Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said the Tenant was served with the Application and Notice of Hearing (the "hearing package") by registered mail on October 26, 2010. On February 17, 2011, the Tenant faxed a letter dated February 16, 2011 to the Residential Tenancy Branch with submissions and other documentary evidence outlining his position with respect to the Landlord's application and which also stated that he was unable to attend the hearing "due to uncontrollable circumstances." Consequently, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the beginning of the hearing, the Landlord's agent said she was not served with a copy of the Tenant's evidence package and submissions. RTB Rule of Procedure 11.5(b) says the Dispute Resolution Officer may refuse to accept evidence not provided to the other party in advance of the hearing if the acceptance of the evidence would prejudice the other party. I find that the Landlord would be prejudiced by relying on evidence of which she has not had an opportunity to review and as a result the Tenant's evidence package is excluded.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to cleaning expenses and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on November 1, 2009 and ended on October 1, 2010 when the Tenant moved out. Rent was $995.00 per month due in advance on the 1st day of each month plus $15.00 for parking. The Tenant paid a security deposit of $497.50 at the beginning of the tenancy.

The Landlord said the Tenant gave written notice on September 19, 2010 that he was ending the tenancy and that the rental unit could not be re-rented until October 16, 2010. Consequently, the Landlord sought a loss of rental income (and parking) for one-half of October 2010. The Landlord also said an appointment was set up with the Tenant to complete a move out condition inspection on October 15, 2010, however the Tenant did not attend that appointment. The Landlord provided a copy of the move out condition inspection report which says the report was completed on October 15, 2010 without the Tenant. The Report also shows that additional cleaning was necessary throughout the one bedroom suite.

Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one full, calendar month's notice in writing that they are ending the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. The only exception to this rule is s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period ***after the tenant has given written notice*** of the failure, the tenant may end the tenancy without further notice to the Landlord.

I find that there is no evidence that the Tenant advised the Landlord in writing that there was something going on that constituted a breach of a material term of his tenancy agreement or that was disturbing his use and enjoyment of the rental unit. I also find that there is no evidence that the Landlord was given an opportunity to deal with any of the Tenant's concerns because he raised them for the first time when he gave his notice he was ending the tenancy. Consequently, I find that the Tenant was responsible for giving the Landlord one full, calendar month's notice in writing that he was ending the tenancy and therefore the earliest that his written Notice given on September 19, 2010 (or at any date in September 2010) could have taken effect would have been October 31, 2010. As the Landlord was able to re-rent the rental unit for October 16, 2010, I find that the Tenant is responsible for compensating the Landlord for a loss of rental income for October 1 – 15, 2010 in the amount of $497.50 plus $7.50 for parking.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlord said the rental unit was not reasonably clean as indicated by the move out condition inspection report. The Landlord said a move out inspection was arranged for October 15, 2010 but the Tenant failed to attend and as a result, the report was completed on October 15, 2010 without the Tenant. However, invoices for general cleaning provided by the Landlord allege that a total of 10 hours of cleaning was done from October 11 to October 13, 2010 and that carpet cleaning was done on October 14, 2010 ***prior to the report being completed***. In light of this evidence, the Landlord's agent claimed that the move out condition inspection Report may have been completed at an earlier date.

Section 21 of the Regulations to the Act says that "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." Given that the invoices for general and carpet cleaning indicate that these expenses were incurred before the move out inspection date alleged on the report, ***I find that information on the move out report is unreliable and I give it no weight***. In the absence of any reliable evidence of the condition of the rental unit on October 15, 2010, I find that there is insufficient evidence that general cleaning was required and that part of the Landlord's claim is dismissed without leave to reapply.

However, RTB Policy Guideline #1 (Responsibility for Residential Premises) says at p. 2 that "a Landlord is responsible for providing a tenant with clean carpets at the beginning of the tenancy and the Tenant is responsible for cleaning the carpets at the end of a tenancy of one year or greater." If a rental unit (including carpets) is not reasonably clean at the beginning of the tenancy, a Tenant may be able to recover the costs of bringing it up to that standard. However, a Landlord's failure to do so does not mean that a Tenant does not have to clean them at the end of a tenancy. In any event, the move in condition inspection report signed by the Tenant at the beginning of the tenancy shows that there were no issues in that regard. Consequently, I find that the Tenant is responsible for the cost of cleaning the carpets at the end of the tenancy and I award the Landlord $84.00 for this part of her application.

As the Landlord has been largely successful on its application, I find that it is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of $141.50.

Conclusion

A Monetary Order in the amount of **$141.50** 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.

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: February 23, 2011.

Residential Tenancy Branch