Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC
Tenant: MNSD, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution, both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord, his agents, the female tenant and her witness.

In the hearing the tenant identified that she had submitted some additional photographic evidence to the Residential Tenancy Branch (RTB) via Service BC and that she served this evidence to the landlord's agent but that Canada Post had not yet delivered the evidence to the landlord.

I received the tenant's additional evidence at 3:06 p.m. the day of the hearing that was held at 11:00 a.m. I find that since the landlord did not receive any of this evidence it would prejudice the landlord if I were to consider it without him being able to at least view it. As such, I have not considered this evidence in reaching this decision.

Also, this afternoon (after this hearing) I received a letter/statement mailed directly from the tenant's witness. As neither the tenant or her witness mentioned this in the hearing this morning, I have no way of knowing if the landlord or his agents received this document and as such, I have not considered it in reaching this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to to a monetary order for double the amount of the security deposit; double the amount of the pet damage deposit; compensation for the ending the tenancy for landlord's use of property, pursuant to Sections 38, 49, 51, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on January 17, 2010 for a 1 year fixed term tenancy that began on February 1, 2010 and converted to a month to month tenancy on February 1, 2011 for a monthly rent of $1,200.00 due on the 1st of each month with a security deposit of $600.00 paid on January 15, 2010.

The tenants assert that they also paid a pet damage deposit in cash on or after February 16, 2010. The tenants did not provide a receipt for this payment but did provide a copy of an account inquiry showing a withdrawal on an account with CIBC in the amount of $600.00 on February 16, 2010.

The tenant's witness testified that she was with the female tenant the day that she went to the landlord's agent's office to pay the pet damage deposit but that she remained in the car and did not go into the agent's office with the tenant.

The landlord's agent testified that while the tenants signed the tenancy agreement indicating the tenants wanted to have a pet the tenants were told they had to get permission directly from the owner of the property. The owner (landlord) testified that he told the tenants they could have a dog as long as they had the tenancy agreement amended and paid a $600.00 pet damage deposit.

The landlord's agents testified that they have no record of receiving any cash payment or otherwise for a pet damage deposit or that the tenancy agreement was ever amended. The agents testified that they went through all their files and have found nothing recording any such payment.

The parties agree the tenancy ended on August 3, 2011 after the tenants vacated the rental unit after receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2011 with an effective vacancy date of August 31, 2011 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord testified that the incorrect box on the 2 Month Notice was checked and that he had intended to have the caretaker move in to the rental unit until such time as all repairs had been made and that they would later decide whether they would rent out the property to another tenant. The landlord's caretaker is currently living in the unit.

The parties agree a move out Condition Inspection Report was completed on August 3, 2011 and that the carpets had not yet been cleaned. The tenants provided their forwarding address in the Condition Inspection Report.

The landlord asserts that it wasn't until after the carpets were cleaned that it was determined the carpets required replacement as the pet urine and feces stains had soaked permanently into the carpet. While uncertain of the exact age of the house or carpeting, the landlord testified the carpets are at least 8 years old.

The Condition Inspection Report indicates that the carpet had “minor stains” and that throughout the unit the walls and trim had nicks and chips at both the start and end of the tenancy. There are no comments in the Report on the condition of the yard and grounds.

The landlord submitted 24 photographs including two pictures taken of the exterior of the residential property prior to, but not immediately prior to, the start of the tenancy, showing the front yard and the back yard. 5 of the photographs are of the brown sections of the lawn and areas of lawn that have gone to dirt after the end of the tenancy.

The interior photographs include 6 of the carpeting and 8 of the molding and trim and 3 of wooden steps (two showing worn corners and one from the garage showing staining on the concrete flooring.

The landlord and his agents testified that they had not returned the tenants’ security deposit of the compensation for issuing a 2 Month Notice because they were trying to negotiate a settlement with the tenants instead of having to go through the Dispute Resolution Process. The landlord and agents testified they had send material to the tenants but that the tenants just did not respond.

The landlord seeks compensation for the replacement of the carpet in the amount of $4,000.63 and repairs to the moulding and trim; fill in holes in planting beds and lawn; to repair the dead lawn; plant new shrubs and plants; for new soil in lawn and replace bedding soil; to replace new stairs and replace gazebo all torn by dogs in the amount of $7,340.00.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant’s forwarding address, either return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Regardless of the landlord attempting to resolve the matter and negotiate a settlement with the tenants, as the landlord, or his agents, had the tenants’ forwarding address on August 3, 2011 the *Act* required the landlord to provide the tenants with their security deposit or file an Application for Dispute Resolution no later than August 18, 2011.

