Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNR, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the property, unpaid rent, damage or loss under the Act and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting return of double the deposit paid and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord confirmed that she does not have a claim for unpaid rent and that she is seeking compensation for loss of rent revenue only.

On August 23, 2011, the landlord submitted late evidence to the Residential Tenancy Branch; the landlord requested an adjournment, so that this evidence could be considered. The landlord stated that the evidence included an amendment to the application, increasing the amount of compensation sought. The adjournment was denied as the landlord was provided with ample opportunity to prepare her claim prior to submitting her application on August 11, 2011. The landlord chose not to withdraw her application.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid in the sum of $1,200.00?

Is the landlord entitled to compensation for damage to the rental unit in the sum of $953.39?

Is the landlord entitled to loss of April, 2011, rent revenue in the sum of $600.00?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced with tenant M.P. taking possession in December 2009; in December 2010, tenant M.C. moved into the rental unit. Both parties agreed during the hearing that this was a co-tenancy; that each tenant was jointly responsible for payment of $1,200.00 rent due on the first day of each month. The landlord confirmed that she is holding a deposit in the sum of $600.00 that was paid in December 2009.

There was no written tenancy agreement signed; no move-in or move-out condition inspection reports were completed; although the parties agreed that they did meet on April 1, 2011, to walk through the unit together.

The landlord confirmed the tenants gave proper written notice ending the tenancy.

The tenants provided a copy of an April 10, 2011, letter sent to the landlord via registered mail, requesting return of the deposit to their forwarding address. The tenants had viewed the Canada Post web site and determined that the landlord's ex-spouse had signed accepting the mail. The landlord stated that she had not been given the letter and suggested that her ex-spouse had forgotten to give her the mail.

The landlord confirmed that she did receive the tenant's forwarding address no later than the end of May, 2011; via registered mail, as part of the tenant's Notice of hearing served to the landlord.

The landlord has made the following claim:

Window installation	224.00
Framing bedroom door	90.00
Cleaning	40.00
Drywall mud/paint inside/outside railing	87.51
Sandpaper	11.47
Labour for fixing wall holes	50.00
Labour for painting – outside	80.00
Labour for painting – inside	320.00

Keys, caulking, recycling bin	13.93
Recycling bin	4.00
Loss of April rent revenue	600.00
	1553.39

The tenants agreed the landlord was entitled to compensation for the window replacement and repair of the damaged post outside of the unit.

The landlord stated that the tenants walked through the unit with her at the end of the tenancy and that they were told she needed to assess the damage made to the unit before any of the deposit would be returned. The tenants stated that the landlord did discuss the window and post, but that no other concerns were mentioned at that time. The landlord stated she had also pointed out cigarette butts that had been left on the property.

After the tenancy ended the landlord determined that the bedroom door required repair; the bathtub needed to be caulked and the unit required painting due to an excessive number of picture holes.

The landlord purchased the home in December 2008 and the unit had been freshly painted just prior to the purchase.

The landlord stated that the fridge, oven and bathroom required cleaning; she spent 2 hours of her time completing the cleaning. The tenants stated the house was dirty when they moved in and that at the end of the tenancy the unit was much cleaner than it had been at the start of the tenancy. The landlord provided a written statement from the new occupant who declared that the unit was dirty when he moved in on April 1, 2011.

The landlord provided a letter from another individual who saw the unit at the end of the tenancy and the landlord's ex-spouse, both of whom stated that the unit was left in a dirty state.

The tenants provided a letter from a previous occupant who had moved into the unit in December 2009. This individual indicated that when she moved in the unit was below standard, the walls required painting, were covered in holes and that both bedroom doors had fist-sized holes. Another statement submitted by the tenant's, from witness B.J. indicated he was present on April 1, 2011, when the tenants moved out and that the unit was left in a clean state.

The landlord provided receipts and estimates for items claimed. The landlord charged for her own time to clean. The window was repaired and payment made on May 17, 2011.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of condition inspection reports the landlord must provide a preponderance of evidence that the tenants caused damage to the rental unit. I have considered the evidence before me; the conflicting statements provided by each party and find that the landlord has failed to prove the claim for damages.

The landlord's receipts and paint estimate are dated, with the exception of one in the sum of $32.48; between May and August, 2011. The landlord testified that she suffered a loss of rent revenue for the first 2 weeks of April, as work was required to the unit; yet the evidence indicated that no expenses were incurred until later in the year. Further, the letter from the new occupant indicated that he did take possession on April 1, 2011; which contradicts the landlord's claim that she suffered a loss of rent revenue for the first 2 weeks of April. There was no evidence before me that the landlord provided the new occupant with a rent reduction.

I find that the landlord is entitled to compensation in the sum of $224.00 for the window and $80.00 for repair to the posts, items acknowledged by the tenants. The balance of the claim is dismissed.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord stated she did not receive the tenant's letter dated April 10, 2011, requesting return of the deposit. The landlord's ex-spouse accepted the registered mail and has also submitted evidence for this hearing; it is difficult to accept that he would not have brought the registered mail to the landlord's attention. Even if I were to find that the landlord not been served with the April 10, 2011, letter, the landlord has confirmed that no later than the end of May, 2011, she had received the tenant's application requesting return of the deposit. The landlord did not return the deposit and has not submitted a claim against the deposit.

I find that no later than May 31, 2011, the landlord had the tenant's forwarding address and that she failed to return the deposit or submit a claim against the deposit within 15 days. Therefore, pursuant to section 38(6) of the Ac, I find that the tenants are entitled

to return of double the $600.00 deposit; less the amount due to the landlord for repairs in the sum of $304.00

As each application had some merit I decline filing fees to either party.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia*, for reference by each party.

Conclusion

I find that the landlord has established a monetary claim, by agreement, in the sum of $304.00.

The tenants are entitled to return of double the deposit in the sum of $1,200.00 less $304.00 due to the landlord.

Based on these determinations I grant the tenants a monetary Order for the balance of $896.00**.** In the event that the landlord not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim is dismissed.

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: August 26, 2011.

Residential Tenancy Branch