Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MND, MNSD, FF
Tenant: MNDC, FF

Introduction

This matter dealt with an application by the Landlords to recover unpaid utilities, for compensation for repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for repairs and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?
4. Are the Landlords entitled to keep all or part of the Tenant's security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on March 25, 2011 and expired on August 31, 2011. The Tenant vacated the rental unit on September 1, 2011. Rent was $1,600.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of $800.00 and a pet damage deposit of $800.00 at the beginning of the tenancy.

The Landlords' Claim:

The Landlords did not complete a move in condition inspection report. Instead, the Landlords said they left a blank condition inspection report in the rental unit at the beginning of the tenancy and asked the Tenant to complete and return it to them however she did not do so. The Landlords did not complete a move out condition inspection report. The Landlords said they tried to arrange a move out inspection after the Tenant vacated but she kept deferring them. The Landlords admitted that they did not give the Tenant a Final Notice to Schedule a Condition Inspection.

The Landlords said the Tenant did not pay the final utility bills which were $116.00 for gas and $191.28 for electricity for the period, July 22 to August 24, 2011. The Landlords said the amount for electricity should be reduced by $100.00 because the Tenant was paying the electricity bill for 2 other tenants of the rental property. The Tenant did not dispute these amounts.

The Landlords said that at the end of the tenancy, they incurred repair expenses to fix a curtain rod bracket that pulled away from the wall and left a hole. The Landlords said this bracket was firmly secured to the drywall at the beginning of the tenancy. The Tenant claimed that the curtain rod was poorly secured to the wall in that the screws for it were only sunk into drywall. The Tenant said the curtain rod was composed of two bars held together in the middle with tape and that the weight and instability of the curtain rod caused it to fall repeatedly throughout the tenancy. Consequently, the Tenant argued that any damage to the wall from the bracket pulling out of the drywall was the result of it being poorly mounted and from reasonable wear and tear.

The Landlords also claimed that two toilet seats were securely attached at the beginning of the tenancy but were broken at the end of the tenancy and had to be replaced. The Tenant claimed that the toilet seats were loose at the beginning of the tenancy and that any further damage was the result of reasonable wear and tear. The Landlords further claimed that at the end of the tenancy a floor vent in the living room was broken. The Tenant denied that there were any broken floor vents. The Landlords further claimed that at the end of the tenancy, the master bedroom en-suite bathtub and vanity drains were plugged and a sink stopper was broken. The Tenant claimed that the sink stopper was not functioning properly at the beginning of the tenancy. The Tenant denied that the drains were plugged.

The Landlords said they tried to negotiate a settlement with the Tenant for these items but she would not agree and as a result, they withheld Tenant's security deposit and pet damage deposit pending the hearing of their application in this matter. The Parties agree that the Landlords received the Tenant's forwarding address in writing on September 23, 2011 by registered mail. The Parties also agree that the Tenant did not give the Landlords written authorization to keep any of the security deposit or pet damage deposit and they have not been returned to the Tenant.

The Tenant's Claim:

The Tenant said that on May 29, 2011 she noticed water seeping into the basement through some baseboards and contacted the Landlords. The Tenant said S.N. came to the rental unit but did not appear concerned. The Tenant said S.N. helped her to move some of the boxes she had sitting on the floor onto shelves. The Tenant said the water continued to seep into the basement. The Tenant said she tried but was unable to contact the Landlords on June 6, 8 and 9, 2011. The Tenant said that sometime after

June 9, 2011, the Landlords had a plumber attend the rental unit to install a new sump pump.

The Tenant said the Landlords advised her to mop up the water however she claimed that it was a never ending job and she did not feel that it was her responsibility so she stopped mopping up the water. The Tenant said that in mid-July, 2011 she noticed a strong, musty odour coming from the basement and found that this odour and moisture had penetrated clothing and other belongings she had stored in the basement and that mould was growing on the outside of some boxes. The Tenant said she brought some of these belongings upstairs and contacted the Landlords about it. The Tenant said the Landlords came to the rental unit on July 22, 2011 to look at the basement and advised her that she should be mopping up the water. The Tenant admitted that the Landlords hired a contractor to mop up the water, remove some wooden boards and paint cans that had been lying on the basement floor and disinfect the area.

The Tenant said the Landlords advised her at the beginning of the tenancy that there had been no flooding in the basement for 20 years. The Tenant said she believes, however that seepage in the spring time is a regular occurrence and that the Landlords withheld this information from her. Consequently, the Tenant sought compensation equivalent to two month's rent for the two months during which she lived in "unhealthy living conditions."

The Landlords claimed that they showed the Tenant on May 29, 2011 how to operate the sump pump and advised her that she should expect some seepage during the Spring months and would need to mop it up. The Landlords also claimed that as soon as they were advised by the Tenant that the sump pump was not operating properly, they paid to have a new sump pump installed. The Landlords said they were unaware until mid-July that the Tenant was not mopping up water but still paid to have a contractor come in and clean up the water and mildew. Consequently, the Landlords argued that there was nothing more they could have done short of attending the rental unit on a daily basis to clean up water. The Landlords also argued that the Tenant was supposed to have insurance for her belongings. The Landlords further argued that the Tenant's application for this relief was questionable given that she did not bring an application for this compensation until long after the tenancy had ended.

Analysis

The Landlords' Application:

Given that the Tenant did not dispute the Landlords' claim for unpaid utilities in the total amount of **$207.28,** I find that the Landlords are entitled to recover that amount.

