Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF
MNDC, MNSD, OLC, O, FF

Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the landlord is for a monetary order for damages, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. The application by the tenant is for money owed or compensation for damage or loss, return of the security deposit, to order the landlord to comply with the Act, other and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This hearing was previously adjourned on November 16, 2011 to allow the landlord's property manager the opportunity to be present and provide testimony and to ensure that the parties were in receipt of each other's evidence.

It was established at the start of the hearing that the tenant's advocate, who is named as a respondent in the landlord's application is in fact not a party to the claim and should not be named as a respondent.

The landlords claim

The landlord testified he would withdraw his claim for replacement of the damaged carpet and flooring in the rental unit as he had not yet incurred a cost for replacement of these items.

The landlord testified that the rental unit was not left in rental condition resulting in a loss of $910.00 rental income for August 2011. The landlord stated that the tenancy did

not come to an end until July 31, 2011 and the landlord did not have access to the rental unit until the tenancy ended therefore repairs and cleaning in the rental unit could not be started until the landlord has possession. The landlord's evidence shows that on July 19, 2011 the landlord sent the tenant a text message regarding the condition of the rental unit and confirmed the tenant's request to complete the move out inspection on July 31, 2011 at 1:00PM. The text message refers to the unit being dirty, not repainted as required, holes on the walls, a black sticky substance on the carpets and that there were concrete pavers and gravel in the bathroom. The landlord also refers to a communication from the tenant where the tenant states very clearly that the landlord is not to enter the rental unit without first providing the tenant 24 hours written notice and that the security system must be disarmed prior to entry. The landlord stated that a new tenant was secured for December 1, 2011.

The landlord stated that the tenant had painted some of the rooms with orange, black and pink paint and that the tenant did not paint the rental unit back to a neutral color prior to vacating. The landlord stated that because the tenant had used high gloss paint, it took multiple coats of paint to cover the three colors.

The landlord stated that the tenant left numerous items in the rental unit and did not clean the rental unit prior to vacating. The landlord stated that the tenant had also installed patio pavers and gravel in the bathroom and did not remove these materials prior to vacating the rental unit. The landlord stated that it was very difficult for his resident manager to remove the pavers and gravel and that the bathroom floor was very dirty and stained as a result of these items.

The landlord's resident manager stated that the oven was not cleaned, the tenant had installed 2 cabinets that had to be removed, the windows were dirty, left over paint was found in the fridge, wood packing boxes were left in the rental unit and all the surfaces had to be wiped down. The resident manager stated that the tenant was not available to complete a move out inspection at the end of July 2011 as he vacated in late June 2011 and the tenant's agent did not attend the move out inspection. The resident manager stated that because the tenant left in late June, the tenant had no idea what the condition of the rental unit was at the end of the tenancy on July 31, 2011 as he had left the cleaning and removal of any additional items to his agent.

The tenant testified that he had painted 3 walls in the rental unit with orange, black and pink paint and that he did not repaint the walls prior to vacating. The tenant stated that he had removed all of his personal belongings and all 'unattached' items from the rental unit prior to vacating. The tenant acknowledged that he had left the paving stones and gravel in the bathroom and that he had installed 2 cabinets in the rental unit and these items were not removed. It was stated that the tenant had left the security deposit with the landlord because the rental unit was not cleaned or repainted. The tenant stated that he had not had the carpet cleaned at the end of the tenancy, as the carpet was at least 10 years old. The landlord commented that the carpet was 7 years old, still in good condition however was left stained and dirty.

The landlord in this application is seeking $910.00 for loss or rental income, $164.64 for carpet cleaning, $672.00 for repainting of the rental unit and $360.00 in cleaning costs.

The tenant's claim

The tenant testified that during his tenancy there were constant problems with the heat in the rental unit and that the rental unit was often very cold. The tenant stated that he had spoken to the resident property manager a number of times but had no response regarding the heat and then contacted the resident property manager on 4 separate occasions by placing a note in the drop box in the building: September 27, 2010, October 28, 2010, December 1, 2010 and February 22, 2011. The tenant stated that it was sometimes so cold in the rental unit that he could see his breath in the mornings. The tenant stated that he had recorded the temperature in the rental unit to be as low as 10 degrees celsius. The tenant did acknowledge that lack of heat was not an issue during the warmer summer months.

The landlord stated that the heat in the building is and has been fine for 29 years. The landlord maintains that the heat is set in accordance with the city of Vancouver bylaws and that when the tenant's rental unit was checked by a plumbing professional that the heat was found to be 22 degrees celsius. The landlord stated that the bylaw allows for heat to be reduced at midnight and turned back up in the morning and that as re-warming the building takes some time, this may have accounted for the lower morning temperature. The landlord stated that the current tenant renting this unit has no complaints about the temperature and provided the landlord with a statement that has been submitted into evidence.

