Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MND, MNDC, FF
Tenants: MNSD, O

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for compensation for cleaning expenses and damages to the rental unit as well as to recover the filing fee for this proceeding. The Tenants applied for the return of their security deposit.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to compensation for cleaning expenses and the cost to replace damaged items?
3. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on December 1, 2010 and was to expire on June 15, 2011. The Tenants said they moved out on June 1, 2011. The Landlords claim the Tenants moved out on June 15, 2011. Rent was $800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $800.00 at the beginning of the tenancy.

The Landlords' Claim:

The Parties agree that in mid-May, 2011, the Tenants contacted the Landlord, B.S., and advised her that they had been unable to find other accommodations for June 1, 2011 as they had hoped. Consequently, the Parties verbally agreed that the Tenants would stay until June 15, 2011, that the Tenants would pay ½ of a month's rent or $400.00 for those 2 weeks and that the Landlord would deduct the rent from the Tenants' security deposit.

The Landlord, B.S., said the Tenants then contacted her on May 31, 2011 to say they had found other accommodations and would be moving out that day. The Landlord said it was her practice to rent the rental unit out as a vacation rental from June to

September each year at a rate of $1,500.00 per WEEK. The Landlord argued that had the Tenants notified her earlier, she would have been able to rent the rental unit for the first 2 weeks of June and as a result, she sought a loss of rental income of $3,000.00. The Tenants said that when they spoke to the Landlord in mid-May, she said she did not have anyone lined up to rent the rental unit for the first two weeks of June. The Tenants said they moved out on June 1, 2011 and returned 2 days later to drop off a key for the front gate of the gated community and for the rental unit. The Landlord claimed the Tenants did not return a gate key and she sought $100.00 to replace it.

The Parties agree that the Landlords did not complete a move in or a move out condition inspection report. The Landlord, B.S., said because she lived out of the province, she relied on tenants to advise her if there were any damages at the beginning of the tenancy. The Landlord said she went to the rental unit on June 16, 2011 and took some pictures. The Landlord claimed that the Tenants left the rental unit dirty and in particular, did not clean the floors and that the ceilings and ceiling fans had a large amount of dust or dirt. The Landlord said she spent 8 hours cleaning and sought $200.00 as compensation. The Tenants claimed that at the beginning of the tenancy, the walls, blinds and ceiling fans were covered in dust and they spent considerable time cleaning the walls and blinds. The Tenants said they also cleaned the rental unit thoroughly at the end of the tenancy (with the exception of the ceiling and ceiling fan) and specifically denied that the floors were dirty.

The Landlord also claimed that the carpets were stained at the end of the tenancy and that she incurred expenses of $107.97 to have them professionally cleaned. The Landlord provided a number of photographs of the carpet in the rental unit showing where they were stained. The Tenants said the carpets were stained at the beginning of the tenancy and they were told by an agent of the Landlords (ie. their cleaning lady) that she would clean them but they were not cleaned. The Tenants said they cleaned the carpets at the end of the tenancy but the pre-existing stains could not be removed.

The Landlords further claimed that the Tenants damaged two chairs and a lamp during the tenancy and they sought $159.98 and $129.00 respectively to replace them. The Tenants admitted that they were responsible for breaking a lamp but denied that it would cost $129.00 to replace it and suggested instead that it would only cost between $40.00 and $50.00. The Tenants claimed that the site of the damage on one of the chairs had previously been repaired with a screw (which the Landlords denied. The Tenants also claimed that the back rails of a second chair fell out the first day of the tenancy and they had to glue it together but that this same chair later collapsed when one of them sat on it. Consequently, the Tenants argued that it was not due to their neglect but to the poor condition of the chairs that they broke.

The Landlord also claimed that at the end of the tenancy two pillows, an extension cord and a rubber ring for a blender were missing and she sought compensation to replace those items. The Tenants said they had no knowledge of a missing blender ring or an extension cord. The Tenants admitted that they took one pillow by accident but claimed

that they contacted the Landlord on or about June 16, 2011 to ask when they could return it to her but she did not return their call (which the Landlord denied).

The Tenants' Claim:

The Parties agree that on June 28, 2011, the Tenants mailed the Landlord (B.S.) a letter that contained their forwarding address. The Parties also agree that the Landlord has not returned the Tenants' security deposit and they did not give the Landlord written authorization to keep it.

Analysis

The Landlords' Claim:

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that they lost rental income and that the Tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. 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.

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. I find that the Parties had a fixed term tenancy ending June 15, 2011, that the Tenants never gave the Landlord written notice to end it early and the Landlord did not agree to end it earlier. Consequently, I find that the Tenants must compensate the Landlords for a loss of rental income for the period, June 1 – 15, 2011. However, I also find that there are no grounds for the Landlords' claim for a loss of rental income for $3,000.00. In particular, I find that the parties agreed in mid-May 2011 that the rent for the period June 1 – 15, 2011 would be $400.00. The fact that on May 31, 2011 the Tenants sought to end the tenancy earlier did not then entitle the Landlord to charge a greater rate of rent. As a result, I find that the Landlords are entitled to recover a loss of rental income of $400.00.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he or she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlords did not complete a move in condition inspection report and provided no other corroborating evidence of the condition of the rental unit (or the furnishings in it) at the beginning of the tenancy. The Landlord, B.S., claimed the rental unit was reasonably clean and undamaged at the beginning of the tenancy which the Tenants disputed. In particular, the Tenants claimed that the walls, window coverings and ceiling fans were excessively dusty and dirty and that the carpets were stained and dirty. The Tenants also claimed that the 2 chairs that broke during the tenancy were already in poor condition. The Tenants denied that there was an extension cord or that they were responsible for an alleged missing blender ring.

