Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC

Introduction

This matter dealt with an application by the Landlord for unpaid rent and for compensation for cleaning and repair expenses.

At the beginning of the hearing the Landlord said on January 9, 2012 he served the Tenant with a supplementary evidence package by priority post courier. The Tenant said she refused service of these documents because they were not served within the time limits required under the Rules to the Act.

RTB Rule of Procedure 3.5(a) says that any evidence not filed by the applicant at the time of filing their application for dispute resolution must be served *at least 5 days* before the dispute resolution proceeding. The definition of "day" under the Rules states that when calculating the time for service, the first and last days must be excluded and only when served on the Residential Tenancy Branch are weekends not included in the calculation of time. *RTB Rule of Procedure 11.5 says that the Dispute Resolution Officer may accept late evidence if it is relevant and does not prejudice the respondent*.

There was no evidence as to when the Tenant refused to accept service of the Landlord's supplementary documents. However, even if the documents were served late as the tenancy claimed, I find that this evidence assisted the Tenant more than it prejudiced her. In particular, the Landlord's photographs of the yard, financial ledger showing rent payments and incomplete condition inspection report corroborated much of the Tenant's oral evidence. As she did not provide this evidence herself, I conclude that the Tenant has not been prejudiced by the late service of the Landlord's supplementary evidence package which I also find is relevant and as a result, it is admitted into evidence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?

Background and Evidence

This tenancy started on February 1, 2009 and ended on April 1, 2011 when the Tenant moved out. Rent was $990.00 at the beginning of the tenancy but increased to $1,020.00 effective February 1, 2010. Rent was due in advance on the 1st day of each month. In previous proceedings heard on November 14, 2011, the Landlord was ordered to return the Tenant's security deposit and pet damage deposit.

The Parties agree that the Tenant's rent cheque for April 2010 in the amount of $1,020.00 was returned for insufficient funds. The Landlord said the Tenant made 2 payments of $200.00 each in June and December 2010 but that $620.00 remains unpaid. The Tenant said she made a $300.00 payment in December 2010 and a further $100.00 payment in February 2011 so that only $420.00 remains unpaid.

The Landlord said he believed a condition inspection report was completed by an agent at the beginning of the tenancy but he could not locate one. The Landlord claimed however that the rental unit was new at the beginning of the tenancy and had no condition issues. The Tenant said a condition inspection report was not completed at the beginning of the tenancy or at the end of the tenancy. The Tenant said the Landlord did not offer her an opportunity to do a move out inspection so she took photographs of the rental unit on March 31, 2011 and also obtained witness statements that day. The Landlord submitted a copy of a condition inspection report that he said was completed on April 1, 2011 without the Tenant. Handwritten notes on the document state on the first page, "incomplete as owner was there...not cleaned....carpets as per Erica." Notes on the 3rd page state, "no time for walk out inspection...owner took keys April 1st and took over unit from here on." The Landlord also relied on photographs of the rental property that he said he took on April 1, 2011.

The Landlord said at the end of the tenancy, a carpet in a second bedroom had a yellowish-brown stain which he believed to be cat urine. The Landlord said the stain and a slight urine odour remained even though the Tenant had recently cleaned the carpet. The Landlord said an edge of the same carpet by the door had been shredded likely by the Tenant's cat. The Landlord claimed that the carpet could have been salvaged by re-stretching however he claimed he was advised by a professional carpet cleaner that the stain could not be removed with further cleaning. Consequently, the Landlord said he incurred expenses of $695.83 to replace the carpet with one of a similar quality (and he admitted $40.00 of this amount was to re-stretch a carpet in another room). The Tenant denied that there was a stain on the carpet at the end of the tenancy and argued that the carpet was frayed at the edges because it had not been properly stretched and secured by transitions at the beginning of the tenancy.

The Landlord claimed that the Tenant's cat had also scratched the same area of adjacent door frame and baseboards. The Landlord said there was also a puncture in a bi-fold closet door and damages to the walls in the hallway. The Tenant denied that there were any scratches on the bedroom door frame or baseboards. The Tenant

claimed that she asked the Landlord's agent repeatedly at the beginning of the tenancy to hang the closet door properly because it kept falling off but no one fixed it and on one occasion, the door fell and sustained a puncture hole. The Tenant also denied that there was any damage to the walls in the hallway.

The Landlord also claimed that the Tenant left spatters of paint in a large area of the garage floor and that he incurred expenses of $120.00 to have it chemically removed. The Tenant admitted that she was responsible for the paint spatters but argued that the amount claimed by the Landlord was unreasonable given that it was only a small area and that it would have taken less time to clean it than suggested by the Landlord.

The Landlord further claimed that under the terms of the tenancy agreement the Tenant was responsible for maintaining the yard and garden beds but that she had not done so and as a result, he incurred expenses of $320.00 to restore them to the condition they were at the beginning of the tenancy. The Tenant argued that she was not responsible under the tenancy agreement for maintaining the garden beds but only for mowing the lawn and that it did not need mowing at the end of the tenancy. Neither party provided a copy of the tenancy agreement as evidence at the hearing.

