Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNDC, MNSD, FF, O
Tenant: MNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for unpaid rent, for compensation for a loss of rental income and locksmith expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to recover the cost of emergency repairs, for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and to recover the filing fee for this proceeding. The Tenant withdrew a claim for moving expenses.

Both parties filed a great deal of documentary evidence (much of which was duplicated in their respective evidence packages) and they confirmed at the outset of the hearing that they had received each other's evidence packages. Consequently, the Parties agreed to conduct this hearing by way of documentary evidence only

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 keep the Tenant's security deposit?
4. Is the Tenant entitled to recover the cost of emergency repairs?
5. Is the Tenant entitled to other compensation?

Background and Evidence

This fixed term tenancy started on November 1, 2010 and was to expire on October 31, 2011, however it ended on August 28, 2011 when the Tenant moved out. Rent was $1,500.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $750.00 at the beginning of the tenancy. A move in condition inspection report was not completed at the beginning of the tenancy. A move out condition inspection report was completed by the Parties on September 1, 2011 and the Tenant gave the Landlord his forwarding address in writing at that time.

On July 17, 2011, the rental unit suffered flooding as a result of a broken washing machine hose in a suite two floors above the rental unit. A restoration company came to the rental unit on July 17, 2011 and removed sections of water-damaged drywall from two rooms and installed a number of fans and dehumidifiers to dry out the insulation.

The Landlord's Claim:

The Landlord claimed that the 4 out of the 8 fans and 2 of the 4 dehumidifiers that were installed on July 17, 2011 were removed on July 19, 2011 and the remainder were removed on July 22, 2011. The Tenant claimed that 10 dryers operated for 10 days.

On August 4, 2011, the Tenant gave the Landlord a letter which stated that he and his family had been disturbed by the noise of the fans (which operated 24 hours per day) as well as the dust from the drywall removal and insulation and had lost the use of approximately 1/3 of the living area of the rental unit (a bedroom and a den used as a bedroom). Consequently, the Tenant proposed that the tenancy end early on August 31, 2011 and that he would not be responsible for rent for that month. Alternatively, the Tenant proposed that the tenancy would end at the end of the fixed term but that rent would be reduced to $750.00 per month effective August 1, 2011.

On August 5, 2011, the Landlord gave the Tenant a letter in response which stated that repairs would be commencing within a week. The Landlord proposed that the tenancy would end early on September 30, 2011. The Landlord proposed in the alternative that the tenancy would continue to the end of the fixed term, with a rent reduction of $750.00 per month from July 17, 2011 until the completion of the repairs.

The Landlord said the restoration company scheduled repairs to commence on August 8, 2011, however the Tenant would not grant access to the rental unit for the repairs. The Tenant admitted that he refused to grant access to the restoration company as he claimed the noise and dust from the repairs would be too disruptive to his family. On August 15, 2011, the Tenant advised the Landlord in writing that he accepted the Landlord's proposal to end the tenancy early on September 30, 2011 and he requested that the repairs be delayed until he vacated the property at that time. On August 16, 2011, the Landlord wrote the Tenant and advised him that the Tenant's rent cheque had been returned unpaid due to a stop payment placed on it by the Tenant. The Landlord asked the Tenant for a replacement cheque for August 2011 and stated that rent in full for September 2011 would also have to be paid.

On August 22, 2011, the Tenant corresponded with the Landlord's daughter (J.K.) by text messaging. The Tenant said he advised J.K. that he would be vacating the rental unit at the end of August 2011 and claimed that J.K. "implied to him that the lease would be terminated at such time." J.K. denied advising the Tenant that he could end the tenancy at the end of August 2011 but instead claimed that she merely advised the Tenant that she sympathized with his circumstances.

