Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

Tenant's application: MNSD; FF

Landlords' application: MNSD; MNDC

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks return of the security and pet damage deposits; and to recover the cost of the filing fee from the Landlords.

The Landlords seek compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security deposit and pet damage deposit towards partial satisfaction of their monetary award.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlords with the Notice of Hearing documents and copies of her documentary evidence, by registered mail, sent August 24, 2011. The Tenant provided copies of the registered mail receipt for each of the Landlords, and the tracking numbers, in evidence.

The Tenant testified that she served the Landlords with her second package of documentary evidence, by registered mail, sent November 1, 2011. The Tenant provided copies of the registered mail receipt for each of the Landlords, and the tracking numbers, in evidence.

Based on the Tenant's affirmed testimony and documentary evidence, I am satisfied that the Landlords were both duly served in accordance with the provisions of Sections 88 and 89 of the Act.

The Landlords testified that they served the Tenants with their Notice of Hearing package by registered mail, sent October 12, 2011. The Landlords provided a copy of the registered mail receipt and the tracking number in evidence. The Landlords testified that they sent the documents in one envelope to the address that the Tenant AG provided as her forwarding address. The Tenant testified that the Tenant RB did not live at her address at the time the package was sent.

Section 89 of the Act requires an applicant to serve each respondent separately with a copy of the Notice of Hearing documents. Based on the testimony of both parties, and

the documentary evidence provided, I find that the Landlords served the Tenant AG in accordance with the provisions of Section 89(c) of the Act, but did not serve the Tenant RB. Co-tenants are jointly and severally responsible for debts and damages incurred. Therefore, the Landlords' application continued with respect to the Tenant AG only. The Landlords' application against the Tenant RB is dismissed without leave to reapply.

The Landlords testified that they served the Tenant AG with copies of their documentary evidence, by registered mail, sent November 11, 2011. The Tenant acknowledged receipt of the documents.

Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to the provisions of Section 38(6) of the Act?
2. Are the Landlords entitled to a Monetary Order for loss of revenue for the months of August, September and half of October, 2011; the cost of advertising the rental unit; and damage to the back yard of the rental property allegedly caused by the Tenants' dog?

Background and Evidence

This tenancy began on March 21, 2010. A copy of the tenancy agreement signed February 24, 2010 was provided in evidence. The tenancy agreement was a one year fixed lease, expiring April 1, 2011. Monthly rent was $1175.00, due on the first day of each month, and did not include utilities.

The Tenant testified that she paid a security deposit in the amount of $585.00 and a pet damage deposit in the amount of $300.00 on February 24, 2010. She stated that she had receipts for the deposits made, but she did not provide them in evidence.

The Landlords testified that the Tenant paid a security deposit in the amount of $585.00, but only paid $250.00 for a pet deposit.

The Tenant testified that on June 30, 2011, she gave the Landlords notice that she would be ending the tenancy effective July 31, 2011. The Tenant testified that she moved out of the rental unit on July 16, 2011.

The Landlords testified that they did not receive the Tenant's written notice to end the tenancy until July 1, 2011, though it was dated June 30, 2011. A copy of the written notice was provided in evidence by the Landlords.

The Landlords testified that the lease was renewed on April 6, 2011 for one more year and therefore the Tenant was not entitled to end the tenancy on July 31, 2011, without consent of the Landlords. The Landlords provided a "Notice by Landlord of Intention to Renew/Extend Rental Agreement" (the "Notice") in evidence.

The Tenant testified that the Notice was not clear because it was silent about whether the tenancy would continue for one month or one year. The Tenant also provided a copy of the Notice in evidence.

The copy provided by the Tenant indicates that the "Tenant wishes to renew/extend the Rental Agreement for an additional period of 1 months/years beginning March 21, 2011, pursuant to the same terms as contained in the Rental Agreement". Neither the "months" nor the "years" is circled on the Notice. On the copy provided by the Landlords, the word "years" is circled.

The Landlords testified that they realized that the Notice was not complete after the parties signed it, so they circled "years" and provided the Tenant with an amended copy. The Landlords testified that the Tenant knew that it was a lease renewal for one year. The Landlords referred to the Tenant's letter dated June 30, 2011, which they submit confirms this fact.

The Tenant confirmed that "In my mind, I thought I had signed for a year".

The Tenant testified that there was a condition inspection done with the Landlords at the beginning of the tenancy, but not at the end of the tenancy. She stated that she attempted to arrange for a condition inspection at the end of the tenancy, but the Landlords did not cooperate.

The Landlords testified that the Tenant suggested one time to do the condition inspection, but the Landlords were not available at that time. They submitted that they called her cell phone and left three messages to arrange for an alternate time, but the Tenant did not return any of their calls. The Tenant denied receiving any messages from the Landlords.

The Tenant stated that she mailed the Landlords, by regular mail, her forwarding address on July 21, 2011, but she did not get a response from the Landlords.

The Landlords testified that they did not receive the Tenant's forwarding address until they were served with the Tenant's Application for Dispute Resolution at the end of August, 2011.

