Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for damages to the rental unit, for compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

At the beginning of the hearing, the Tenant sought an adjournment on the grounds that she needed more time to file a response to the Landlord's application and that one of her witnesses was not available. The Tenant also claimed that she was not well but did not provide a doctor's note as she was advised by an information office yesterday when she asked to adjourned the matter that she should not provide one.

I denied the Tenant's application on the grounds that she had had sufficient time to prepare a response to the Landlord's evidence. In particular, I note that the Landlord served the Tenant with a copy of the Application, Notice of Hearing and evidence package in this matter by registered mail to her forwarding address on November 19, 2008. The Tenant did not pick up the package and as a result, the Landlord also had an agent personally serve the Tenant with the hearing package at her residence on December 22, 2008. The Tenant admitted that she could have obtained the assistance of an agent or advocate if she felt she needed help but had not done so and could have obtained a written witness statement if a witness was unavailable on the hearing date. The Tenant also admitted that much of the evidence was the same as had been provided to her by the Landlord for a previous hearing on November 13, 2008.

Issue(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on started May 1, 2008. The Landlord served the Tenant on October 8, 2008 with a One Month Notice to End Tenancy for Cause alleging

she had caused extraordinary damage to the rental unit. In proceedings between these parties in file #718126, the Landlord was granted an Order of Possession to take effect on November 16, 2008 (by agreement of the Parties). The Tenant moved out on November 16, 2008.

Unpaid Rent/Loss of Rental Income:

The Parties agree that the Tenant did not pay rent for November, 2008. The Landlord said that due to the need to do repairs (which took approximately one week), the unit could not be re-rented until December 1, 2008. The Tenant said that in the previous hearing she was told by the Dispute Resolution Officer that the Landlord could use the security deposit for one-half of the month's rent. Consequently, she said she believed the security deposit was to be kept in full satisfaction of rent for the period November 1-16, 2008 and disputed that rent was owed for November, 2008.

Damages:

The Parties signed a move in condition inspection report on May 3, 2008. No particulars are noted on the report as the Landlord claimed that the rental unit had been newly renovated and everything was in good condition. The Tenant claimed that she had never rented before and did not notice some deficiencies (such as holes in the closets) until a few months later. The Tenant argues that the Landlord is now trying to recover the cost of the pre-existing damages from her (for which she should not be responsible).

The Tenant claimed that she has recently been diagnosed as bipolar and that she probably had some manic episodes during the tenancy. The Tenant admitted that she was responsible for some of the damages such as 3 holes in the kitchen wall. The Landlord claimed that on a number of occasions during the tenancy, the Tenant contacted him complaining of a bug infestation and that he investigated but could not find anything. The Landlord said he found the damages to the rental unit on October 7, 2008 when he went to pick up the Tenant's rent. He said that at the time, the Tenant admitted to causing all of the damages and said she would pay for it. The Landlord had his maintenance person go through the rental unit with the Tenant the following day for the purpose of writing up an estimate to repair the damages.

The Landlord's maintenance person provided the Landlord with a copy of the estimate. The Tenant disputes the accuracy of that estimate as she claims that further damages alleged on it were made to the rental unit when she was away one day (such as scratches on doors) and a hole was enlarged in the kitchen.

The Landlord did not do a move out condition inspection with the Tenant. He claimed that one was scheduled with the Tenant for 2:00 pm on November 16, 2008 but that the

Tenant had already left and she would not return his calls thereafter. The Landlord said he did not complete a move out condition inspection report because the condition of the rental unit at the end of the tenancy was as it described in the maintenance person's estimate from his review of the property with the Tenant on October 8, 2008. The Tenant denied that a condition inspection was scheduled on November 16th and said that the Landlord told her just to leave her keys on the counter.

Analysis

Section 21 of the Regulations to the Act states as follows:

> "In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that there is insufficient evidence of pre-existing damages to the rental unit at the beginning of the tenancy as alleged by the Tenant. Consequently, given that the Tenant agreed with the move in condition inspection report (that there were no issues), I find that the damages complained of by the Landlord did not exist at the beginning of the tenancy but occurred during the tenancy.

Section 32 of the Act states that a Tenant must repair damage that is caused by the actions or neglect of a tenant but a tenant is not responsible for reasonable wear and tear. RTB Guideline #1 – Responsibility for Residential Premises, defines reasonable wear and tear (at p. 1) as "the natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Tenant argued that the kitchen cabinet doors, hall doors and baseboards were all old and worn and that the holes in the hall doors were from naturally occurring knot holes in the wood. The Tenant also argued that the tiles in the kitchen were not scratched but that the wax finish was simply worn. The Tenant said she brought this to the Landlord's attention in June, 2008. The Landlord denied this.

