Decision

Dispute Codes: MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

It is understood that the subject unit (a small house) was originally built in the 1960s. The landlord testified that renovations had been undertaken during the period from 1991 to 1993, and that he purchased the unit in 1993. The landlord lived there for a period of time from 1993 to 1995. Thereafter, the unit was rented for approximately 5 years before the subject tenancy began on March 1, 2001.

There is no written tenancy agreement in evidence for the subject tenancy. What was a month-to-month tenancy spanned a period approaching 9 years until it ended on October 31, 2009. At the outset, monthly rent was $1,095.00, however, it appears to have been reduced by $295.00 to $800.00 effective from October 1, 2005. Documentary evidence includes a copy of a notice of rent increase showing an increase in rent from $800.00 to $829.00 effective September 1, 2008.

A security deposit of $550.00 was collected at the outset of tenancy, and its disposition was decided by way of a previous hearing and decision dated May 27, 2010.

Both parties participated in the completion of a move-in condition inspection and report on February 28, 2001. However, they present varying perspectives on the reasons why they did not participate together in the completion of a move-out condition inspection and report. In evidence is a copy of a move-out condition inspection report with notations that appear to have been made by the landlord, however, the report bears no signatures. Further, there is no evidence of the landlord having offered the tenant "at least 2 opportunities, as prescribed, for the inspection," pursuant to the requirement set

out in section 35 of the Act. However, the parties agree that they met together at the unit on November 7, 2010, but by then the landlord had already commenced significant remedial work in the unit.

The main thrust of the landlord's application is his claim to entitlement to compensation related to costs incurred for cleaning and repairs, and arising from the tenant's alleged failure to maintain the unit as agreed. Evidence submitted by the landlord includes, but is not limited to, e-mail exchanges, a description of repairs required, receipts and photographs.

The tenant takes the position that at the start of his own nearly 9 year tenancy, the unit already showed signs of 5 years' worth of wear and tear from the immediately previous tenancy. In short, the tenant argues that the landlord's costs are mainly the result of work required after several years of normal wear and tear.

Also in dispute is the level of oil in the tank at the beginning of tenancy. There does not appear to be any disagreement that the tank was empty at the end of tenancy.

Finally, the tenant acknowledged that he did not "give the landlord all the keys or other means of access that are in the possession or control of the tenant" at the end of tenancy, as required by section 37 of the Act.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ The attention of the parties is drawn to the following particular sections of the Act:

Section 32: **Landlord and tenant obligations to repair and maintain**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

Further to the above statutory provisions, also relevant to the circumstances of this dispute are guidelines for the Useful Life of Work Done or Thing Purchased, as set out in Residential Tenancy Policy Guideline # 37, "Rent Increases."

Based on the documentary evidence and testimony of the parties, my findings in relation to each aspect of the landlord's application are set out below. While I have turned my mind to all aspects of the information presented by both parties, not all details

of the arguments or submissions are reproduced here. I note that the parties are at odds in their perspectives on most aspects of the dispute. While a measure of this difference in views may be the result of recollections worn with the passage of time, it also reflects the lingering animosity between the parties.

$6,459.79: *damage to premises including material and labour*. Pertinent to this aspect of the claim is section 36 of the Act, which provides in part as follows:

> 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 35(2) *[2 opportunities for inspection]*,
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> (b) having complied with section 35(2), does not participate on either occasion, or
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> (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As earlier stated, there is insufficient evidence demonstrating that the landlord offered the tenant "at least 2 opportunities" for completion of the move-out condition inspection. Further, it appears that the unit was subjected to the normal wear and tear of a 5 year tenancy before the normal wear and tear of the nearly 9 year tenancy which is the subject of this dispute. Additionally, in 2005 when the landlord's property management agent and the tenant completed a walk-through of the unit, a range of deficiencies were identified; these are noted more fully below. In sum, I find there is insufficient evidence to support this aspect of the landlord's claim, and it is therefore hereby dismissed.

$532.55: *heating oil.* The tenant argues that the landlord made notations on the landlord's copy of the move-in condition inspection report concerning the amount of oil in the tank, after the report had been signed by both parties; further, the tenant states that these notations do not appear on his own copy of the report. Notwithstanding the difference in the way in which the two condition inspection reports read in this regard, I find on a balance of probabilities that the tank was not empty at the start of tenancy but that it was empty at the end of tenancy. Accordingly, I find that the landlord has established nominal entitlement limited to **$100.00***.

$200.00: *lock replacement*. While the tenant testified that he did not return the unit keys to the landlord at the end of tenancy, as required by the legislation, the landlord

was unable to provide a receipt for the cost claimed. Accordingly, I find that the landlord has established entitlement to the limited amount of **$100.00***, which is half the amount claimed.

$12,270.00: *repayment for unfulfilled contract*. During the hearing, the landlord acknowledged that calculation of the amount claimed may not be accurate. It is understood that the calculation is made on the basis of the mathematical difference between 2 amounts of monthly rent, multiplied over a period of 44 months. In any event, the gist of the landlord's claim is that the tenant failed to fulfill his end of the bargain by maintaining the unit in reasonable condition, in exchange for the reduced rent. The most relevant evidence in relation to the particular nature of the tenant's obligations is an e-mail to the landlord from the landlord's property management agent dated September 15, 2005. In part, this e-mail reads as follows:

> On the repairs, I assume you realize that the drywall ceiling will have to be replaced as well as the tiles. The tub will be caulked and the tiles will have to be grouted. Hopefully, the tenant can avoid replacing the drywall ceiling and walls by painting them with Kilz to seal off the mould and then oil painted. The tenant doesn't want to do any more than necessary either. He is aware that your plan is to return and do the major repairs next summer. An outside contractor coming in to do this work would charge a minimum of $25.00/hr (TPM charges $31.00/hr). The tenant is prepared to do this work with the help of his carpenter friend and in addition will pull out the carpet which is gross. There are hardwood floors which aren't in great shape but will do for now. He has asked that you pay for the hauling charge for the carpet and all the materials pulled out of the house which will be in excess of a couple of hundred dollars. Cannot give you an exact amount but it can go through your TPM account.
>
> The tenant [tenant's name] is offering $800./mo. Rent (reduced from $1095) for doing this work effective October 1, 2005. This represents about $2,700 until next June. For an outside contractor at $200/day, labour alone for 13 days is $2600.

The range of undertakings by the tenant in exchange for a reduction in rent, as described above, is very narrow. Accordingly, based on the documentary evidence and testimony of the parties I find there is insufficient evidence for me to conclude that the landlord has established entitlement to his claim. In the result, this aspect of the landlord's claim is hereby dismissed.

$2,190.00: *loss of rent.* This amount is calculated on the basis that the unit was unable to be re-rented for 2 months after the end of the subject tenancy, while cleaning and certain repairs were undertaken (2 x $1,095.00). However, once again, in the absence of a move-out condition inspection and report completed by both parties, and in view of the effects of normal wear and tear subsequent to the time when renovations were completed in 1993, I find there is insufficient evidence to support the landlord's claim that the tenant bears responsibility for this cost. This aspect of the application is therefore hereby dismissed.

$100.00: *filing fee*. As the landlord has largely been unsuccessful in this claim, the application to recover the filing fee is hereby dismissed.

As for the monetary order, I find that the landlord has established a claim of **$200.00**, as set out above.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$200.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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*.

DATE: February 17, 2011

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Residential Tenancy Branch