agreed to pay \$60.00 more per month to have heat (also by gas) included. The addendum to the Parties' tenancy agreement contains a term showing that heat was initially not included. The Parties agree that the Tenants had accrued rent arrears of \$100.00 at the end of March 2011, had shortfalls in their rent payments for April 2011 of \$115.00 and for May of \$650.00 and did not pay rent for June 2011. The Tenant, A.W., claimed he did not pay in full because he was not getting what he was paying for.

The Parties arranged to meet on June 2, 2011 to participate in a move out inspection. The Tenants did not attend and the Landlord did not complete a move out condition inspection report. The Landlord said the Tenants left furnishings and other belongings in the rental unit and did not leave the rental unit reasonably clean. Consequently, the Landlord said he incurred expenses of \$47.07 to have an employee and himself remove the Tenants' belongings and \$6.00 in dump fees to dispose of them. The Landlord said he also incurred expenses of \$91.08 to have an employee do general cleaning and \$110.88 for carpet cleaning. The Tenants said the Landlord agreed to store their belongings because they were unable to retrieve them but instead he disposed of them. The Tenants also said the rental unit was "spotless" when they moved out and disputed the amounts the Landlord claimed he paid his employees. The Tenant, W.A., agreed to compensate the Landlord \$40.00 representing the cost to rent a steam cleaner to clean the carpets.

Analysis

Although one of the Tenants argued that he was under duress when he agreed to an increased amount of rent at the beginning of the tenancy, I find that there is insufficient evidence to support this allegation. In particular, the Tenants did not provide a copy of the advertisement which they claimed said that *all* utilities were supposed to be included in the rent of \$850.00. Furthermore, the Parties' tenancy agreement shows that rent was to include hot water only and that for an additional amount, heat was included. Consequently, I find on a balance of probabilities that the Parties did agree to increase the rent so that heat would be included. As there is no dispute that there are rent arrears for the months of March, April and May 2011 in the total amount of \$865.00, I find that the Landlord is entitled to recover that amount.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses.

This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. I find that the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on May 19, 2011 which the Tenants did not dispute; instead the Tenants vacated the rental unit on or about May 28, 2011 without giving written notice. The earliest the Tenants could have ended the tenancy had they given written notice to the Landlord on that date would have been June 30, 2011.

I also find that the Tenants agreed to meet with the Landlord on June 2, 2011 to participate in a move out inspection but did not attend on that date. The Tenants returned the keys to the rental unit after the Landlord advised them following June 2, 2011 that he needed the keys in order to re-rent the rental unit. The Landlord provided evidence that he started advertising the rental unit for rent on or before June 7, 2011 but was unable to re-rent the rental unit for June 2011. Consequently, I find that the Landlord has established a claim for a loss of rental income for June 2011 in the amount of \$915.00.

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. Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of a tenancy (even if the Tenants don't participate) and to provide a copy of it to the Tenants within 15 days. A condition inspection report is intended to serve as some objective evidence, for example, of whether the Tenant has failed to leave a rental unit reasonably clean at the end of a 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 disputed.

The Landlord did not complete a move out inspection. The Landlord submitted a list of things that he said his employee cleaned as proof that the rental unit required cleaning. The Tenants argued that the rental unit was "spotless" at the end of the tenancy. Given the contradictory evidence of the parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord to resolve this contradiction, I find that there is insufficient evidence to support his claim for cleaning expenses and it is dismissed without leave to reapply.

The Landlord also sought to recover labour expenses of \$47.79 plus dump fees of \$6.00 for removing and disposing of belongings left in the rental unit by the Tenants. The Tenants claimed that the Landlord agreed to store those belongings for them. Sections 24 of the Regulations to the Act says that a Landlord may only dispose of a Tenant's belongings if they have been abandoned; ie. if they are left on the rental property after the tenant has vacated *and* the Tenant expressly states that they do not intend to return to the rental property or it is not reasonable to expect them to return. In the circumstances, I find that there is insufficient evidence that the Landlord was entitled to dispose of the Tenants' belongings, however, I do find that the belongings would have had to be removed from the rental unit in order for the Landlord to re-rent the

rental unit. Consequently, I find that the Landlord is entitled to his removal expenses of \$47.79 however his claim for disposal fees is dismissed without leave to reapply.

The Tenants admitted that they did not clean the carpets at the end of the tenancy however they claimed that the Landlord should only be entitled to recover \$40.00 representing the cost of renting a steam cleaner. The Parties' tenancy agreement contains a term that the carpets will be "professionally cleaned" at the end of the tenancy. Consequently, I find that the Landlord is entitled to recover carpet cleaning expenses of \$110.88.

As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee he paid for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$865.00
Loss of rental income:	\$915.00
Removal expenses:	\$47.79
Carpet cleaning:	\$110.88
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,988.67
Less: Security deposit:	<u>(\$425.00)</u>
Balance Owing:	\$1,563.67

During the hearing, the Respondent, W.A., argued that he had a number of monetary claims against the Landlord (eg. for painting, for disposing of personal possessions and for a loss or quiet enjoyment) that should be set off any award made to the Landlord in this matter. However, the Tenants did not file an application for dispute resolution to seek this compensation and in the absence of an application I could not consider those claims in this hearing.

During the hearing, the Respondent, W.A., also claimed that he was recording these proceedings and intended to distribute them online via U-Tube. The Respondents were warned by the Dispute Resolution Officer that the Residential Tenancy Branch Rules of Procedure (#9) prohibit a party from privately recording dispute resolution proceedings and they were ordered to cease.

Section 87 of the Act says it is an offence (subject to a fine) for a party to threaten another party in retaliation for seeking or obtaining a remedy under the Act and to fail to comply with an order made by the director.

Conclusion

A Monetary Order in the amount of **\$1,563.57** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: September 19, 2011.

Residential Tenancy Branch