Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened as a face-to-face hearing in response to an application made by the tenant for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of this application. The tenant's application also claims aggravated damages for loss of quiet enjoyment, which is identified in the application as "other" relief sought.

Both landlords and the tenant attended the hearing, and the tenant called a witness. The parties and the witness provided affirmed testimony and the parties provided evidence in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?
Is the tenant entitled to aggravated damages for loss of quiet enjoyment?

Background and Evidence

The parties agree that this month-to-month tenancy began on March 8, 2010 and ended on August 12, 2011. Rent in the amount of $1,000.00 per month was originally payable in advance on the 1st day of each month, and the tenant paid a pro-rated amount of rent for the first month. Rent was increased to $1,023.00 per month on July 1, 2011, and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit from the tenant in the amount of $500.00 as well as a pet damage deposit in the amount of $500.00. The rental unit is a 2 bedroom suite on the main floor of a house with a basement suite which was occupied at least part-time by the landlords during this tenancy.

Tenant's Evidence

The tenant testified that move-in and move-out condition inspection reports were completed and the tenant provided the landlords with a forwarding address in writing on the move-out condition inspection report. A copy of the report was provided in advance of the hearing and it is dated August 12, 2011 and covers move-in as well as move-out notations. The report also has comments sections, and at move-out states that all door jams were dusty and in need of cleaning, and under the section that says “End of Tenancy; damage to rental unit or residential property for which the tenant is responsible:” it is written, “cleaning & painting walls where chipped and scratched; carpets to be cleaned.” The tenant checked off the box beside the statement stating that the tenant does “not agree that the report fairly represents the condition of the rental unit for the following reasons:” but no reasons are written in the comments section. The tenant testified that the landlords had lived in that unit prior, and the tenant was required to take their laundry out of the washer, clean the microwave, kitchen, and bathroom upon moving in. Further, the move-in condition inspection report was not as thoroughly completed as the move-out condition inspection report. Renovations were also completed by the landlord during the tenancy on both bedrooms and the bathroom, and the tenant cleaned it up. The tenant also testified that an Information Officer at the Residential Tenancy Branch advised that if the landlord does not provide a copy of the move-in condition inspection report to the tenant, the amount of the security deposit to be returned to the tenant triples, and the landlords failed to give the tenant a copy of the report after the move-in portion was completed.

A copy of the tenancy agreement was also provided for this hearing, and it contains an addendum with 13 conditions, the last of which states that the tenant is responsible for snow removal and yard work on the portion allocated to the tenant. The tenant testified to looking after the back yard, but no portion of the yard was specifically allocated to the tenant. When the landlords were not there, the tenant looked after the front and back yards, and when the landlords were there, the parties shared the yard work.

During the tenancy, the landlords asked the tenant if the tenant wanted to grow a garden, and when the tenant declined, the landlords gave that plot of the yard to a neighbour to use. The tenant felt that to be an infringement on the tenant’s privacy; the tenant liked to sunbathe in the yard, and did not feel comfortable doing so with other neighbours in the yard. When the tenant spoke to a landlord about it, the tenant was met with foul language by the landlord who told the tenant the landlords could do as they pleased. The garden was given in May, 2011, and the tenant claims $450.00 for loss of privacy.

The tenant has had depression issues and IBS as well as other medical conditions, having had a nervous break-down. The tenant testified that the foul language and treatment by the landlord caused the tenant to trigger into a downward spiral and on

July 31, 2011 went to a doctor. The tenant claims $5.37 for medication prescribed by the doctor, and the tenant provided a receipt dated July 31, 2011 for that purchase. Also provided was a copy of a medical note stating that the tenant was under medical care and off work from July 29 to August 2 inclusive.

The tenant also lost 5 days of work (July 29 to August 2, inclusive) as a result of the illness brought on by the landlords. The tenant earns $16.78 per hour, and works 7.7 hours per day. The tenant's pay cheque was deducted 3 days pay. The tenant also accrues sick hours, and 22.02 hours were deducted from the tenant's time bank. The tenant receives a maximum of 20 hours credit in that bank per year, and claims $789.64, being the entire 5 days. A copy of the tenant's payroll statements were provided for this hearing.

The tenant also testified that the landlords overcharged the tenant for utilities, however during the course of the hearing, the tenant withdrew the claim for a refund of utilities.

The tenant further testified that the landlords kept moving the tenant's belongings in the yard. The barbeque and patio table set were moved by the landlord, and the tenant's friend came to visit and parked a motor bike in the carport and the landlord left a note saying to move it. On July 4, 2011, the landlord brought a newer stove for the rental unit, but it was dirty and the tenant had to clean it. The tenant had just replaced the bulb in the old one, and the landlord kept the new light bulb.

During the tenancy, the landlord inspected the rental unit and commented to the tenant words to the effect, "Don't you ever clean your house?" The house was not clean when the tenant moved in.

The tenant told the landlords in April, 2011 that mail hadn't been received since February, 2011. Mail was delivered for the first year, but alot of mail went missing and was not found. The Post Office told the tenant that the landlords should have 2 boxes marked A and B, and the tenant told the landlords but the landlords refused telling the tenant that it was not necessary and the parties continued to share a box. The tenant never did start getting mail again.

