



REVIEW HEARING

DECISION

Dispute Codes

MNDC, MNSD, OPC, FF

Introduction

This hearing was scheduled in response to a successful application for review filed by the tenant who sought a new hearing on the ground they were unable to attend the hearing held in August 2013. The original hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the Act) seeking a monetary order for loss of rental revenue, to retain the tenants' security deposit in partial satisfaction of the claim, an order of possession for cause, and to recover the filing fee.

Both parties attended this hearing and were given opportunity to present all relevant evidence and testimony in respect to the claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The parties were also provided opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged having each received all of the evidence of the other as provided to this hearing. The parties were advised I am not bound by the findings of a previous Decision in this matter.

It must be noted that an order of possession is no longer required as the tenant vacated on June 30, 2013 in accordance with the effective date of the landlord's Notice to End for Cause. The landlord orally amended their application clarifying that this hearing was proceeding solely on the merits of their application for compensation for loss of rent revenue for the first half of July 2013. Effectively, all other claims by the landlord other than aforementioned are therefore preliminarily dismissed, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began February 2, 2011, and ended on June 30, 2013. The monthly payable rent was \$1200.00. At the outset of the tenancy the landlord collected a security deposit of \$600 which they retain in trust. At the outset of the tenancy the parties did not conduct a move in inspection. At the end of the tenancy the parties did not conduct a mutual move out inspection, although the landlord completed a condition inspection report in the absence of the tenant.

The landlord claims that at the end of the tenancy the tenants left the rental unit unclean and damaged by their large dog - preventing the landlord from immediately re-renting the rental unit July 1, 2013. In particular the landlord claims the tenant damaged the carpeting and walls of the unit.

The landlord's relevant document evidence includes a series of photographs of the rental unit at the end of the tenancy, email correspondence between the parties and invoices for carpet replacement. In addition, the landlord provided evidence they entered into a new tenancy agreement on July 14, 2013, following on-line advertising efforts.

The tenant disputes the landlord's claim – providing evidence which they purport is in support they left the rental unit reasonably clean and that any claimed deficiencies by the landlord were the result of normal wear and tear, aided in part, by what the tenant describes as *poor quality carpeting*. None the less, the tenant provided document evidence that the carpeting experienced some additional *wear down* from the tenant's steam-cleaning efforts 2 years earlier when removing spilled oil on the carpet. The tenant provided a series of photographs taken at the end of the tenancy which they claim proves they left the unit reasonably clean.

The tenant also disputes the landlord's claim the rental unit was not occupied until July 14, 2013. The tenant claims they saw a motor vehicle outside the rental unit resembling that of the current occupant the first week of July 2013 and the current occupant standing near the front door of the unit – which the tenant purports *proves* the current occupant moved into the rental unit prior to July 14, 2013. The tenant testified they did not see the occupant moving items or belongings into the unit. The tenant claims that they had 2 witnesses that could attest to the same information, but that neither they nor their witnesses could testify to any more than to the tenant's observations. The tenant was informed their observations and equally those of their witnesses would be insufficient to prove a new tenant *moved into the unit* in the first week of July 2013.

Analysis

The parties have provided an abundance of evidence not all relevant to the issues before this hearing. On preponderance of the relevant evidence in this matter, and on a balance of probabilities, I find as follows:

In this matter the burden of proving claims of damage and loss rests on the claimant landlord who must establish, on a balance of probabilities, that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss? Section 7 of the Act states the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy **each component** of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred *solely* because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

In the absence of a *move in* inspection and requisite report I find that the landlord is unable to accurately compare the condition of the rental unit at the end of the tenancy with its condition at the outset – primarily in respect to the overall condition of the carpet. However, the landlord does not seek compensation for replacement of the carpets – only seeking to highlight that damage and overall un-cleanliness of the unit likely prevented them from re-renting the unit immediately after regaining legal possession of the unit for July 01, 2013. I find I prefer the landlord's photographic evidence over that of the tenant's photographic evidence. I find the landlord's photographs portray closer depictions of the unit and more clearly show the conditions of the unit at the end of the tenancy, including stained carpeting, scratched and otherwise damaged walls, and unclean stove. It must be noted that the tenant did not

argue that the unit was in its current condition at the outset of the tenancy and I find that the current conditions represent damage versus wear and tear. I accept, on the evidence and on balance of probabilities, that the tenant left the rental unit damaged, unclean, and unavailable for immediate re-renting; and, that the landlord could only deal with the deficiencies upon acquiring legal possession of the unit. As a result of all the above, I find the landlord lost revenue for the beginning of July 2013 solely attributable to the tenant's conduct during the tenancy in violation of the Act or the agreement. Effectively, I find the landlord has proven that solely the tenant's actions or neglect resulted in the unavailability of the rental unit to generate revenue from the beginning of July 2013, and from the evidence it is reasonable that the unit was un-rentable until after the remediation efforts of the landlord. I find it reasonable the unit was un-rentable for the first half of July 2013. On the evidence and on balance of probabilities I find the landlord has met the above test for loss and as a result I grant the landlord **\$600.00** for loss.

Conclusion

The landlord's application is allowed. I confirm the previous Decision and Order are null and of no effect.

As the landlord still holds the security deposit, **I Order** that the landlord may retain the tenant's deposit in the amount of \$600.00 in full and final satisfaction of the monetary award.

This Decision is final and binding on both parties.

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 21, 2013

Residential Tenancy Branch