Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 7, 2011. Although the landlord did not send this hearing package to the tenants by registered mail until 2 ½ months after he applied for dispute resolution, I am satisfied that he did serve the tenants with his package in accordance with the *Act*. The parties also agreed that they received one another's written evidence packages.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on May 15, 2009. At the expiration of the first term, this converted to a month-to-month tenancy. Monthly rent was set at $1,300.00, payable in advance on the first of each month.

The parties agreed that this tenancy ended on January 31, 2011 when the tenants vacated the rental unit. The parties agreed that the male tenant spoke with the landlord on December 30, 2010 to let him know that the tenants were planning to end their tenancy on January 31, 2011. The tenants testified that the male tenant specifically asked the landlord if he wanted to receive a written notice to end this tenancy from the tenants. The tenants testified that the landlord told the male tenant that it would not be

necessary to provide him with a formal written notice to end this tenancy because the landlord was in the process of trying to sell the rental property and it would be more attractive to sell this as a vacant property.

The landlord disputed the tenants' testimony regarding their notice to end this tenancy. He testified that he specifically asked the tenants for a written notice to end this tenancy when the tenant spoke with him on December 30, 2010. He did not dispute the tenants' oral and written evidence that by December 30, 2010 he had already spoken with the tenants about his intentions to sell the rental property.

Although the tenants paid a $650.00 security deposit on May 3, 2009, all portion of this security deposit have been returned to the tenants in accordance with a June 14, 2011 decision and Order of another Dispute Resolution Officer (DRO). In that application, the tenants were successful in obtaining a full return of their security deposit.

At the commencement of the hearing, I noted that issues regarding the tenants' security deposit, the landlord's recent compliance with the DRO's monetary Order, and any further claim that the tenants may have to a monetary Order are not before me. I advised the parties that the only issues properly before me were the landlord's application for a monetary Order of $1,500.48 for the following:

- $1,300.00 for loss of rent for February 2011, resulting from the tenants' alleged failure to give written notification of their ending this tenancy; and
- the landlord's claim for damage and losses (including his claim that he incurred $99.68 in costs to have the tenants' carpet professionally cleaned at the end of this tenancy and the landlord's claim for $100.80 in damage to the wiring of the fireplace thermostat).

The landlord testified that there was a joint move-in condition inspection when the tenants occupied the rental unit. He described this as a walk-through with his agent who was not in attendance at this hearing and who did not provide any written evidence of this "walk through." He said that no move-in condition inspection report was created or sent to the tenants.

The parties agreed that there was a joint move-out condition inspection held on the evening of January 31, 2011 between the landlord's real estate agent (the landlord's witness at this hearing) and both tenants. The parties agreed that the landlord did not send any written request to conduct this inspection nor did the landlord or his real estate agent produce any written condition inspection report or take any photographs.

At the commencement of his oral testimony at the hearing, the landlord's real estate agent testified that the only portion of this matter that he could speak to as a witness was his participation as the landlord's agent at the joint move-out condition inspection on January 31, 2011. He testified that the tenants were in a hurry to complete this inspection and were unwilling to delay this inspection until the following day when they could examine the premises in full daylight. He testified that the rental unit was "not in too bad shape." He said that there were a few spots on the carpet. He said that his primary request of the tenants was to steam clean the carpets, a request that the tenants refused to accommodate. He said that the landlord told him that the carpet was "brand new" when the tenants commenced their tenancy. He testified that it was not until after he completed his inspection with the tenants that he and the landlord discovered that there was further damage to other items (e.g. the bathroom spout; the gas fireplace which did not start) that he had not noticed with the tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a DRO may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Analysis – Landlord's Application for Loss of Rent for February 2011

Section 45(1) of the *Act* requires a tenant to end a month-to-month tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2011, the tenants would have needed to provide their notice to end this tenancy before January 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Based on the undisputed evidence presented by both parties, I find that the tenants did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 when they provided oral notice to end their tenancy on January 31, 2011. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As such, the landlord is entitled to compensation

for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for February 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

At the commencement of the hearing, the landlord acknowledged that as of December 30, 2010, he knew the tenants were planning to end their tenancy on January 31, 2011. When asked about the efforts that he took to minimize the tenants' exposure to the landlord's rental loss for February 2011, the landlord testified that he did not try to rent the premises for February 2011. When I asked the landlord why he did not try to rent the property for February 2011, he said that there was too much damage to try to rent it for February 2011. He said that painting and carpet cleaning were necessary and a number of items had to be fixed before the rental unit could be rented. He also testified that he was successful in selling this property with a closing date of March 1, 2011.

