



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord to recover unpaid rent and cleaning expenses, compensation for a loss of rental income, compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of that amount. At the beginning of the hearing, the Landlord said the tenancy has ended and as a result, his application for an Order of Possession is dismissed without leave to reapply.

The Landlord said he served the Tenant in person on June 16, 2011 (at his workplace) with the Application and Notice of Hearing (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 damages to the rental unit and if so, how much?
4. Is the Landlord entitled to compensation for cleaning expenses and if so, how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2010 and expires on November 30, 2011. Rent is \$1,650.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$825.00 at the beginning of the tenancy. The Landlord said the Tenant did not pay rent in full for April 2011 when it was due and as a result, on April 13, 2011 his agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 13, 2011. The Landlord said the Tenant

moved out on or about April 21, 2011 without any notice to him. The Landlord also said that rent in the amount of \$825.00 remains unpaid for April 2011.

The Landlord said he advertised the rental unit in a local newspaper and was able to re-rent it for the period, May 1, 2011 to September 9, 2011, at a reduced rental rate of \$1,150.00 per month because it was "off-season" in this ski resort area (during which there was less demand for rental properties). Consequently, the Landlord sought a loss of rental income of \$500.00 per month for May to August, 2011 and a further loss of rental income of \$1,650.00 per month for the unexpired term of the lease.

The Landlord also claimed that on or about March 11, 2011, the building manager for the rental property attended the property in response to a fire alarm and discovered water leaking from the rental unit into the fire control panel room below. The Landlord said that when the building manager went to the rental unit to find out where the leak was coming from, the Tenant (and other occupants) advised him that the toilet had been overflowing for approximately four days but they had not reported it. The Landlord said the Tenant and other occupants of the rental unit had apparently continued to use the toilet and tried to control the leaking water by mopping it up with towels. The Landlord said the Strata for the rental property incurred expenses of \$16,553.68 to repair the water damage to the fire control panel. The Landlord also said that this amount was paid by the Strata's insurer however it had to pay an insurance deductible of \$10,000.00. The Landlord further said that the Strata demanded that he pay the insurance deductible because the Tenant caused the water damage.

The Landlord further claimed that the Tenant did not leave the rental unit reasonably clean when he moved out and as a result, he incurred general cleaning expenses of \$270.00 and carpet cleaning expenses of \$95.00.

Analysis

The Landlord said that the Tenant moved out on or about April 21, 2011 after having been served with a 10 Day Notice to End Tenancy on April 13, 2011. However, the Landlord submitted into evidence e-mail correspondence that contradicts this assertion. In particular, in an e-mail from the Landlord to the Strata manager dated April 24, 2011, the Landlord asked that the Tenant's keys to the rental unit be deactivated. In a responding e-mail of the same day, the Strata manager advised the Landlord that she would do so, however, she advised the Landlord that the Tenant and/or his guests were still there sleeping so it would not be any benefit to him until they left the rental property. The Strata manager suggested to the Landlord that he should also tell the Tenant to leave that day or get the RCMP to escort him off of the property.

When questioned about this correspondence at the hearing, the Landlord admitted that he was under the mistaken belief that he could remove the Tenant and his guests without an Order of the Residential Tenancy Branch if they were using illegal drugs on

the rental property. Consequently, I conclude that the Tenant did not move out without giving notice on April 21, 2011 as the Landlord claimed but instead was locked out of the rental unit by the Landlord on or about April 24, 2011. In these circumstances, I find that it was the Landlord (and not the Tenant) who ended the tenancy and as a result, he is not entitled to recover any rent or a loss of rental income after that date and those parts of his application are dismissed without leave to reapply.

I find that the Landlord is entitled to unpaid rent for the period, April 1 – 24, 2011 in the pro-rated amount of \$1,320.00. The Landlord said that the Tenant paid \$825.00 toward his April 2011 rent and as a result, I find that the Landlord is entitled to recover unpaid rent in the amount of **\$495.00**.

Section 32 of the Act says that a Tenant is responsible for damages caused **by his act or neglect** but is not responsible 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 claimed that the Tenant is responsible for water damage sustained to a fire control box on the rental property because he and/or other guests or occupants he allowed in the rental unit failed to report to the building manager that the toilet in the rental unit had been overflowing for approximately 4 days. The Landlord also claimed that the Strata for the rental property incurred an insurance deductible expense of \$10,000.00 which he is now responsible for paying. Consequently, the Landlord sought to recover this amount from the Tenant.

I find that the only evidence that the toilet in the rental unit was overflowing for 4 days is the double hearsay oral evidence of the Landlord. The documentary evidence provided by the Landlord does not include any invoices for plumbing repairs but rather only some with respect to the repair of the fire control panel which generally refer to a toilet leak from the rental unit. There was also no other evidence as to the cause of the toilet leak. In the circumstances, I find that the double hearsay evidence of the Landlord that the Tenant continued to use and failed to report an overflowing toilet for four days is very unreliable and insufficient to discharge the burden on him to show that the Tenant was responsible for the damage to the fire control panel. Consequently, this part of his application is dismissed without leave to reapply.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlord said it is also a term of the Parties’ tenancy agreement that the Tenant would have the carpets professionally cleaned at the end of the tenancy. The Landlord said the Tenant did not clean the carpets or the rental unit at the end of the tenancy.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the

Regulations and provide a copy of it to the Tenant (within 7 to 15 days respectively). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy.

The Landlord admitted that he did not complete a move out condition inspection report and he provided no other evidence (such as photographs) of the condition of the rental unit at the end of the tenancy. Consequently, I find that there is insufficient evidence to support the Landlord's claim for general cleaning expenses and it is dismissed without leave to reapply. The Landlord said that the Parties' tenancy agreement contains a term that the Tenant will have the carpets professionally cleaned at the end of the tenancy however this is not the case. Instead the Parties' agreement contains a term that the "tenant will have [the] unit professionally cleaned upon departure." Consequently, in the absence of any evidence from the Landlord regarding the condition of the carpets at the end of the tenancy, I find that there is insufficient evidence to support his claim for carpet cleaning expenses and it is dismissed without leave to reapply.

As the Landlord has been largely unsuccessful on this application, I find that it is not an appropriate case to award him the cost of the filing fee and that part of his application is also dismissed without leave to reapply.

Conclusion

I order the Landlord pursuant to s. 38(4) of the Act to keep \$495.00 of the Tenant's security deposit in full satisfaction of the monetary award in this matter. I order the Landlord to return the balance of the Tenant's security deposit in the amount of \$330.00 to him forthwith. The Landlord's application for an Order of Possession is dismissed without leave to reapply.

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 13, 2011.

Residential Tenancy Branch