The Tenant said he vacated the rental unit on August 28, 2011 and advised the Landlord. The Landlord denied this and claimed instead that the building manager advised him on August 30, 2011 that the Tenant had vacated. The Landlord said when he spoke to the Tenant on August 31, 2011 the Tenant advised him that he would not return the keys unless that Landlord agreed to the Tenant's proposal dated August 4, 2011. The Landlord said the Tenant then spoke to his daughter, J.K. on August 31, 2011 and advised her that he would not return the keys to the rental unit until the Landlord returned the security deposit and reimbursed him for laundering and moving expenses. Consequently, the Landlord said he changed the locks on September 1, 2011. The Tenant argued that he agreed to participate in a move out condition inspection on September 1, 2011 and that when he arrived the Landlord had already changed the locks.

The Landlord claimed that he and his family planned on moving into the rental unit on November 1, 2011 when the Tenant's lease expired. The Landlord said he sold his residence on August 16, 2011 and entered into a lease for other accommodations for August, September and October. The Landlord said he was unable to re-rent the rental unit after the Tenant vacated because repairs still had to be done and he could not get another tenant to rent the property for the unexpired term of the lease. The Tenant argued that he had an agreement with the Landlord's daughter (who was acting as his agent) that the tenancy would end early at the end of August 2011. The Tenant argued in the alternative that he gave the Landlord written notice on August 4, 2011 that he was in breach of a material term of the tenancy agreement, that the Landlord failed to correct the situation and that as a result, the Tenant was entitled to end the tenancy early.

The Tenant's Claim:

The Tenant said that when the restoration company came into the rental unit, they moved a dresser and damaged a leg on it which the restoration company denied. The Tenant claimed the cost to repair the dresser was $500.00. The Tenant also claimed that he was advised by the restoration company to remove clothes from a bedroom closet and pile them on a bed which was later covered in dust and debris from the drywall and insulation and had to be dry-cleaned at a cost to him of $500.00. The Tenant also claimed that as a result of the dust, debris and stress of living with noise and limited space in the rental unit, his spouse developed respiratory issues and required medication. Consequently, the Tenant sought to recover the cost of his spouse's medications.

The Landlord argued that he was not responsible for the cost to repair the dresser and dry-clean clothes and bedding because the Tenant was supposed to have insurance.

Analysis

The Landlord's Claim:

The Parties agree that no rent was paid for the month of August 2011. Although the Tenant argued that he should have been entitled to a rent reduction of $750.00 for each of the months of July and August 2011 as a result of the flooding, he did not apply for that relief and as a result, I find that the Landlord is entitled to recover $1,500.00.

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. The only exception to this rule, it section 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given written notice of the failure, the tenant may end the tenancy without further notice to the Landlord.

I find that the Tenant made a written complaint to the Landlord on August 4, 2011 about the difficulties he was experiencing as a result of the flooding and subsequent restoration however he did not tell the Landlord that he would end the tenancy if the Landlord failed to rectify that issue within a certain period of time (or at all). Instead, I find that on August 15, 2011, the Tenant accepted the Landlord's offer to end the tenancy on September 30, 2011 on condition that no repairs would commence until after that date. I also find that it was not until August 22, 2011 that the Tenant advised the Landlord's agent that he no longer wished to reside in the rental unit and advised her that he would be vacating at the end of August 2011. The Tenant argued that the Landlord's daughter ***implied*** in a text message on August 22, 2011 that the tenancy would end at the end of August 2011 however the Landlord's daughter denied this. The text message in question was written in the Korean language and the Parties were advised at the beginning of the hearing that the Dispute Resolution Officer would not be able to interpret those messages. Given the contradictory evidence of the Parties and in the absence of any other evidence, I find that there is insufficient evidence to support the Tenant's allegation that the Landlord's daughter or agent agreed that the tenancy could end at the end of August 2011.

For similar reasons, I find that there are no grounds for the Landlord's claim for a loss of rental income for October 2011. In particular, I find that the Landlord agreed that the Tenant could move out at the end of September 2011 and therefore he is not entitled to recover rent for October 2011. Consequently, I find that the Landlord is entitled to recover a loss of rental income for September 2011 only in the amount of $1,500.00.

