

DECISION

Dispute Codes:

MND, MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for damages and unpaid rent; and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided prior to the Hearing. All parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

Landlord's testimony:

- The Tenants caused damage to the rental unit and did not remove all of their garbage upon vacating the suite at the end of the tenancy. The Landlord estimates the cost of repairs to be \$650.00, for the following: missing screws on door handles; repairing heater; repairing glass shower door; replacing 7 damaged floor tiles; replacing kitchen hood fan; and replacing missing vegetable trays in fridge. The Landlord provided photographs of the rental unit, taken at the time the Tenants moved out, in support of their claim. The Landlord provided a copy of the written estimate for repairs in evidence.
- There was no move-in or move-out inspection completed. The Landlord testified that the Tenants refused to attend at the move-out inspection.
- The Landlord is also applying for the cost of rekeying the locks to the rental unit, in the amount of \$34.90.
- Monthly rent was \$1,100.00, due on the first day of each month. The Tenants gave verbal notice on April 1, 2009, that they were moving out on April 30, 2009. The Tenants did not move out until May 1, 2009. The Landlord had to

make repairs and clean the rental unit before it could be re-rented on May 8, 2009. Therefore, the Landlord is applying for loss of rent in the amount of \$600.00.

- The Landlord's total monetary claim is \$1,284.90.

Tenants' testimony:

- The Tenants stated that the Landlord has doubled the original amount of the estimates of repairs, after an Order made awarding the Tenants double the amount of the security deposit.
- The Tenants testified that the damages for which the Landlord is seeking compensation are not the responsibilities of the Tenants. The Tenants testified that the stove fan did not work properly when the Tenants moved in, and that the Tenants asked the Landlord to fix it, but it was never done. The Tenants testified that they lived in the rental unit for a year and there was no maintenance done on the rental unit while the Tenants lived there. The Tenants stated that the tiles cracked because there were improperly laid over uneven surfaces, and that the doors were improperly hung. The Tenants denied taking any screws from the doors or removing any locks from the doors.
- The Tenants testified that they cleaned the rental unit before moving out and that the new tenant was formerly living in the rental unit beside the Tenants (and shared the same Landlord as the Tenants). The Tenants testified that the new tenant could have moved into the rental unit immediately upon the Tenants' moving out. The Tenants stated that the Landlord prevented the Tenants from moving out on May 31, 2009, by refusing to open the gate for the movers. Therefore, they were not able to complete the move until June 1, 2009.
- The Tenants testified that the estimate for repairs provided in evidence by the Landlord was in the Landlord's handwriting and that he was writing out the estimate on May 31, 2009, as the Tenants were moving out. The Tenants questioned, therefore, why there was a business card from a third party renovation company attached to the estimate.

Tenants' Witness's testimony:

- The Witness testified that he was present on the day the Tenants were moving out.
- The Witness testified that both Tenants were cleaning the rental unit while he was there. He testified that the Landlord did not say anything about any damages at the time the Tenants were moving out.
- The Witness testified that the broken tiles were laid over a raised platform in the kitchen and were broken because they were not laid properly.
- The Witness testified that he was taking photographs of the rental unit, and was asked to leave by the Landlord.

Analysis

The Landlord testified that he provided the Tenant with two opportunities to complete a move-out inspection, but the Tenants refused to do so. There was no move-in inspection done. There is disputed verbal testimony with respect to the damages for which the Landlord is seeking compensation.

In a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened 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; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the Applicant, that being the Landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the Respondent Tenants. Once that has been established, the Landlord must then provide evidence that can

verify the actual monetary amount of the loss or damage. Finally it must be proven that the Landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With respect to the Landlord's claim for damages to the range hood and tiles, the Tenants agreed that they were broken, however, they state that the range hood never worked properly and that the tiles were cracked due to being improperly laid. There was no move-in inspection done to support the Landlord's allegation that the Tenants broke the range hood. The photographs provided in evidence show cracked tiles, which appear to be the result of stress fractures because the tiles were laid on an uneven floor surface.

With respect to the Landlord's claim for damages to the doors, heater and missing vegetable trays and screws, there was no move-in inspection or move-out inspection done to indicate the state of repair of these items when the Tenants moved in, or when they moved out. The onus is on the Landlord to arrange for condition inspection reports. If the Tenants were given two opportunities to participate in an inspection, and decline to do so, then the Landlord must issue a Notice of Final Inspection Opportunity. No such Notice was issued to the Tenants. Following issuing the Notice, if the Tenants still do not attend, the Landlord may perform the inspection without the Tenants being present. The Landlord did not perform any written Condition Inspection Report in the Tenants' absence.

The Landlord's claim for damages to the rental unit is therefore unproven and dismissed without leave to reapply.

With respect to the Landlord's application to recover the costs of replacing the lock set, it was not clear from the Landlord's submissions and evidence whether he was making this application as a result of a damaged lock set, or if he was making this application because he had been asked by the new tenant to replace the lock set. If it was the former reason, there was no move-out inspection done to support his claim. If it was for the latter reason, Section 25 of the Act provides that the Landlord is responsible for these costs. Therefore, this portion of the Landlord's application is dismissed without leave to reapply.

Section 45 of the Act provides that the Tenants may end the tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. Section 52 of the Act provides that such notice must be in writing. In this case, the Tenants did not provide the Landlord with written notice, and in any event did not provide the Landlord with one full month's notice, in accordance with the provisions of Sections 45 and 52 of the Act. Therefore, with respect to the Landlord's application for partial loss of rent for the month of June, the Landlord provided evidence from his new tenants which state that they moved into the rental unit on May 8, 2009. Monthly rent was \$1,100.00. I award the Landlord a prorated amount for 8 days in May, in the amount of \$283.87 ($\$1,100.00 / 31 \times 8$).

The Landlord has been partially successful in his application and is entitled to recover the cost of the filing fee of \$50.00 from the Tenants.

Conclusion

I hereby grant the Landlord a Monetary Order against the Tenants in the amount of \$333.87. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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 6, 2010
