



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a loss of rental income, for cleaning, repair and advertising 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 admitted that he mailed his evidence package to the Landlord on the same day as the hearing with the result that the Landlord had not received them. In the circumstances I find that the Landlord has not been served with the Tenant's evidence package and as a result, it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income?
2. Is the Landlord entitled to compensation for cleaning and repair expenses?
3. Is the Landlord entitled to compensation for advertising expenses?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

The parties agree that the Tenant took possession of the rental unit at approximate 7:00 p.m. on December 1, 2011 and 2 hours later advised the Landlord that the rental unit was not in an acceptable condition and that he would be moving out. On December 2, 2011, the Tenant gave the Landlord written notice that he was ending the tenancy. There is no written tenancy agreement although the Landlord claimed that it was supposed to be a 6 month fixed term tenancy. The Tenant paid rent of \$840.00 for December 2011 rent and a security deposit of \$420.00.

The Parties also agree that the Tenant viewed the rental unit a couple of times before he agreed to rent it. The Tenant claimed that there were furnishings in the unit on those occasions so he did not have a good opportunity to view such things as the carpet. The Landlord claimed that the unit was unoccupied on at least one of the occasions that the Tenant viewed it. In any event, the Tenant claimed that he arrived at the rental property with all of his belongings and discovered that the carpeting was extremely

soiled and torn. The Tenant said he also found cockroaches (both dead and alive) as well as leaking water pooled under the kitchen sink. The Tenant also claimed that there was sawdust and nails lying on the kitchen floor, handprints on the walls and that a countertop had not been secured to the cabinet. The Tenant admitted that the Landlord offered to replace the carpeting and also offered him the use of an unoccupied suite (one of two) for 5 – 7 days until the carpeting could be replaced. The Tenant said he advised the Landlord that he would not be moving into the rental property under any terms because he believed the rental unit was unsanitary and detrimental to his health and he said he believed the whole rental property likely had cockroaches.

The Landlord said the Tenant advised him that he had seen cockroaches and bedbugs in the rental unit. The Landlord admitted that the property was regularly inspected for bedbugs and that cockroaches had been reported in another suite on the same floor a few months prior but argued that when he viewed the rental unit after the Tenant left, he found no cockroaches or bedbugs. The Landlord said he also had an exterminator inspect the rental unit on December 6, 2011 and he found no evidence of bedbugs or cockroaches. The Landlord's exterminator gave evidence at the hearing that he did not inspect the rental unit for cockroaches and could not recall seeing any cockroaches but left bait for them as a preventative measure because they had been reported previously in the rental property. The Landlord's maintenance person also gave evidence that he had spent some time in the rental unit over a 5 day period painting, and installing flooring and a countertop and during that time he did not see any cockroaches.

The Landlord said he incurred advertising expenses to re-rent the rental unit and lost rental income for January 2012. The Landlord also sought to recover the cost of cleaning the carpets before the Tenant moved in, the cost to install new carpets after the Tenant moved out and the cost of the exterminator.

Analysis

Section 32 of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that make it suitable for occupation by a tenant. The Tenant's photographic evidence was excluded (because it was not served on the Landlord) and he did not pre-arrange to have a witness available to attend the hearing to give evidence. Consequently, the Tenant did not provide any evidence to corroborate his allegation that the rental unit was unsanitary or unfit for occupation.

In the absence of a tenancy agreement, I find that there is insufficient evidence to conclude that this was a fixed term tenancy as the Landlord claimed and therefore, I find that it was a periodic or month-to-month tenancy. Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing that they will be ending 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, is s. 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 gave the Landlord written notice on December 2, 2011 that he had vacated the rental unit and provided the Landlord with his forwarding address. However, the Tenant did not give the Landlord written notice that he was in breach of a material term of the tenancy agreement nor did he give the Landlord an opportunity to rectify the alleged breaches. As a result, I find that the Tenant was required to give one month's written notice as required by the Act and the earliest his Notice December 2, 2011 could have taken effect would have been January 31, 2012. However, s. 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.

The Landlord said in order to re-rent the rental unit he had to advertise it in a local newspaper and incurred expenses of \$790.72. The Landlord also claimed that the rental unit could not be re-rented until February 1, 2012. However, the Landlord provided no corroborating evidence that he entered into a new tenancy for February 1, 2012 (although he claimed it was his practice to enter into a tenancy agreement on the date of possession). Consequently, I find that there is insufficient evidence to conclude that the Landlord lost rental income for January 2012. Furthermore, the advertising invoices provided by the Landlord show that the start date of the advertising was November 29, 2011 which preceded the tenancy and that the cost of advertising was for 3 separate rental units. Consequently, I find that the Landlord is not entitled to be reimbursed for the 1st advertising billing and in the absence of any corroborating evidence that the rental unit was not re-rented until February 2012, I find that there is insufficient evidence to award the Landlord compensation for the 2nd advertising invoice.

I also find that there is no basis upon which to compensate the Landlord for his expenses for carpet cleaning prior to the tenancy and for carpet replacement after the tenancy ended. The Landlord had an obligation under the Act to provide clean carpets at the beginning of the tenancy and given that he was advised by the Tenant in writing on December 2, 2011 that he had moved out, I conclude that the Landlord voluntarily removed the damaged and soiled carpeting rather than relying on any representation by the Tenant that he would stay if they were replaced. Furthermore, it is not clear from the Landlord's invoice for carpeting when it was purchased. Consequently, I find that there is insufficient evidence that the Landlord incurred these expenses as a result of a breach of the Act by the Tenant. For similar reasons, I find that there is no basis to compensate the Landlord for exterminator expenses. If the Tenant never occupied the rental unit and there were no pests as the Landlord claimed, then it was not due to an act of the Tenant that an exterminator was required but rather one was engaged at the Landlord's discretion.

As the Landlord has been unsuccessful on his claim, I order pursuant to s. 38(1) of the Act that he return the Tenant's security deposit of \$420.00 to him forthwith.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply. A Monetary Order in the amount of **\$420.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: February 27, 2012.

Residential Tenancy Branch