The Landlords also did not complete a move out condition inspection report. The Landlords provided some photographs of the rental unit they said they took at the end of the tenancy that show stains on the carpet, dirt and/or dirt on the ceiling and ceiling fan, dirt on a wall and on a garbage can. The Tenants claimed that the dirt on the ceiling fan and ceiling and the stains on the carpet existed at the beginning of the tenancy and argued they should not be responsible for those things. The Tenants said they left the rental unit reasonably clean.

Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence of the Landlords to resolve the contradiction, I find that there is insufficient evidence to support their claim for cleaning expenses, carpet cleaning expenses, and compensation to replace 2 chairs, an extension cord and a blender. In other words, I find that there is insufficient evidence to conclude that the dirt or dust on the ceiling, ceiling fan and walls was not already there at the beginning of the tenancy. Furthermore, the Landlords did not provide any evidence in support of their expenses or estimates of the cost to replacement items. Consequently, these parts of the Landlords' application are dismissed without leave to reapply.

For similar reasons, I find that there is insufficient evidence to support the Landlords' claim to replace a gate key. The Tenants said they returned all keys that were given to them (including the gate key) and put them in a lock box at the rental unit on or about June 3, 2011. Given the contradictory evidence of the Landlords and the Tenants on this issue and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that they have not made out a claim to be compensated for this item. Furthermore, the Landlords provided no estimate or other evidence in support of the amount the claimed for the gate key.

The Tenants admitted that they were responsible for damaging a lamp but argued that the amount claimed by the Landlords was unreasonable. The Landlord claimed that the amount she sought was to replace the lamp with one of a similar quality however she provided no evidence in support of this assertion. In the circumstances, I award the Landlords $50.00 for the broken lamp. The Tenants also admitted that they took one pillow by accident but were unable to return it because the Landlords failed or refused to return their call (which the Landlords denied). In the circumstances, I find that the amount claimed by the Landlords ($17.50 per pillow) is reasonable and I award them $17.50 for one pillow.

I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the $50.00 filing fee for this proceeding. In summary, I find that the Landlords have made out a total monetary claim for $517.50.

The Landlords' evidence package contained a list of items for which they sought compensation together with a statement that they would be retaining $400.00 from the Tenants' security deposit in partial payment of this amount. The Landlord, B.S. also claimed at the hearing that she was keeping the balance of the Tenants' security deposit because the Tenants verbally agreed she could deduct $400.00 for rent for the period, June 1 - 15, 2011. However, s. 38 of the Act says that a Landlord may not keep a security deposit unless they have the Tenants' *written authorization* or the Landlord makes an application for dispute resolution to keep it (and is granted an order to keep it). I find that the Landlords did not have the Tenants' written authorization to keep all or part of the security deposit. I also find that the Landlords did not include a claim on their application for dispute resolution to make a claim against the security deposit.

The Landlord, B.S. argued that the Tenants' written submissions dated July 25, 2011 constituted written authorization for the Landlord to keep $400.00 of the security deposit for rent for June 1 – 15, 2011, however I find that this is not the case. The Tenants' written submissions with their application for Dispute Resolution state as follows:

> "Our landlord has not given us our damage deposit of $800. It's been almost 2 months since our last day of tenancy, which as May 31/2011. She had also wanted to keep half because we had asked her and agreed verbally to stay an extra 2 weeks past that date if we hadn't found a new place to rent before June 1. Which we found a place and didn't need to stay longer."

I find that this statement dated July 25, 2011 was prepared exclusively for the hearing in this matter and does not authorize the Landlords to keep $400.00 of the Tenants' security deposit but rather explains the ***verbal agreement*** the parties had to that effect. Furthermore, section 21 of the Act says that unless a landlord gives *written consent*, a tenant must not apply a security deposit as rent.

As a further note, I find that in requiring a security deposit of $800.00 from the Tenants, the Landlords contravened s. 19 of the Act which states that *a Landlord must not require or accept a security deposit that is greater than ½ half of a month's rent*.

<u>The Tenants' Claim</u>:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date 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 tenancy ended on June 3, 2011 when the Tenants returned the keys. The Landlord, B.S., admitted that she received a copy of the Tenants' forwarding address in writing that they mailed to her on June 28, 2011. Pursuant to s. 90 of the Act, the Landlord is deemed to have received this mail 5 days later or on July 4, 2011. Consequently, pursuant to s. 38(1) of the Act, the Landlord had 15 days or ***no later than July 19, 2011*** to either return the Tenants' security deposit or to file an application for dispute resolution to make a claim against the security deposit.

I find that the Landlord did not return the Tenants' security deposit of $800.00 and did not have their written authorization to keep it. Although the Landlords filed an application for dispute resolution on September 27, 2011, it was filed outside of the time limits set out under s. 38 of the Act *and did not include a claim to keep the Tenants' security 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 to the Tenants. In summary, the Tenants have made out a total monetary claim for $1,600.00.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, I find that he did not specifically waive reliance on s. 38(6) of the Act.

I order pursuant to sections 38(4), 62 and 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 $1,082.50.

Conclusion

A Monetary Order in the amount of **$1,082.50** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: November 02, 2011.

Residential Tenancy Branch