Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, MNDC, FF
DRI, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid utilities, for compensation for repairs to the rental unit and to recover the filing fee for this proceeding. The Tenants applied to dispute a rent increase, to recover overpayments of rent, for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlords' alleged failure to return it within the time limits required under the Act and to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenants claimed that they had not received all of the documents that the Landlords filed as evidence with the Residential Tenancy Branch. In particular, the Tenants said they did not receive 2 of the Landlords' photographs and did not receive their invoices for flooring, a garage door, registered mail service expenses or a copy of a note written by one of the Tenants on July 1, 2010. The Landlords admitted that in August 2010 they gave the Tenants 5 of the 7 photographs submitted as evidence to the Branch and that they did not give the Tenants copies of documents already in the Tenants' possession but argued that the Tenants were served with all of the other documents on January 2011.

The Landlords have the burden of proving that they served the Tenants with all of the documents in question. However, given the contradictory evidence of the Parties on this point, and in the absence of any corroborating evidence by the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants were served with the Landlords' missing documents in question and as a result, they are excluded pursuant to RTB Rule of Procedure 11.5(b). The Landlords were permitted, however, to refer to this evidence in their oral evidence.

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for repair expenses and if so, how much?
3. Are the Tenants entitled to recover an overpayment of rent?
4. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This tenancy started on December 1, 2006 and ended on July 1, 2010 when the Tenants moved out. The Landlords purchased the rental property in October of 2007. Rent was $2,100.00 per month until January 1, 2010 when it was increased to $2,200.00 per month pursuant to verbal notice given by the Landlords in December 2009. The Parties agreed in writing that effective May 1, 2010 the Tenants would rent only the upper part of the rental property for $1,500.00 per month plus 60% of the gas and hydro bills. The Tenants paid a security deposit of $1,000.00 at the beginning of the tenancy. The Tenants admit that utilities are unpaid as alleged by the Landlords.

The Landlords' Claim:

The Landlords said they were advised by their realtor when they purchased the rental property that a move in condition inspection report had been completed by the previous owner but they never received a copy of it. The Tenants said a move in condition inspection report was not completed at the beginning of the tenancy. The Landlords executed a new tenancy agreement with the Tenants but did not complete an inspection report at this time either. The Landlords admitted that they did not complete a condition inspection report at the end of the tenancy but claimed that they tried to contact the Tenants on July 1, 2010 and for some days after but they would not return their calls. The Landlords admitted that the Tenants gave them one month written notice they were ending the tenancy. The Tenants claim that the Landlords never asked them to participate in a move out inspection report and that one of them waited in the rental property until 12:00 noon on July 1, 2010 but the Landlords never showed up.

The Landlords claimed that the Tenants and their dogs damaged the hardwood floors in the rental unit and that they had to replace them with laminate flooring. The Landlords said they did not know how old the flooring was but estimated that the rental unit was approximately 50 years old. The Landlords provided photographs of the floors that they said they took on July 2, 2010. The Landlords also claim that one of the Tenants admitted to them after the tenancy ended that their dogs scratched the floors. The Tenants claimed that the floors were old and in poor condition at the beginning of the tenancy. The Tenants admitted that there were areas of damage such as in high traffic areas but argued that it was reasonable wear and tear. However, the Tenants admitted that their dogs and a chair by the computer in the corner of the living room may have contributed to the existing wear on the floor.

The Landlords also claimed that the Tenants damaged a garage door. The Landlords said the Tenants reported a break-in in August of 2008 but at that time only a corner of the garage door was damaged. The Landlords admitted that they did not repair this damage but claimed that the damaged section of the door was blocked off and the Tenants did not use the door. The Landlords also claimed that the garage door would still open and close using a remote following this break-in but at the end of the tenancy, the garage door had additional damage and had to be replaced. The Tenants claim that

the garage was broken into 2 more times in the 6 month period following the first break-in and that they reported these incidences to the Landlords. The Tenants said the Landlords said they would repair or replace the garage door but never did. The Tenants denied that the garage door would open and close with a remote following these break-ins and noted that the door had to be manually lifted by 3 people to remove a van from the garage in April of 2010. The Tenants claim that the garage door was damaged as a result of the break-ins.

The Landlords further claimed that the Tenants damaged some flooring tiles in the dining area, that their dogs left deep scratches in a kitchen and bedroom door as well as on a dining room and bedroom wall. The Landlords also claimed that the Tenants did not properly paint over nail holes in the walls. Consequently, the Landlords sought expenses to repair these alleged damages. The Tenants said the Landlords replaced some broken floor tiles shortly after they purchased the property but replaced them with tiles of a different pattern. The Tenants denied that there were any damaged tiles at the end of the tenancy and argued that the Landlords wanted to replace the tiles so that they would all match because they were selling the rental property. The Tenants denied that there were scratches to any walls or doors and noted that there was no kitchen door. The Tenants said they filled and painted over any nail holes but admitted that the paint colour was not an exact match.

The Tenants' Claim:

The Tenants sought to recover an overpayment of rent of $100.00 for each of January, February, March and April, 2010 as they claim that the Landlords did not give them a Notice of Rent Increase or otherwise comply with the Act for increasing the rent. The Landlords argued that the Tenants verbally agreed to pay this amount until May 1, 2010 when they began renting only the upper portion of the rental property because they did not want to pay the increased rent any longer.

The Tenants said they gave their forwarding address in writing to the Landlords on or about July 20, 2010. The Landlords said they received this letter on or about August 2, 2010. The Tenants said they did not give the Landlords written authorization to keep their security deposit and the Landlords have not returned it. On August 9, 2010, the Landlords sent the Tenants a letter advising them that they would be keeping the security deposit in partial payment of damages to the rental unit.

