Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction
This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- other reasons as set out in their application for dispute resolution.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The parties agreed that on or about October 6, 2011, the female tenant told the landlord that the tenants were planning to vacate the rental premises at the end of October 2011. The female tenant said that they planned to continue the tenancy until the end of November 2011 in order to restore the rental premises to its original condition. The landlord confirmed he received a copy of the tenants' dispute resolution hearing package sent by registered mail on December 1, 2011. I am satisfied that the tenants served the landlord with their hearing package in accordance with the *Act*.

In the tenants' original application for dispute resolution, a copy of which the tenants sent the landlord, the tenants identified their address for the purposes of the dispute resolution hearing process as a post office box number in D, B.C. The male tenant said that this was a post office box he had been keeping since the 1990s. The landlord sent his written evidence package to that mailing address by registered mail on February 6, 2012. He provided a copy of the Canada Post Tracking Number and a copy of the tracking status to confirm this mailing. The landlord's written evidence package was returned as undeliverable at that address. Although the tenants amended their application for dispute resolution to show a different mailing address, they did not advise the landlord of their change of address. The female tenant said that they failed to do so because they were concerned about letting the landlord have their current mailing address. The male tenant did not dispute the landlord's claim that the post office box identified by the tenants to their mailing address has not been in operation for the past year. The male tenant said that he did not realize until recently that the new owner of

the store containing the post office box had changed policies and was closing any post office box that had not been checked within six weeks.

I find that the tenants were responsible for advising the landlord of any change in their mailing address. Without a copy of their amended application for dispute resolution, the landlord sent his written evidence package to the tenants by registered mail at the wrong mailing address. Had the tenants provided him with a correct mailing address, they would have received his written evidence package in time to have this information considered during this hearing.

According to section 90 of the *Act*, material sent by registered mail to the last known address of a party is considered served 5 days after being mailed. In this case, the tenants would have been considered served with the landlords' written evidence on February 11, 2012, three days before this hearing. Under these circumstances, I find that the landlord's written evidence package was deemed served to the tenants in accordance with the *Act* and was admissible evidence for the purposes of this hearing.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of their security deposit from the landlord?
Are the tenants entitled to any reduction in their rental for loss of use of the rental home during November 2011?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on November 1, 2009. At the expiration of the fixed term, the tenancy continued as a periodic tenancy. Monthly rent for this rental home was set at $1,700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' $850.00 security deposit paid on or about October 1, 2009.

The tenants did not dispute the landlord's claim that they conducted a joint move-in condition inspection in October 2009, although the landlord did not produce a condition inspection report and did not provide a copy to the tenants. The parties disagreed as to whether a joint move-out condition inspection was conducted. The landlord said that he conducted one with one of the tenants; the tenants maintained that no such joint inspection occurred. At any rate, the landlord did not produce a move-out condition inspection report.

The tenants applied for a monetary award of $850.00 for the return of their security deposit. They also said that they did not have full use of the rental home during November 2011, as the landlord had commenced painting the interior of the rental

home by mid-November 2011, which prevented them from using the rental home on November 19, 2011 when they returned to the community expecting to sleep there that night. They could not do so, due to the strong paint fumes and had to stay in a hotel instead that night.

The landlord's written evidence package stated that the front yard was all grass when the tenancy began. He said that the back yard was half grass and half gravel. He described the changes made by the tenants during the tenancy to the exterior of the rental home in the following terms:

- Removal of about 2 ½ tonnes of dirt from the front yard, piled into a mound in the back yard and used for gardening;
- Removal of grass from the front yard and replacement with landscaping gravel
- Construction of wood planter boxes in the front yard.

The landlord testified that on November 12, 2011, he visited the rental premises and spoke with the female tenant. By that date, the tenants had removed planters and the majority of plants from the yard, but a very large mound of dirt remained in the back yard of the rental home. He also presented evidence that there was a lot of debris remaining and the front yard was uneven dirt and gravel. He also noticed significant changes to the condition of the interior walls which had putty applied by the tenants. When he raised his concerns about the condition of the rental property to the female tenant, the landlord said that the female tenant told him that she would not be doing any more work on the premises and that he should keep their security deposit and do the work himself. Although he made arrangements to return to the premises the following day to meet with both tenants, they were not there when he returned, did not answer their phone, and left their key to the house for him. The female tenant confirmed at the hearing that she told the landlord that the tenants would not be conducting further work on the property. She confirmed that she left her key for the landlord when she left the property on November 12, 2011.

The landlord assumed from his November 12, 2011 meeting with the female tenant that the tenants had ended their tenancy and were not going to perform any further work on the rental home. He hired workers to repair damage to the yard and to clean up and repair the interior of the home, work which lasted more than one week.

Although the landlord identified a number of repairs, damage and unpaid utility bills stemming from this tenancy, he did not submit a separate application for dispute resolution.

Analysis

Pursuant to section 63 of the *Act,* the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues arising out of this tenancy on the following terms:

1. Both parties agreed that the landlord will retain the tenants' security deposit.
2. Both parties agreed that the tenants will pay the landlord $116.00 forthwith.
3. Both parties agreed that the terms of this agreement constituted a final and binding resolution of all issues arising out of this tenancy for both parties and that neither party will pursue any further applications for dispute resolution arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of $116.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenants do not abide by the terms of the above settlement. As per the parties' agreement, I allow the landlord to retain the tenants' security deposit.

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: February 14, 2012

Residential Tenancy Branch