Analysis

1. Unpaid Rent: The copy of the financial ledger provided by the Landlord as evidence at the hearing shows that the Tenant made the following partial rent payments for April 2010:

- $200.00 in June 2010;
- $200.00 in December 2010;
- $100.00 in each of January, February and March 2011;

Consequently, I find that the Landlord is entitled to recover rent arrears for June 2010 of **$320.00.**

2. Repair Expenses: 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."

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. The purpose of having both parties participate in an inspection and complete the inspection reports is so that there is reliable evidence as to what damages were caused by the Tenant during

the 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.

I find that the condition inspection report completed by the Landlord's agent on April 1, 2011 is of no evidentiary value. There are comments written in the section of the report for the move in inspection, however I accept the Tenant's evidence and conclude that a move in inspection report was never completed and that the comments on it refer to the condition of the rental unit at the end of the tenancy instead. However, it is also apparent from the hand-written notes on the document that the report was not completed. Consequently, I find that the only evidence of the condition of the rental unit at the beginning of the tenancy is the Landlord's evidence that the rental unit and carpets were new. Similarly, I find that the only reliable evidence of the condition of the rental unit at the end of the tenancy is the Parties' photographs.

Bedroom Carpet: The Landlord claimed that the carpet in the 2nd bedroom could not be salvaged because it had a pet urine stain. The Tenant denied that there was a stain. However, the Landlord provided a photograph he said he took of the carpet on April 1, 2011 that shows a very faint outline. The Landlord claimed that he was advised by a professional carpet cleaner that this mark could not be removed with further cleaning. However the Landlord provided no corroborating evidence of this and given the faintness of the stain in question, I find it unlikely that the mark could not have been removed with further cleaning. I also find it unlikely that the Landlord had a carpet cleaner view the carpet as he claimed given that his photographs were taken on April 1, 2011 and the receipt for the carpet shows that it was purchased at 3:45 p.m. on the same date. Consequently, even if the Tenant was responsible for the stain on the carpet, I find that there is little evidence that that carpet could not be salvaged and had to be replaced and for this reason, the Landlord's monetary claim for $695.00 to replace the carpet is dismissed without leave to reapply.

Repairs to trim, baseboards and walls: The Landlord said that the Tenant's cat clawed at the edges of the carpet in the 2nd bedroom and scratched the adjacent door frame and baseboards. The Tenant denied that there were any scratches to the door frame or baseboards and claimed that the carpet was frayed because it had not been properly secured under a transition. Although the Landlord claimed that deep scratches could be seen in the Tenant's photographs, I find instead that the marks in question appear more like wear marks from opening and closing the door rather than scratches from nails. Consequently, I find that there is insufficient evidence to conclude that there were damages to the door frame and baseboards. Furthermore, the Landlord provided no evidence of the alleged damages to the hallway walls. As a result, this part of the Landlord's claim is dismissed without leave to reapply.

Replacement Closet Door: The Parties agree that a bi-fold closet door was punctured during the tenancy. The Tenant claimed however, that the damage occurred when the door fell because the Landlord failed to hang it properly. I find it unlikely that there would have been enough force from the closet door falling onto "something" to cause the damage to the door. I find it more likely that the puncture occurred as a result of

something banging into it with much greater force. Consequently, I conclude that the damage to the door was caused by an act or neglect of the Tenant rather than reasonable wear and tear and I award the Landlord $80.00 for labour and $54.99 for the door (plus HST of $6.60) for a total of **$141.59**.

Repair to the Garage Floor: The Parties also agree that the Tenant splattered red and blue paint on the garage floor. The Landlord said he incurred expenses of $120.00 to have the paint chemically removed. The Tenant argued that this amount was excessive given the small area in question. The full extent of the paint spatters cannot be made out in any of the photographs. However, the Landlord has provided an invoice showing that it took 3 hours to remove the paint and in the absence of any corroborating evidence from the Tenant that it should have taken less time, I award the Landlord the amount he has claimed of **$120.00**.

Yard Work: The Landlord claimed that the Tenant failed to maintain the yard and gardens during the tenancy as she was required to do under the tenancy agreement. The Tenant claimed that she was only responsible under the tenancy agreement for mowing the law. In the absence of a copy of the tenancy agreement, I find that there is insufficient evidence as to what yard work, if any, the Tenant was required to perform and as a result, this part of the Landlord's claim is dismissed without leave to reapply.

Filing Fee: The Landlord did not make a claim on his application to recover the filing fee for this proceeding. In any event, I find that this would not be an appropriate case to order that the Tenant bear the cost of the filing fee for this proceding given that the Landlord has established a total monetary claim for only 25% of the amount he sought on his application.

Conclusion

A Monetary Order in the amount of **$581.59** 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: January 23, 2012.

Residential Tenancy Branch