Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   MNR, MND, MNDC, MNSD, FF

<u>Introduction</u>

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, for compensation for a loss of rental income, for cleaning and repair expenses, to recover liquidated damages, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's agent said on February 7, 2012 she served the Tenants with the application and notice of hearing (the "hearing packages") by registered mail to a forwarding address provided by the Tenants. The Landlord's agent said the Tenants did not pick up the hearing packages and they were returned to her so she delivered them to the Tenants' forwarding address. The Landlords' agent said she gave the hearing packages to a person at that address who claimed she was house sitting and knew that the Tenants were living there most of the time but were not there at that time. Based on the evidence of the Landlord's agent, I find that the Tenants were served with the Landlord's hearing packages as required by s. 89 of the Act (i.e,. by registered mail) and the hearing proceeded in the Tenants' absence.

<u>Issue(s) to be Decided</u>

1. Is the Landlord entitled to recover unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

<u>Background and Evidence</u>

This fixed term tenancy started on September 1, 2011 and was to expire on August 31, 2012 however it ended on January 26, 2012 when the Tenants moved out. Rent was $1,200.00 per month payable in advance on the first day of each month. The Tenants paid a security deposit of $600.00 at the beginning of the tenancy.

The Landlord's agent said the Tenants did not given her any notice they were ending the tenancy but instead handed the keys and a note with their forwarding address to the building manager when they vacated. The Landlord's agent said she tried to contact the Tenants by telephone to set up a move out inspection but was unable to reach them. Consequently, the Landlord's agent said she did not complete a move out

condition inspection report. The Landlord's agent admitted that she did not send the Tenants a Final Notice to Schedule a Condition Inspection.

The Landlord's agent said the Tenants did not leave the rental unit reasonably clean and as a result, the building manager spent four hours cleaning walls, kitchen appliances, and bathrooms. The Landlord's agent said the building manager spent a further hour vacuuming carpeted floors and behind appliances. The Landlord's agent also claimed that the Tenants left some belongings behind in the rental unit as well as a sofa in a common area by a disposal bin. Consequently, the Landlord's agent said the building manager spent two hours removing and disposing of those items. The Landlord's agent said the Tenants also damaged a living room wall by leaving a three inch hole that had to be patched, sanded and repainted.   The Landlord's agent said she also incurred carpet cleaning expenses of $112.00.

The Landlord's agent said it is a term of the tenancy agreement that if the Tenants ended the fixed term early, they would have to pay compensation (or liquidated damages) of $100.00 representing the costs to the Landlord to re-rent it.   The Landlord's agent said she advertised the rental unit in a number of local online and newspaper publications and was able to re-rent it for March 1, 2012. Consequently, the Landlord's agent sought a loss of rental income for February 2012.

The Landlord's agent said the Tenants were responsible for paying for electricity and had an account in the name of one of them. The Landlord's agent said she received a letter from the provider of that utility dated March 6, 2012 in which she was advised that there was an outstanding amount of $118.22 and that if it remained unpaid by December 31, 2012 it would be transferred to the Landlord's tax account.

Analysis

Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In a case where a Tenant moves out without giving notice but provides a forwarding address, a Landlord must in accordance with s. 17 of the Regulations to the Act attempt to schedule a move out inspection by serving the Tenant with a Final Notice of Opportunity to Schedule a Condition Inspection. In failing to complete the condition inspection report when the Tenants moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished.   However, the Landlord may still make a claim against the security deposit for other heads of damages such as lost rental income.

The Landlord provided a copy of a move in condition inspection report that shows the rental unit was clean and in good condition at the beginning of the tenancy. However, the Landlord provided *no evidence* of the condition of the rental unit at the end of the

tenancy and as a result, I find that there is insufficient evidence to support the claims for general cleaning, repairs, carpet cleaning and garbage disposal and they are dismissed without leave to reapply.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of 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. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Landlord's agent said the rental unit was advertised in online and local publications however she provided no evidence to corroborate that assertion. The Landlord's agent said another tenant of the rental property moved into the rental unit as of March 1, 2012. I find that the Tenants were not entitled to end the tenancy early and therefore they are liable for a loss of rental income. However, in the absence of any reliable evidence from the Landlord regarding the steps taken to re-rent the rental unit, I find that there is insufficient evidence the Landlord took reasonable steps to re-rent and therefore I award the Landlord a loss of rental income of **$600.00** for February 2012. I also find that the Landlord is entitled to recover liquidated damages of **$100.00** pursuant to a term of the tenancy agreement to that effect.

The Landlord also sought to recover unpaid utilities of $118.22 however I find that this part of the Landlord's application is premature given that the Landlord will not be liable for this amount until December 31, 2012. Consequently, the Landlord is granted leave to reapply for this part of its claim. I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenants the **$50.00** filing fee for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of $600.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of $150.00.

Conclusion

A Monetary Order in the amount of **$150.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: April 03, 2012.

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Residential Tenancy Branch