Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes — For the landlords: MNDC, MND, FF
For the tenants: MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The landlords applied for a monetary order for damage to the rental unit, money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act") or tenancy agreement, and to recover the filing fee for the Application.

The tenants applied for a monetary order to recover all or part of their security deposit, money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act") or tenancy agreement, the cost of emergency repairs and to recover their filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Are the tenants entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy started on July 15, 2006, on a one year, fixed term tenancy. The parties entered into subsequent one year, fixed term tenancy agreements thereafter, until the final tenancy agreement, with that tenancy starting on August 1, 2010, ending on July 31, 2011, for a monthly rent of $1,750.00.

I heard testimony that the tenancy actually ended on June 19, 2011, when the tenants sought and received permission to leave early as a result of receiving the landlords' notice that they did not intend to renew the tenancy due to the landlords' son moving into the rental unit.

The tenants paid a security deposit of $850.00 at the beginning of the original tenancy.

The tenants agreed at the hearing that they would be responsible for between $50.00 to $100.00 for carpet cleaning, $40.00 for a sink replacement and a water bill for $329.00.

The landlords produced a short, handwritten statement, which they claim was the final inspection report. The final inspection took place on June 19, 2011. By their signature, the tenants agreed that landlords could retain carpet cleaning of 2 rooms for $50.00-$100.00, $100.00 for dryer and stove parts, $20.00 for a sink faucet, $40.00 for a porcelain sink and $329.00 for the water bill.

I note this short note also stated that the landlords would return the balance of the tenants' security deposit by July 4, 2011.

Despite the tenants' agreement, the landlords further deducted $90.85 for flea treatment and returned the amount of $442.81 to the tenants.

Landlords' Claim and Evidence:

The landlords monetary claim is in the amount of $1,088.20, which includes the cost of a cleaner, for $221.00, $48.23 for flea treatment for the landlords' cat, carpet cleaning for $116.14, blind replacement for $103.58, a light fixture for $35.71, registered mail expenses for $9.73 and expenses for repairs and parts for the rental unit.

The landlords' relevant evidence included a written summary, various small receipts from home repair stores too numerous to mention individually, a receipt for carpet cleaning, photographs of the rental unit, a letter of July 4, 2011, from the tenants requesting their security deposit and informing the landlords of their forwarding address, a letter of explanation from the landlords to the tenants explaining the deductions from the tenants' security deposit with a cheque for the remaining portion, service receipts, the latest tenancy agreement and a portion of the other tenancy agreements between the parties.

Additionally the landlords submitted upon their return from a vacation, a further unilateral inspection by the landlords without the tenants present, revealed further issues with the rental unit, such as un-cleanliness, a missing shower head, damaged blinds, malfunctioning appliances, damage and dirty carpets.

The landlords submitted that they had informed the tenants that the upstairs bedroom carpets did not need cleaning as they would be replaced, and that the most important

carpet was the living room. The landlords claimed the tenants mistook their intent and did not clean the stairs and downstairs rooms.

Despite the landlords giving the tenants notice of not renewing the tenancy due to their son moving in, the landlords presented that the rental unit was not in move-in condition for the next tenants. Upon query the landlords stated that their son moved into the rental unit after the tenants vacated and had access to the rental unit directly after the tenants left on June 19, 2011. Upon further query, the landlords admitted that the photographs were taken two weeks after the final inspection.

I note that with the exception of a carpet cleaning on June 30, 2011, the other multiple receipts, including the receipt for cleaning on July 15, 2011, was well into July and into August, after a new tenancy or occupancy had begun.

Upon query the landlords stated that the sink in question was 20 years old, the refrigerator was 19 years old, the bathtub was 19 years old, the dining room carpet was 19 years old, and the living room and carpet on the stairs was 5 years old.

Upon query the landlords admitted knowing the tenants' new address in May 2011, as the tenants moved a short distance away.

Tenant Claim and Evidence

The tenants' monetary claim is in the amount of $3,215.85, comprised of $1,750.00 for an amount equal to one month's rent pursuant to section 51(1) of the Act, $850.00, doubled, for not returning the tenants' security deposit within 15 days, $90.85 for the additional amount deducted from their security deposit, $175.00 for prorated rent from June 15-19, $300.00 for labour for emergency repairs, and recovery of the filing fee for $50.00.

The tenants further requested consideration of a claim of $2,400.00 for a loss of 2 weeks' vacation, compensation for suffering and stress, and case preparation.

The tenants submitted that the final inspection on June 19, 2011, was a positive experience, and that the landlords were pleased with the condition of the rental unit, especially after the tenants agreed to allow the landlords to deduct a carpet steam cleaning for $50.00-$100.00, along with the other agreements. The tenants submitted that the landlords agreed to return the balance of their security deposit by July 4, 2011, which was 15 days after the final inspection.