Analysis

The Landlords' Claim:

Section 32 of the Act says that a Landlord is responsible for repairing and maintaining a rental property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

Section 32 of the Act also says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenants damaged the hardwood floors, a garage door, and some walls and interior doors in the rental unit and that these damages were not the result of reasonable wear and tear. This means that if the Landlords' evidence is contradicted by the Tenants, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Tenants claim that the floors were already damaged (or had signs of neglect) at the beginning of the tenancy and any further "damage" caused during the tenancy was the result of reasonable wear and tear. The Tenants also deny that they are responsible for the damage to the garage door and deny that there were any wall or interior door damages.

I find that the Landlords have provided insufficient evidence to show that the Tenants were responsible for the condition of the hardwood floors in the rental unit. In particular, there is no evidence as to what the condition of the floor was at the beginning of the tenancy or when the Landlords purchased the property 10 months later. The Landlords admitted that the house was at least 50 years old and they said they did not know how old the floors were.

In the circumstances, I find that the Landlords have not shown that the Tenants should be responsible for the cost of repairing or replacing the wood floor. Although the Landlords claimed that one of the Tenants admitted that their dogs caused some of the damage, I find that this is hearsay evidence and unreliable. Even if the Tenants or their dogs contributed to some of the wear, that alone is insufficient to hold the Tenants responsible for what I find is the result of *many* years of wear and tear that likely preceded their tenancy. Furthermore, RTB Policy Guideline #37 says that the expected lifetime of a hardwood floor is 25 years. I find that the hardwood floor in the rental unit was likely at least 25 years old at the beginning of the tenancy and for that reason, the Landlords would also not be entitled to recover the cost of replacing the floor. Consequently, this part of the Landlords' claim is dismissed without leave to reapply.

I also find that the Landlords have provided insufficient evidence to show that the Tenants were responsible for damage to a garage door. The Landlords admit that the door was initially damaged during a break-in in August or 2008 and they did not dispute that there were 2 subsequent break-ins through the garage door in the following 6 month period. The Tenants claim that the damage to the garage door occurred during the break-ins and that the door was inoperable as a result. The Landlords deny this but provided no evidence in support of this assertion. Consequently, I find that the damage to the garage door is a repair for which the Landlords are responsible and as a result, this part of the Landlords' claim is dismissed without leave to reapply.

The Landlords also claim that the photographs they took of the rental unit on July 2, 2010 support their position that the Tenants (or their dogs) scratched some walls and interior doors in the rental unit. However, the Landlords photographs include only 2 photographs of a wall with peeling paint. No scratches on the walls are visible in the Landlords' photographs and there are no photographs or other evidence of scratches on any interior doors. Consequently, I find that there is insufficient evidence to support this part of the Landlords' claim and it is dismissed without leave to reapply.

The Landlords also claimed that they incurred "miscellaneous expenses" to repair tiles in a dining area and to paint walls where the Tenants had not properly matched the paint to cover nail holes. The Landlords provided no evidence of broken floor tiles and the Tenants denied that there were any at the end of the tenancy.

The Landlords also provided no evidence that they incurred expenses for painting supplies or that the walls were re-painted as they claimed. RTB Policy Guideline #1 at p. 4 says that where a tenant has been permitted to hang items on a wall using nails, the Tenant is not responsible for repairing the walls unless there are an excessive number of nail holes, or large nails that have left unreasonable wall damage. The Landlords did not suggest any of these things but instead claimed only that the paint color used by the Tenants to conceal the repairs was not an exact match. For all of the above reasons, I find that the Landlords have not shown that the Tenants are responsible for alleged damages to floor tiles and walls or that they incurred expenses to repair the walls and as a result, this part of the Landlords' claim is also dismissed.

As the Tenants do not dispute the Landlords' claim for unpaid utilities of $198.00, I find that the Landlords are entitled to recover that amount. However as the Landlords have been unsuccessful on the rest of their application, I find that they are not entitled to recover their filing fee or for expenses for serving documents and making copies of documents and photographs and those parts of their claim are dismissed without leave to reapply. Consequently, I find that the Landlords have made out a total claim for $198.00.

The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlords received the Tenants' forwarding address in writing on August 3, 2010 (given that the 2nd was a statutory holiday) but did not return their security

deposit of $1,000.00 and did not have the Tenants' written authorization to keep the security deposit. I also find that the Landlords did not make a claim on their application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit or $2,000.00 to the Tenants with accrued interest of $30.67 (on the original amount).

Section 42 of the Act say that a Landlord may not impose a rent increase unless he or she gives the Tenant a Notice of Rent Increase on an approved form at least 3 months before the increase is to take effect and the increase must not be more than the amount permitted under the Regulations to the Act. Section 43 of the Act says that a Tenant may agree to a rent increase that is more than the amount allowed by the Regulations to the Act but that agreement must be in writing.

I find that the Landlords increased the Tenants' rent by $100.00 for January, February, March and April 2010 but did not give the Tenants a Notice of Rent Increase or obtain the Tenants' agreement in writing to pay that amount. Consequently, I find that the rent increase contravened the Act and the Tenants are entitled to recover an overpayment of rent of $400.00.

As the Tenants have been successful in this matter, I find that they are entitled to recover their expenses for obtaining a police report (regarding the damage to the garage door) of $53.33 and the $50.00 filing fee for this proceeding. The Tenants abandoned their claim for "screen captures". Consequently I find that the Tenants have made out a total claim for $2,534.00.

I order pursuant to s. 62(3) and s. 72 of the Act that the Parties' respective monetary awards be offset with the result that the Tenants will receive a Monetary Order for the balance owing of $2,336.00.

Conclusion

A Monetary Order in the amount of **$2,336.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: January 26, 2011.

Residential Tenancy Branch