The Landlord provided copies of photographs of the damages to the rental unit he said were taken on October7, 2008 with the Tenant present. The Landlord argued that the damages were the result of the Tenant taking a sharp object and trying to pry away the baseboards at the corners as well as in between the laminate tiles in the kitchen and ceramic tiles in the bathroom. I find that many of the damages the Tenant refers to as "scratches" are more accurately described as gouges made from some sharp object. Consequently, I find that the damages alleged by the Landlord are not the result of reasonable wear and tear.

The Landlord also provided copies of receipts for the labor and supplies to complete the repairs. The Tenant argued that some of these expenses were unreasonable. In particular, she claimed that the amount spent on paint and painting supplies was excessive given that only the kitchen and two bedrooms needed to be painted. She also claimed that the number of ceramic tiles the Landlord purchased was excessive and suggested that the Landlord could have used some of those for other rental units he owned. The Tenant also argued that the carpet cleaning expense was unreasonable given that it did not need cleaning and that the invoice was dated prior to the end of the tenancy and for another address. I note, however that the correct rental unit address is written on that invoice and that the Landlord claims in his written list of expenses that it was pre-paid.

Notwithstanding the Tenant's argument that the living room did not need to be painted, I find there is evidence of damage in that room such that it would have to be re-painted. I accept the Landlord's evidence that the entire rental unit required painting. Notwithstanding the Landlord's claim that carpet cleaning was done and that further damages were discovered as a result of it, in the absence of a condition inspection report or an actual date of service on the invoice, I find there is insufficient evidence of the Landlord incurring a carpet cleaning expense for the rental unit after the tenancy ended and that part of his claim (ie. for $105.00) is dismissed.

Other than a comment in the repair estimate that vertical blinds in the kitchen were bent, I find no other evidence in support of the Landlord's claim that replacement blinds in the amount of $24.16 were necessary and that part of his claim is dismissed. I also find that the charge for the ceramic tile is unreasonable. The relevant invoice indicates that 468 tiles were purchased. The Landlord's evidence was that only 5 or 6 ceramic tiles were broken in the bathroom and had to be replaced. Consequently, that part of the Landlord's claim (for $256.84) is also dismissed. The Landlord claimed that although only some of the kitchen floor tiles were damaged, the whole kitchen and hallway floor had to be replaced because the tiles could not be matched. However, the Landlord also claimed that the same tiles were new at the beginning of the tenancy (approximately 7 months earlier). I find there is insufficient evidence that the entire floor had to be replaced as alleged and that the Tenant should be responsible the entire cost of the laminate tiles purchased. As a result, I award the Landlord one-half of that cost (or $170.10). I find that the Landlord has established a claim for the balance of the repair expenses in the amount of **$1,370.98** for supplies and **$1,725.00** for labor.

Unpaid Rent / Loss of Rental Income:

In the previous proceedings, the Dispute Resolution Officer issued only an Order of Possession; no order was made with respect to the payment of rent and no application was before her for that relief. The Landlord denied that he agreed to use the Tenant's security deposit in satisfaction of November 2008 rent.

I find that the Tenant has not paid rent for the period November 1 -16, 2008 and that the Landlord has suffered a loss of rental income for the period November 17- 30 during which time repairs were made a new Tenant found. Consequently, I find that the Tenant is liable for unpaid rent and a loss of rental income for November, 2008 in the total amount of **$875.00**.

Other Expenses:

I find that photographs provided by the Landlord were necessary and helpful in establishing the damages in question. The Landlord provided a receipt in support of that expense and as a result, I find he is entitled to recover **$63.20** for the photographs**.** As the Landlord has been successful in this matter, I also find that he is entitled to recover his **$50.00** filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenant's security deposit plus accrued interest of $4.39 in partial payment of the rent arrears. The Landlord will be entitled to a monetary order for the balance owing as follows:

	November rent/loss of rent:	$875.00
	Repair costs – supplies:	$1,370.98
	Repair costs – labor:	$1,725.00
	Photographs:	$63.20
	Filing fee:	$50.00
	Subtotal:	$4,083.20
Less:	Security deposit:	($437.50)
	Accrued interest:	($4.39)
	Balance Owing:	$3,641.31

Conclusion

A Monetary Order in the amount of **$3,641.31** 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.