As the landlord failed to do either I find the landlord failed to comply with Section 38(1) and the tenants are therefore entitled to return of double the security deposit amount as allowed under Section 38(6). As per the testimony of the tenant, this amount must be discounted by $77.42 for overholding of two days.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. As such, the burden of proof to confirm the terms is on the party making the claim.

As the landlord disputes that the tenant paid a pet damage deposit, as they have no record of its receipt, the burden is on the tenant to prove that the deposit was paid. While I accept someone withdrew $600.00 from an account at CIBC on a date that coincides with the timing that the tenant may have been required to pay the pet deposit, the withdrawal slip itself does not provide any confirmation of the account the withdrawal was made from or the amount withdrawn was paid to anyone.

Further, I accept the tenant's witness's testimony that she attended with the tenant to the landlord's agent office and stayed in the car during the tenant's visit with the agent. However, seeing the tenant going into the agent's office does not confirm what was discussed or if any monies were exchanged between the parties.

For these reasons, I find the tenant has failed to establish that she paid the landlord a pet damage deposit. As such, I dismiss the portion of the tenant's Application claiming for the return of double the pet damage deposit.

In relation to the compensation sought by the tenant for the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use, I accept the landlord acknowledges the tenant is entitled to compensation in the amount equivalent to one month's rent in accordance with Section 51(1).

While I accept the landlord may have made an error in indicating the landlord sought to end the tenancy because landlord or a close family member would be moving in, I find, the notice was none-the-less issued for the purpose of landlord using the unit for his own or a family members use and the notice was acted upon by the tenants.

By now indicating that it was for a different reason would prejudice the tenants in that if they had felt the notice was issued for another purpose that was not in good faith they may have applied to dispute the notice and the tenancy may have continued.

Therefore in accordance with Section 51(2), I find the tenants are entitled to further compensation in the amount equivalent to 2 month's rent under the tenancy agreement.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the landlord's claim for replacement of the carpets in the rental unit, I accept that the Condition Inspection Report signed by the landlord's agent and the tenant confirms that there were "minor stains" in the carpet at both the start and the end of the tenancy.

I also acknowledge that the landlord submitted a letter dated September 23, 2011 from his carpet supplier that states: "....upon my inspection it was my opinion that the carpet and underpad were soiled with pet urine to the extent that they needed to be replaced."

However, as the Report indicates the same stains at both the start and end of the tenancy, I find the landlord has failed to establish that the need for the carpet removal was solely the fault of these tenants or if it was a pre-existing condition.

Residential Tenancy Policy Guideline #37 lists the useful life of carpeting to be 10 years, as the landlord cannot confirm the exact age of the carpet but acknowledges it is at least 8 years and in light of the stained condition at the start of the tenancy, I find the landlord has failed to establish the tenants are responsible for the replacement of this carpet.

As to the landlord's claim for repairs to the baseboards and door casings, again the Condition Inspection Report indicates the condition of the walls and trim were the same at the start and the end of the tenancy. The report includes descriptions as follows: "marked/crack"; "picture holes/scuffs"; "trim is chipped"; "minor nicks"; and "small nicks".

The photographic evidence from the landlord shows the condition of the moulding and trim only at the end of the tenancy but there is no evidence to show the condition was any different at the start of the tenancy. As such, I find the landlord has failed to establish the condition of the baseboards and door casings was solely the fault of these tenants or if it was a pre-existing condition.

As the Condition Inspection Report provides no indication of the condition of the yard and grounds, I must rely upon the photographic evidence to establish its condition. The majority of photographs show the condition of the lawn at the end of the tenancy, there is no photographic evidence of the shrubs or gazebo at the end of the tenancy.

The photographs showing the condition of the lawns at some time before the tenancy began, by the landlord's testimony. I cannot, therefore, rely upon them as an accurate record of the condition of the lawn at the start of the tenancy.

The landlord's submission of his contract with his caretaker for repairs to this rental unit state part of the charges are for filling holes; repair dead lawn (re-seed); replant new shrubs and plants; to place in new soils; replace set of patio stairs; replace gazebo.

While the contractors submission indicates all of these damages were required because of dog damage the landlord has provided no supporting evidence to confirm this.

As such, I find the landlord has failed to establish he suffered a loss as a result of the tenancy agreement for either carpet replacements; trim and casings; or the yard. I therefore dismiss the landlord's Application in its entirety.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$4,772.58** comprised of $1,200 double the security deposit owed; $1,200.00 compensation for receiving a Section 49 Notice to End Tenancy; $2,400.00 compensation for the landlord not using the unit for the stated purpose when ending the tenancy under Section 49; and the $50.00 of fee paid by the tenants for this application, as they were only partially successful less $77.42 for overholding.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: November 22, 2011.

Residential Tenancy Branch