The tenant also pointed out that the landlord's bill for window sills, etc. is marked as "Fine" on move-out. The landlords provided the tenant with return of $638.85 of the combined security deposit and pet damage deposit in a cheque dated August 22, 2011.

The tenant appeared emotional and sensitive during the hearing, and showed clear signs of distress at the issues raised and the required appearance at the hearing.

The tenant's witness testified that the tenant was very stressed due to harassment by the landlords moving furniture and garbage cans and privacy in the yard being taken away. The witness works with the tenant, and they're friends. The tenant had also expressed worry to the witness about people coming to view the rental unit just before the tenant was going to move out and the tenant was worried the rental unit would be shown when the tenant wasn't at home. The tenant put tape on the door to see if that happened. The tenant was worried about safety which is why the tenant felt the need to put tape on the door, showing how upset and stressed the tenant was during this tenancy.

The witness also testified that the tenant's house was kept impeccable, including the cat box. The witness recalls seeing ignorant letters from the landlord to the tenant, which are almost harassing.

When asked if the witness had met the landlords or spoken to them, the witness stated that they had not had a conversation, just in passing, and found the landlords grumpy.

Landlords' Evidence

One of the landlords suffers from Myotonic Dystrophy, a form of Muscular Dystrophy, and was unable to speak at all during the hearing, using an iPad to type statements, and was represented by the other landlord, who spoke for both landlords.

The landlords testified to moving into the house in July, 2010 but were there off and on prior to then. The landlords go to Alberta regularly and did so throughout the tenancy.

The landlords do not dispute the nervous breakdown suffered by the tenant, and acknowledged that the tenant has suffered with depression in the past.

The landlords also testified that the tenant was given a copy of the move-in condition inspection report once it was completed. The tenant claimed to have not received it, so the landlords provided the tenant another copy with a note dated August 9, 2011, and provided a copy of same for this hearing.

The tenant always talked about moving. In June, 2011 the tenant was excited about a boyfriend, and the parties verbally agreed that the if the tenant wanted to move, the landlords would not require 30 days notice because they knew they would have no difficulty re-renting the rental unit. The tenant wrote a note to the landlords, and the journal provided by the tenant for this hearing states that the landlords did not respond, but they did respond. The tenant's boyfriend arrived for a visit, but the tenant didn't move. The tenant's attitude started to change, and that's when the landlords felt that the break-down started because there were no issues for the full year prior. The tenant

would run into the house when seeing the landlords, and the landlords thought the tenant was embarrassed.

The landlords also dispute the unpaid leave claimed by the tenant; if the tenant is entitled to 20 days and then got docked time from pay, the tenant must have taken a fair bit of time off of work prior to July, 2011. The tenant told the landlord that the landlord swore at the tenant on July 29, 2011 but the tenant was already off sick. The landlords noticed a pattern of drinking and bringing home male visitors, and then claimed loss of work.

With respect to the back yard, the tenant moved into the rental unit knowing that the landlords also lived there. There never has been grass in the front yard, and the very back of the yard has a little garden plot. The landlords invited the tenant to pick vegetables from the garden; and there is no designation of allocated yard space, so it doesn't matter who is planting the garden, be it a neighbour or the landlords. For the next summer, the landlords didn't want a garden and asked if the tenant wanted it, but the tenant declined stating that the tenant would be moving out. The landlord asked the tenant if the tenant cared if a neighbour used the garden plot and the tenant again replied that it didn't matter because the tenant would be moving out. The neighbours planted corn, which gave the tenant even more privacy; a chain link fence divided the homes. The landlord disputes the tenant's claim stating that the tenant states that there was no yard for the tenant, and then that the landlords took away the yard.

When the tenant told the landlords that the tenant would be moving, the landlords gave the tenant a letter confirming that the landlords did not require 30 days notice.

With respect to utilities, the landlords testified that the water meter was read on June 21, 2011 and the landlords paid the bill. The tenant was told that from June 22, 2011 to August 12, 2011 was the tenant's portion, being 52 days. The landlord also called the City and was told that the tenant had already called, but the City staff couldn't give the information because the utility was in the landlord's name but did tell the tenant that the June bill was paid. The billing date was June 30, 2011; the landlords received the bill in July; the reading date was July 21, 2011. The amount of the bill was $154.60, and the tenant paid $73.10. The landlords felt the tenant owed $88.34 and therefore the landlords withheld $15.29 from the security deposit.

The landlords also testified that the rental unit was not left reasonably clean and undamaged by the tenant at the end of the tenancy, and provided a letter from a cleaner employed by a cleaning company to support that claim. The landlords withheld $361.15, being $15.29 for the unpaid utility bill, and $345.86 for damages, which includes $8.95 for paint, $8.59 for a kitchen light bulb, $100.80 for professional carpet cleaning, and $227.50 for the professional cleaning service. Also provided was a

document dated August 22, 2011 entitled, “Damage Deposit Reconciliation Report” but it is not clear whether or not a copy was given to the tenant when the portion of the deposits was returned to the tenant. The document also refers to a damage deposit of $500.00 and a pet damage deposit in the amount of $500.00, and shows that the landlords did not withhold any amount from the pet damage deposit, only from the security deposit.