The Landlords testified that they started advertising the rental unit on July 4, 2011, in the local newspaper and on three different popular websites. They testified that the ads were renewed regularly. The Landlords provided copies of the invoices for the newspaper ads, which total $338.58. The Landlords testified that they lowered the asking price to $1,100.00 per month on July 19, 2011, in an attempt to rent it quickly. They stated that it was re-rented effective October 15, 2011 for $1,100.00 per month. The Landlords are not seeking to recover the monthly shortfall of $75.00 per month for the remainder of the term of the lease.

The Tenant testified that she went by the rental unit on August 8, 2011, and noticed a lady, child and dog in the yard. She stated that she talked to a neighbour, who believed it had been re-rented. The Tenant testified that she went by again in September, 201, and it appeared to be empty. The Tenant believes someone was living in the rental unit for the month of August, 2011.

The Landlords testified that no one was living in the rental unit until October 15, 2011. They stated that the Tenant may have seen prospective new tenants viewing the rental unit on August 8, 2011. The Landlords testified that they were on vacation for part of August and therefore did not advertise in the local newspaper from August 5 to September 4, 2011, but continued advertising after they returned until the rental unit was re-rented in mid-September for October 15, 2011.

The Landlords testified that they had no concerns with respect to any damages on the inside of the rental unit, but the Tenant's dog had damaged the lawn. The Landlords testified that it would cost $250.00, the amount of the pet damage deposit, to remove the damaged sod and reseed the lawn.

The Tenant testified that her dog did not damage the lawn and suggested that the nitrogen burns might have been caused by the dog that moved into the rental unit for the month of August, 2011.

Analysis

Regarding the Tenant's claim:

The parties disagreed with respect to the amount the Tenant paid for a pet damage deposit. The Tenant stated that she had receipts to prove that she had paid $300.00, but the Tenant did not provide the receipts in evidence. The onus is on the person making the claim to prove their claim and I find that the Tenant provided insufficient evidence that she paid $300.00. Therefore I find that the pet damage deposit was $250.00.

Security deposits and pet damage deposits are held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the deposits) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlords testified that they received the Tenant's forwarding address in writing when they were served with the Tenant's Notice of Hearing documents. The Landlords did not return the deposits within 15 days of receipt of the Tenant's forwarding address, nor did the Landlords file for dispute resolution against the deposits within 15 days. The Landlords filed their Application for Dispute Resolution on October 6, 2011.

Section 38(2) of the Act provides that the Tenant extinguishes her right to return of the deposits if she fails to participate in an end of tenancy inspection. However, it is the Landlord's responsibility to arrange for the inspection and, after at least two attempts to set a date, if the Tenant does not cooperate, the Landlord must provide the Tenant with a written Notice of a Final Opportunity to Schedule a Condition Inspection. If the Tenant does not attend on the date provided on that notice, the Landlord may proceed with the inspection in the Tenant's absence, complete the Condition Inspection Report and provide the Tenant with a copy. In this case, no Notice of a Final Opportunity to Schedule a Condition Inspection was provided to the Tenant and therefore I do not find that the Tenant has extinguished her right to return of the deposits.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit and pet damage deposit, calculated as follows:

Security deposit paid	$585.00
Pet damage deposit paid	$250.00
Subtotal	$835.00
Compensation pursuant to Section 38(6)	x 2
TOTAL	**$1,670.00**

Regarding the Landlord's claim:

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony of both parties, I find that the lease was renewed for a period of one year on April 6, 2011. The Tenant confirmed this in writing in her June 30, 2011, letter and also verbally when she stated during the Hearing, "In my mind, I thought I had signed for a year".

The Tenant testified that she believed another tenant had occupied the rental unit for a period of one month in August, 2011, however there was no corroborating evidence. The invoices provided by the Landlords indicate that the Landlords had ordered that the rental unit be advertised in the local newspaper on July 4, 2011(running July 8 – 15); July 19, 2011 (running July 22 to August 5); and August 31, 2011 (running September 4 to September 17, 2011.

The Landlords stated that they did not advertize in the paper from August 5 to September 4, because they were on vacation. The Landlords could have listed an agent's phone number in the advertisement. The Landlords did not appoint an agent to act for them while there were on vacation and therefore online ads would have little effect either. I find that the Landlords did not take sufficient steps to minimize their loss for September, 2011. However, I find that the Landlords have satisfied all four elements of the test for damages with respect to the month of August, 2011, and from October 1 – 14, 2011. I award the Landlords the sum of $1,705.65 for this part of their application, calculated as follows:

Loss of revenue for August, 2011	$1,175.00
Loss of revenue from October 1 – 14 ($1,175.00 / 31 x 14 days)	$530.65
TOTAL	$1,705.65

I find that the Landlords are also entitled to their costs for newspaper advertising in the amount of $338.58.

The Landlords did not provide sufficient evidence to support their claim in the amount of $250.00 for damage to the yard and this portion of their application is dismissed.

The Landlords have established a monetary award in the total amount of **$2,044.23**.

Set-off and filing fees:

I hereby set of the Tenant's monetary award against the Landlords' monetary award and provide the Landlords a Monetary Order in the amount of **$374.23** ($2,044.23 - $1,670.00).

Both applications had merit and I order that the Tenant bear the cost of her filing fee.

Conclusion

The Landlords' application against the Tenant RB is dismissed without leave to reapply.

I hereby provide the Landlords a Monetary Order in the amount of **$374.23** for service upon the Tenant AG. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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 28, 2011.

Residential Tenancy Branch