Section 32 of the Act says that a Tenant is responsible for damages caused by her 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.” Consequently, on the issue of damages to the rental unit, the Landlords have the burden of proof and must show (on a balance of probabilities) that the damages alleged were caused by the Tenant’s act or neglect rather than reasonable wear and tear. This means that if the Landlords’ evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof. However, the Landlords did not complete a move in condition inspection report or a move out condition inspection report or any other corroborating evidence of the condition of the rental unit at the beginning or end of the tenancy. Consequently, I find that on this issue, it is a matter of the Landlords’ word against the Tenant’s.

In particular, the Landlords argued that it was the result of the Tenant’s neglect that a curtain rod bracket detached from the wall damaging the drywall. The Tenant however argued that the bracket was mounted poorly into drywall and given the weight of the curtain rod, it was inevitable that through normal wear and tear, the bracket would give way. Given the contradictory evidence of the Parties on this matter, and in the absence of any evidence from the Landlords to the contrary, I find that there is insufficient evidence to conclude that the wall damage was the result of the Tenant’s act or neglect and as a result, this part of the Landlords’ claim is dismissed without leave to reapply.

For similar reasons I find that there is insufficient evidence to conclude that the Tenant was responsible for damaging 2 toilet seats, a floor vent, a drain stopper and clogging two drains. Consequently, these parts of the Landlords’ claim are also dismissed without leave to reapply. As the Landlords have had little success on their application, I find that it would not be appropriate to allow them to recover from the Tenant the filing fee for the application and that part of their application is dismissed without leave to reapply. As a result, I find that the Landlords have made out a total monetary claim for $207.28.

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 and pet damage deposit or to make an application for dispute resolution to make a claim against them. 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 or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord’s right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for the damages however she may not offset those damages from the security deposit or pet damage deposit.

I find that the Landlords received the Tenant's forwarding address in writing on September 23, 2011 but did not have her written authorization to keep the security deposit of $800.00 and pet damage deposit of $800.00 and did not return them to the Tenant. Although the Landlords filed an application for dispute resolution on September 23, 2011 to make a claim against the deposits for unpaid utilities and damages to the rental unit, I find that they only had a right to make a claim against the security deposit for unpaid utilities and were required to return the balance of the deposits to the Tenant within 15 days. In other words, the Landlords had no right to retain the security deposit and pet damage deposit for damages to the rental unit because their right to do so was extinguished under s. 24(2) and s. 36(2) of the Act as they failed to complete a move in and a move out condition inspection report. 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 (after deducting an amount for utilities) or $1,185.44 and double the amount of the pet damage deposit or $1,600.00 for a total of **$2,785.44**.

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 did not apply to for this relief on her application for dispute resolution, I find that she did not specifically waive reliance on s. 38(6) of the Act.

The Tenant's Claim:

Section 32(1) of the Act says (in part) that a Landlord must provide and maintain residential 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(2) of the Act says (in part) that a Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. Consequently, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlords breached their duty to repair and maintain the rental unit and that as a result of their breach, she suffered damages. This means that if the Tenant's evidence is contradicted by the Landlords, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenant said her claim for compensation was for "living in unhealthy living conditions" for two months during which water seeped into the basement of the rental unit. However, I find that there are two difficulties with the Tenant's claim. The first difficulty is that the Tenant has provided no reliable evidence to corroborate her claim that the rental unit did not comply with health, safety and housing standards. The Tenant merely provided photographs that mould had begun to grow on the exterior of some boxes and other cases. The second difficulty with the Tenant's claim is that I find she has not shown that the Landlords failed in their duty under the Act to repair or maintain the rental property.

In particular, I find that when the Tenant reported to the Landlords that water was seeping into the basement, they took immediate steps to investigate and to ensure that the Tenant knew what steps to take to ensure that water did not accumulate. I also find that the Landlords took steps to replace the sump pump as soon as that issue was brought to their attention and also took immediate steps to investigate and address the mould and mildew in the basement when the Tenant brought that to their attention.

Furthermore, although the Tenant argued that she did not believe it was her responsibility to clean up the water that seeped into the basement, I find that at no time prior to mid-July 2011 did she advise the Landlords that she would not do so. Consequently, I find that the Tenant acted unreasonably in allowing the seeping water to collect and not advising the Landlords until it started to create an odor that she did not intend to clean it up. For all of these reasons, I find that there is no merit to the Tenant's claim for compensation and it is dismissed without leave to reapply.

In summary, I find that the Landlords are entitled to a monetary award of $207.28 for unpaid utilities and that the Tenant is entitled to recover the security deposit and pet damage deposit as follows:

- Security deposit of $800.00 less permitted claim for utilities of $207.28 = $592.72;
- Balance of security deposit of $592.00 retained by the Landlords without authority under the Act is doubled = $1,185.44;
- Pet deposit of $800.00 retained by the Landlords without authority under the Act is doubled = $1,600.00;
- Total amount due to Tenant = $2,785.44

Conclusion

The Landlord's application is granted in part. ***I Order the Landlords pursuant to s. 38(4) and s. 72(2) of the Act to keep $207.28 of the Tenant's security deposit and pet damage deposit in full satisfaction of their monetary award. I Order the Landlords to return the balance of $2,578.16 to the Tenant.***

The Tenant's application is dismissed without leave to reapply. A Monetary Order in the amount of **$2,578.16** has been issued to the Tenant 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: December 13, 2011.

Residential Tenancy Branch