With respect to the tenant’s claim for harassment, the landlords deny ever using any foul language to the tenant. The landlord admitted to moving the tenant’s garbage, but they had asked the tenant to move it. When summer arrived, the landlords wanted to open a window but could smell the kitty litter. The tenant then moved the garbage back.

The landlords also stated that paragraph 7 of the addendum to the tenancy agreement which states that the landlords have the right to enter the rental unit on the 1st day of each month for an inspection was a requirement of the insurance company.

Analysis

Firstly, with respect to the tenancy agreement, I find it prudent to point out that the term in the addendum, “7. The landlord or representative will have the right to enter and inspect the premises on the first day of every month at the time of rent collection,” is not a lawful term in a tenancy agreement in British Columbia. The *Residential Tenancy Act* states:

> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
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> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> (d) the landlord has an order of the director authorizing the entry;
> (e) the tenant has abandoned the rental unit;
> (f) an emergency exists and the entry is necessary to protect life or property,
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> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

With respect to the security deposit and pet damage deposit collected by the landlords, the *Act* also states that:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The *Act* then goes on to say that Section 38(1) does not apply if the tenant's right to the return of the deposits has been extinguished because the tenant has failed to participate in a move-in or move-out condition inspection, and also states that a landlord may retain any portion that the tenant has agreed to in writing. Further, the *Act* sets out the consequences if the landlord fails to return the deposits:

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, I find that the tenancy ended on August 12, 2011 and the landlords received the tenant's forwarding address in writing the same day on the move-out condition inspection report. The landlords returned $638.85 however, the landlords have not made a claim against the tenant for damages or unpaid utilities and the tenant did not agree in writing that the landlords keep any portion of the deposits. Therefore, I must find that the landlords failed to comply with the *Act* by failing to return all of the deposits to the tenant or applying for dispute resolution. The *Act* does not permit a landlord to keep any of the deposits unless the tenant agrees in writing or the landlords receive an order from the Residential Tenancy Branch.

The landlords collected a $500.00 security deposit and a $500.00 pet damage deposit, and testified that the pet damage deposit was returned in the $638.85. I accept that and find that the tenant is entitled to double the amount of the security deposit. Double the

amount of the security deposit is $1,000.00 and the landlords returned $138.85, and I find that the tenant is entitled to recover the difference of $861.15.

With respect to the landlords' testimony and evidence of damage to the rental unit, I have no application before me from the landlords and therefore I cannot consider any claims at this hearing.

I also find it prudent to explain to the tenant that the information received from an Information Officer at the Residential Tenancy Branch was either incorrectly given or incorrectly heard. The *Act* sets out the consequences for the tenant and the landlord if report requirements are not met:

> **24** (1) The right of a tenant to the return of a security deposit or pet damage deposit, or both, is extinguished if
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> (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection],*
> (b) the tenant has not participated on either occasion.
>
> (2) the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 23 (3) *[2 opportunities for inspection],*
> (b) having complied with section 23 (3), does not participate on either occasion, or
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore, a landlord is not required under the *Act* to pay the tenant triple the amount of the deposits for not providing the tenant with a copy of the move-in condition inspection report, but the right of a landlord to make a claim for damages to a rental unit against the deposits is extinguished for that failure. In this case, I decline to make any findings with respect to the tenant receiving the report because I have no application by the landlords claiming against the deposits. The tenant's application for triple rent for that failure is not provided for in the *Act* and therefore must be dismissed.

With respect to the tenant's claim in the amount of $450.00 for loss of privacy, the landlords testified that the tenant was asked prior to allowing a neighbour to use the garden plot, whether the tenant wanted it, and then whether or not the tenant was opposed to a neighbour using it. The tenant did not dispute that testimony, and therefore, I find that the tenant has failed to establish that the landlords have caused the tenant any distress or loss of the rental unit and common property, and the tenant's claim for $450.00 must be dismissed.

With respect to the tenant's claim in the amount of $789.64 for lost wages, I find it clear in the evidence that the tenant was suffering from a mental or emotional breakdown, but I cannot find that the landlords were responsible. The tenant has suffered from emotional and mental distress in the past, and perhaps the landlords did not assist in the situation, however, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that the tenant has failed to establish that the landlords are responsible for the tenant's breakdown. Therefore, the tenant's application for lost wages cannot succeed. The same analysis must be made with respect to the prescription obtained by the tenant, and both requests must be dismissed.

With respect to the tenant's claim for aggravated damages in the amount of $500.00, the Monetary Order Worksheet provided by the tenant states that the claim is in relation to multiple letters and harassment by the landlords. I have reviewed the material, and find that the tenant has failed to establish any of the elements in the test for damages, and that application must also be dismissed.

Since the tenant has been partially successful with the claim before me, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $961.15. This order is final and binding on the parties and may be enforced.

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: January 23, 2012.

Residential Tenancy Branch