The Landlord also sought to recover locksmith expenses of $91.78 as he claimed that the Tenant advised both himself and his daughter on August 31, 2011 that he would not be returning the keys to the rental unit until the Landlord agreed to various terms. The

Tenant argued that he would have returned the keys to the Landlord at the move out condition inspection however the Landlord changed the locks prior to that time. I find that the tenancy ended on August 28, 2011 when the Tenant moved out and that the Tenant was responsible for returning the keys to the rental unit that day. However, I find that the Tenant did not return the keys to the Landlord when he vacated the rental unit and on August 31, 2011 he specifically told the Landlord that he would not be returning them to the Landlord. Consequently, I find that the Landlord acted reasonably in changing the locks on September 1, 2011 because he believed (based on what the Tenant told him) that he would not be returning the keys. As a result, I find that the Landlord is entitled to recover locksmith expenses of $91.78.

As the Landlord has been successful on his application, he is entitled pursuant to s. 72 of the Act to recover from the Tenant the $50.00 filing fee he paid for this proceeding. Consequently, I find that the Landlord has made out a total monetary claim for $3,141.78. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of $750.00 in partial payment of the monetary claim. The Landlord will receive a Monetary Order for the balance owing of **$2,391.78**.

The Tenant's Claim:

The Tenant claimed that when the restoration company came to the rental unit to make repairs, they moved a dresser and damaged a leg. The Tenant claimed it would cost $500.00 to repair the dresser. However, the Tenant provided no evidence of the alleged damage (although he provided a number of photographs of other things) nor did he provide any evidence to support the amount claimed for the repair (such as an estimate). For all of these reasons, I find that there is insufficient evidence to support this part of the Tenant's claim and it is dismissed without leave to reapply.

The Tenant also claimed that he was advised by the restoration company to take clothing out of a bedroom closet and placed it on a bed but that it later got covered with dust and debris from drywall and insulation. The Tenant claimed that he incurred expenses of $500.00 to have the clothing and bedding professionally cleaned and he provided an undated and unsigned claim stub from a dry cleaner on which was hand-written "$500.00." Although the Landlord argued that he was not responsible for this cost because the Tenant was required to submit such claims to his insurer, I find that there is no term in the Parties' tenancy agreement requiring the Tenant to have insurance. However, I find that the receipt for cleaning is lacking in significant particulars such as what was cleaned and when it was cleaned and therefore I find the receipt is unreliable. Consequently, I find that the Tenant is not entitled to this compensation because he has failed to provide sufficient particulars of this alleged expense.

The Tenant further sought compensation for his spouse's medical prescriptions as he claimed they were required as a result of the flooding and subsequently construction dust and debris. However, the Tenant provided no medical evidence in support of this assertion and the prescription receipt is dated September 22, 2011 (3 weeks after the tenancy ended). Consequently, I find that there is insufficient evidence to conclude that the medications were the direct result of the flooding and/or restoration measures and as a result, this part of the Tenant's claim is also dismissed without leave to reapply.

The Tenant further sought compensation for photocopying expenses however the Act makes no provision for the reimbursement of costs associated with preparing and attending a dispute resolution hearing other than for the filing fee. Consequently, this part of the Tenant's application is dismissed without leave to reapply. As the Tenant has been unsuccessful on all of his claims, his application to recover the filing fee for this proceeding is also dismissed without leave to reapply. As the Landlord has already been ordered to keep the Tenant's security deposit in partial payment of his monetary award, this part of the Tenant's claim is also dismissed without leave to reapply.

The Tenant's application did not include a claim for a rent reduction or compensation for loss of use of the rental unit. Furthermore, each of the Parties was asked at the outset of the hearing to confirm what relief or compensation they were seeking and the Tenant did not indicated that he was pursuing any of these matters in these proceedings. However the Tenant's written submissions state under "Order sought" that the Tenant be granted a rent reduction for July and August 2011. Consequently, I find that there likely was some misunderstanding on the part of the Tenant as to what was to be included in his claim and for this reason, I grant the Tenant leave to reapply for this relief.

Conclusion

The Tenant's application is dismissed without leave to reapply. However, the Tenant is granted leave to reapply for compensation for a loss of use of the rental unit or for a breach of quiet enjoyment. A Monetary Order in the amount of **$2,391.78** 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: November 29, 2011.

Residential Tenancy Branch