The landlord also refers to the notice to vacate that was provided by the tenant and that the tenant makes no mention of leaving because of issues with the heat. The landlord's resident manager also referred to a text message from the tenant where the tenant states he talks about moving 'as soon as possible' and 'I hate Vancouver and can't wait', 'to move away'.

The landlord's resident manager stated that she had ever received the 4 notes the tenant claims to have left in the building drop box and stated that the tenant always communicated via text message, pointing to a number that have been submitted into evidence.

The tenant is seeking storage costs and moving expenses as he maintains the tenancy would not have ended had the landlord responded to and done something about the lack of heat. The tenant maintained that he had intended this to be a long term tenancy which the landlord refuted as the tenant at the start of the tenancy had stated he was only in Vancouver to complete his schooling and that the tenant was considering a school in California which he has now relocated to.

The tenant is seeking an award for aggravated damages for the harassment and derogatory comments made by the resident manager and stating that this 'continually happened'. The tenant then went on to state that his relationship with the resident manager was fine until the end of the tenancy at which time his neighbour had filed for dispute resolution. The tenant stated that the property manager made egregious statements about the tenant and the tenant is seeking an apology in writing for this.

The resident manager stated that she had not made the comments about the tenant that the tenant claimed, but that she did have to attend the tenants unit one night due to a noise complaint when the tenant had guests over. The resident manager stated that she would not apologize to the tenant as his allegation of her derogatory was unfounded.

The tenant in this application is seeking $5550.00 in return of 50% of the rent, $2000.00 for aggravated damages and $300.00 reimbursement for moving expenses.

Analysis

The landlord's claim

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for $910.00 in loss or rental income, $164.64 for carpet cleaning, $672.00 for repainting of the rental unit and $360.00 in cleaning costs.

The testimony of the parties has established that the rental unit was not left in rentable condition at the end of the tenancy and that the rental unit had to be re-painted and cleaned, resulting in the landlord not being able to secure new tenants for August 2011. Neither the tenant or his agent made themselves available to complete a move out inspection at the end of July 2011 and the tenant in this hearing acknowledged that he had not repainted the rental unit as required and removed all of the items that he had brought into the rental unit.

Accordingly I find that the landlord is entitled to a monetary order for $2106.64.

As the landlord has been successful in their application the landlord is entitled to recovery of the $50.00 filing fee.

The tenant's claim

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for $5550.00 in return of 50% of the rent, $2000.00 for aggravated damages or $300.00 for reimbursement of moving expenses.

The tenant has made the claim that all through out the tenancy there was an issue with the heat in the rental unit and he tenant has submitted 4 notes into evidence to establish that he had contacted the landlord during the tenancy to address the heat. This evidence was challenged by the resident manager who testified that these notes had never been provide to the landlord by the tenant and that the tenant always communicated by text message as evidence shows. There is also evidence noted in a Residential Tenancy Branch decision that establishes the heat in the tenant's unit being 22 degrees celsius which is in the acceptable temperature range for a rental unit per the City of Vancouver. The tenant during the tenancy did not take steps to mitigate any potential loss to due the lack of heat and stated that he was relying on another tenants application, of which the outcome was not determined until August 2011, well after the tenant had vacated the rental unit. The tenant also maintains that he had intended this to be a long term tenancy however neither the text messages from the tenant to the landlord or the tenant's notice to vacate makes mention of the lack of heat being the reason for ending the tenancy.

The onus or burden of proof is on the party making the claim and in this case the tenant has claimed there was a lack of heat in the rental unit all through out the tenancy and the landlord does not agree. The tenant must prove the lack of heat existed in his rental unit and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenants claim for aggravated damages, there is no direct evidence that substantiates or proves that the landlord's resident manager has caused the tenant to suffer because of the landlord's resident managers alleged actions. The tenant stated that he has been discredited and his health impacted, yet has not submitted any evidence attributing to either of these in relation to the alleged actions of the landlord's resident manager. Additionally, I find the tenant has submitted insufficient evidence to prove that the landlord's resident manager acted in any manner other than as a building manager.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's claim for moving costs, I find that the tenant has not established in any way, how his decision to vacate the rental unit was a direct result of issues related to this tenancy. Therefore this portion of the tenant's application is dismissed without leave to reapply.

The tenant's application is dismissed in its entirety.

As the tenant has not been successful in their application they are not entitled to recovery of the $100.00 filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I find that the landlord has established a monetary claim for $2106.64 for loss, damages and cleaning costs. The landlord is also entitled to recovery of the $50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's $ 460.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **$1646.64**.

If the amount is not paid by the tenant(s), 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: January 24, 2011

Residential Tenancy Branch