I find that the landlord's evidence varied in some important ways from the evidence provided by the landlord's own witness, the real estate agent who conducted the move-out condition inspection on his behalf and represented him in the sale of this property. The landlord's witness initially stated that his only knowledge of the issue in dispute was through his inspection of the property with the tenants on January 31, 2011. However, as he represented the landlord in the sale of this property, he testified that the landlord received what proved to be the successful offer to purchase this property on February 11, 2011. He said that the "subjects" to this transaction were removed a few days later and that the real estate sale of this property closed on March 28, 2011.

After the landlord's witness completed giving his oral testimony, he asked for permission to provide additional evidence that he had not provided earlier. He testified that he advertised the availability of this rental unit for rent on Craigslist on February 1, 2011. He said that he had not retained a copy of the Craigslist advertisement. He said that he received some limited interest in this rental unit which was available on a short term month to month basis because the property was currently listed for sale. He said that once prospective tenants learned that the property was for sale, they lost interest in this rental unit.

I find that the evidence presented by the landlord and his witness was contradictory as to whether the landlord made any effort to find new tenants for February 2011 in order to mitigate the tenants' losses for that month. Although the landlord testified that the

premises could not be rented to anyone else until repairs could be completed, the landlord's witness only noted a need to steam clean the carpets when he participated in the joint move-out condition inspection. The landlord clearly stated that he made no effort to re-rent these premises, while his witness in the added oral testimony he gave claimed that he did try to re-rent these premises for February 2011. Even if I were to disregard the landlord's own evidence and accept that the delayed recollections of landlord's witness were more accurate, I find that the ongoing efforts that were being made to sell this property during early February 2011 call into question the extent to which the landlord genuinely attempted to mitigate the tenants' losses.

For these reasons and under these circumstances, I find on a balance of probabilities that the landlord has not adequately satisfied his duty under section 7(2) of the *Act* to minimize the tenants' losses. As such, I dismiss the landlord's application to recover lost rent for February 2011 from the tenants without leave to reapply.

Analysis – Damage

In support of his application for a monetary award for damage for carpet cleaning and repair of the wiring on the thermostat of the gas fireplace, the landlord entered into written evidence two receipts.

The invoice submitted for $99.68, the amount of the carpet cleaning claimed by the landlord, has no company logo or any other identifying information that would show who issued this invoice. The invoice notes three items apparently provided by an unnamed person or company to the landlord, although there is nothing on this invoice to locate the work done as having been performed on this rental unit. The three items are described as follows on this invoice for a price of $89.00 plus $10.68 for HST:

- *1 Secure bedroom door frame and sand*
- *1 Caulk Temp Control in Bathtub*
- *1 Test F/P Control*

Although the landlord said that he had a carpet cleaning invoice for the same amount, he did not enter this into written evidence nor did he provide a copy to the tenant. I refused to agree to the landlord's request to allow him to submit this written evidence after this hearing. In doing so, I noted that he applied for dispute resolution regarding this matter on July 20, 2011, more than three months before this hearing occurred. I said that he had ample time to have provided any written evidence he wished considered with respect to his application. I denied his request to submit late evidence as I could see no reason why he should be permitted to do so.

As the landlord has not provided any adequate invoice or receipt for carpet cleaning required at the end of this tenancy, I dismiss his application for a monetary Order for cleaning of the carpet in this rental unit without leave to reapply. I also dismiss the landlord's application for a monetary Order for damage for any of the items outlined in the invoice he did provide for $99.68 without leave to reapply. I do so as I find no basis for issuing a monetary Order for these items in the absence of evidence that would demonstrate that the tenants were responsible for any of these repairs.

The landlord also entered into written evidence a copy of a February 22, 2011 invoice for $100.80 to repair "broken wiring connection at thermostat for fireplace control." I find this invoice and a March 3, 2011 letter from the Strata Manager demonstrate that the landlord did incur costs to repair the thermostat on the gas fireplace.

At the hearing, the tenants testified that they never turned on this fireplace during their entire tenancy. They said that any repairs that were necessary to this thermostat were the responsibility of the landlord. Without either a joint move-in condition inspection report or a joint move-out condition inspection report, it is difficult to determine whether the repairs that were required to the gas fireplace arose as a result of the tenants' actions or if these problems pre-dated their tenancy. The landlord's own representative at the joint move-out condition inspection did not notice that there was any problem with the gas fireplace in this rental unit. If the tenants did not use the gas fireplace during their tenancy, as they maintain, it is quite possible that these problems have been in place since before they commenced their tenancy.

Under these circumstances, I do not find that the landlord has proven that he is entitled to a monetary Order for damage to the gas fireplace arising out of this tenancy. I dismiss the landlord's application for a monetary Order for this damage without leave to reapply.

As the landlord has not been successful in his application or a monetary Order, he bears responsibility for his filing fee for his application.

Conclusion

I dismiss all portions of the landlord's application for dispute resolution for a monetary Order for damage and loss arising out of this tenancy without leave to reapply. I dismiss the landlord's application to recover his filing fee for his application from the tenants.

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: October 25, 2011

Residential Tenancy Branch