The tenants submitted that they offered to write down their forwarding address, but the landlords laughed about that and said not to worry as they knew that they, the tenants, were only moving a block away on the same street and they, the landlords, would just walk the cheque to them.

The tenants stated they were surprised when the landlords informed them they would not return any portion of their security deposit until they had received the tenants' forwarding address in writing. The tenants stated they delivered their forwarding address on July 5, 2011.

The tenants submitted that they are entitled to a prorated rent due to the landlords not letting them out of their lease on June 5, instead of June 19, 2011, even though they had received notice of the non-renewal.

In response, the landlords stated that although they knew the tenants' forwarding address well in advance of ending the tenancy, the Residential Tenancy Branch advised them not to return the tenants' security deposit until the forwarding address had been received in writing.

The tenants testified that they had worked hard to clean the rental unit and took upon themselves to repair the rental unit during the course of the tenancy, taking on those responsibilities instead of bothering the landlords with those matters.

The tenants expressed surprise that the landlords would treat them like this after years in a long term tenancy, having always gotten along with each other and being friendly, only to be hit a month after the tenancy ended with other claims for repair or clean.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlords' Application

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection in

compliance with Residential Tenancy Branch regulations, on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

The landlords' half page, handwritten note was purportedly the landlords' condition inspection report. I therefore find the landlords failed to prepare and complete a condition inspection report in compliance with the Act.

Section 36(2) extinguishes the landlord's right to claim against the security deposit if the landlord fails to complete the condition inspection report in compliance with the Act.

In the absence of a move in or move out condition inspection report, I find the landlords have not sufficiently proven the condition of the rental unit after the tenancy ended and are thereby unable to meet steps 1 and 2 of their burden of proof. Therefore I **dismiss** the landlords' application, **without leave to reapply**.

Alternatively, had I not dismissed the landlords' application for failure to comply with the Act regarding the condition inspection report, I would still have dismissed their application for their attempts to have the tenants pay for such things that would be the responsibility of a landlord, such as repair or replacement of fully depreciated appliances, fixtures and carpets. The landlords have not produced any evidence or testimony which persuaded me that the tenants damaged or left the rental unit unclean, and their attempts to inspect the rental unit weeks after the parties' final inspection in an effort to claim against the tenants after the keys had been turned over to the new tenant caused me to doubt their credibility.

As I have dismissed the landlords' application, I find they are not entitled to recovery of the filing fee.

Tenants' Application

Section 38(5) of the *Act* stipulates that the right of a landlord to retain all or part of a security deposit, even if the tenant agrees in writing to deductions, does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit has been extinguished under or 36 (2).

As I have found that the landlords failed to comply with section 35 of the Act, I find that the landlords' right to claim against the security deposit has been extinguished.

Residential Tenancy Branch Policy Guideline 17 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 if

the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

I grant the tenants' application for a return of their security deposit, doubled, and Order that the landlords pay the tenants double their security deposit pursuant to section 38(6) of the *Act* less the $442.81 previously returned.

As to the tenants' claim for $1,750.00 for compensation equal to one months' rent, I **dismiss** this portion of their claim as the tenancy did not end pursuant to a section 51 Notice to End Tenancy, but rather by the terms of the tenancy agreement.

As to the tenants' claim for $175.00 for prorated rent, I find the tenants were obligated to pay rent for the month of June, under the terms of the tenancy agreement, and that the rent was prorated by agreement of the parties for the portion of the month the tenants were in possession of the rental unit. I therefore **dismiss** their claim for $175.00.

As to the tenants' claim for $300.00 labour, I find that the tenants failed to prove that any of the repairs were of an emergency type as that is defined under the Act, and I therefore **dismiss** their claim for $300.00.

Additionally, I find that the tenants have not submitted any compelling or persuasive evidence of stress and suffering or of loss of vacation pay. I therefore **dismiss** that portion of their application.

I find the tenants were compelled to file an application to recover their security deposit, and I therefore award them recover of their filing fee of $50.00.

I find the tenants have established a **monetary claim** in the amount of **$1,334.95**.

This sum is comprised of double the security deposit of $850.00, plus interest on $850.00 paid on July 15, 2006, in the amount of $27.76, plus the $50.00 filing fee. From this sum I deduct the sum of $442.81 which the landlords have already returned to the tenants.

I have issued the tenants a monetary Order for the sum of **$1,334.95**, reflecting their successful monetary claim.

I am enclosing a monetary Order for $**1,334.95** with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlords fail to comply with this monetary order.

Conclusion

The landlords' application is dismissed, without leave to reapply.

The tenants are granted a monetary order for $**1,334.95.**

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