Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for a loss of rental income, for cleaning and repair expenses, for advertising expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on December 1, 2011 and was to expire on May 31, 2012 however it ended on February 5, 2012 when the Tenant removed the last of her furnishings and returned the keys to the Landlords. Rent was $700.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $350.00 and a pet deposit of $175.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report on December 1, 2012 and a move out condition inspection report on February 5, 2012. The Parties agree that the Tenant's puppy chewed some drywall in the hallway which had to be repaired by the Landlords and therefore the Tenant did not dispute the Landlords' claim for drywall repair expenses of $28.66.

The Landlords said the carpet in the rental unit was cleaned at the beginning of the tenancy and had to be cleaned again at the end of the tenancy because the Tenant's puppy had urinated on it and it had an odour and also because it was their practice to provide clean the carpets to each tenant at the beginning of their tenancy. The Tenant disputed this part of the Landlords' claim and argued that the puppy was never allowed on the carpeted area however she admitted that on one occasion, it urinated a small amount which she said she cleaned up immediately.

The Parties agree that on January 4, 2012, the Tenant called the Landlord, R.G., and advised him that her employment had ended and that as a result, she would have to end her tenancy early. R.G. said he was at work at the time so he advised the Tenant that he would speak to his spouse later that day and then decide what they would do. The Tenant said she spoke to the other Landlord, K.R., when she got home from work and advised her about her employment ending. The Tenant said K.R. was sympathetic to her situation and said it would be fine if she moved out and that she would speak to R.G. about how much of the security deposit they would return to the Tenant. The Tenant said she believed from this conversation that K.R. gave her permission to end the tenancy early (which R.G. denied).

The Landlord R.G. said when he returned home from work late on January 4, 2012, he spoke to K.R. and then sent an e-mail to the Tenant which stated (in part) as follows:

> "We are in no way obligated to credit you any portion of this month's rent (January 2012), and based on the rental agreement that you signed in Dec. 2011, you are fully responsible to pay us rent up until the end of that agreement, May 31st, 2012 regardless of whether or not you are staying here..... [K.R.] and I have had a chance to discuss this matter and at this time we are not giving any form of consent, written or verbal, to nullify our current rental agreement."

The Tenant also argued that during the move out inspection, R.G. agreed that he would deduct from the security deposit an amount for one week's rent for February 2012 and estimated repair expenses for the drywall. Consequently, the Tenant said she wrote on the condition inspection report,

> "Landlord agrees a payment of $325.00 to tenant if there is no damage to the carpet. Landlord agrees to pay Tenant's father....."

The Tenant's witness gave evidence that he was present during the move out inspection and also assumed that since the Landlords were willing to return part of the security deposit that they were agreeing that the Tenant could end the tenancy early. The Landlords said the condition inspection report said nothing about a deduction from the security deposit for rent and that the estimated deduction was for carpet cleaning and repairs as specified in that document. The Landlords argued that they were up front with the Tenant at all times about their intention to hold her responsible for the unexpired term of the lease if they could not re-rent the rental unit.

The Landlords said they started advertising the rental unit in two online publications as of January 4, 2012, however when they did not get the responses they anticipated, they began advertising at the end of January 2012 in local newspapers. The Landlords said they were able to re-rent the rental unit for April 1, 2012 but incurred advertising expenses of $103.21. The Tenant argued that the Landlords provided no evidence that

they had advertised in online publications in January and February as they claimed and that they may have incurred expenses for newspaper advertisements needlessly.

Analysis

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 or she incurs as a result. Section 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.

Although the Tenant argued that she believed the Landlords agreed that she could end the tenancy early, I find that there is little evidence of it. In particular, I give little weight to the Tenant's claim that one of the Landlords (K.R.) told her she could end the tenancy early. Firstly, this is hearsay evidence and unreliable. Secondly, even if K.R. did say that it was okay if the Tenant moved out, this is not the same as saying the Tenant would not be responsible for any loss of rental income if she did move out. Furthermore, I find that the Landlords made it eminently clear to the Tenant in their e-mail of January 4, 2012 that they did not agree to the Tenant ending the tenancy early and would be holding her responsible for any loss of rental income they incurred.

For similar reasons, I find that there is little merit to the Tenant's argument that the Landlord's agreement to return part of the security deposit meant that the Landlords agreed she would not be responsible for a loss of rental income. There is nothing in the condition inspection report that says a portion of rent for February 2012 would be deducted from the security deposit but instead it specifically identifies carpet cleaning and wall repairs. I also accept the explanation of R.G. that he was unsure at the time if he was allowed to deduct any amounts for rent from the security deposit or to deal with any rent issues on the condition inspection report. Furthermore, the evidence of both the Tenant and her witness were that they *assumed* the Landlords were agreeing to end the tenancy because they were willing to return part of the security deposit and that the Landlords never actually said this.

I also find that the Landlords have provided sufficient evidence that they attempted to mitigate their damages by re-renting the rental unit as soon as the Tenant gave them verbal notice she would be moving out at the end of January 2012. I accept the Landlords' evidence that they could not print out the postings of their online advertisements in January because they did not have a printer. Furthermore, I find that the Landlords did not have to limit themselves to free, online publications and acted reasonably by also advertising in local newspapers. For all of these reasons, I find that the Landlords are entitled to recover a loss of rental income for February and March 2012 in the total amount of **$1,400.00** as well as advertising expenses of **$103.21.**

The Tenant did not dispute the Landlords' claim for drywall repair expenses of **$28.66** and therefore I award them that amount. However, the Tenant claimed that she should not be responsible for carpet cleaning expenses. RTB Policy Guideline #1 at p. 2 says as follows:

> "a tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of the tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises."

The Tenant claimed that her puppy was in its crate at night and confined to a tiled hallway area during the day. In essence the Tenant argued that the puppy was never permitted on carpeted areas, however she admitted that on one occasion, the puppy urinated on the carpet. In the circumstances, I cannot conclude that the Tenant's pet was always confined to non-carpeted areas as the Tenant claimed and therefore I find that the Landlords are entitled to recover carpet cleaning expenses of **$79.29**.

The Landlords also sought to recover registered mail expenses, however aside from the filing fee, the Act makes no provision for a party to recover expenses related to bringing and participating in dispute resolution proceedings. Consequently, this part of the Landlords' claim is dismissed without leave to reapply. As the Landlords have been successful in this matter, I also find that they are entitled to recover from the Tenant the **$50.00** filing fee for this proceeding.

In summary, I find that the Landlords are entitled to a total monetary award of $1,661.16 I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of $350.00 and pet deposit of $175.00 in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of $1,136.16.

Conclusion

The Landlords' application is granted. A Monetary Order in the amount of **$1,136.16** has been issued to the Landlords 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: April 24, 2012.

Residential Tenancy Branch