Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNDC, MNSD, FF, O
Tenant: MNSD, MNDC

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for cleaning and 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 the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlords' alleged failure to return them as required by the Act.

At the beginning of the hearing, the Landlords claimed that they had not received the Tenant's evidence package which the Tenant's agent said was served on them on July 18, 2012 by regular mail. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. RTB Rule of Procedure #4 says that a party must serve their responding evidence on the other party at least 5 days and (where the time for responding is less than five days), no later than 2 days before the hearing. I find that the Tenant did not serve her documentary evidence on the Landlords within the time limits required by the Rules to the Act and as a result, it is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of a security deposit and pet damage deposit and if so, how much?

Background and Evidence

This month-to-month tenancy started on November 15, 2009 and ended on May 3, 2012 when the Tenant moved out. Rent was $1,000.00 per month payable in advance on the 1st day of each month. The Tenant paid a combined security deposit and pet damage deposit of $950.00 at the beginning of the tenancy.

The Landlords said the Tenant sent them an e-mail on April 4, 2012 advising them that she would be ending the tenancy effective May 1, 2012. The Landlords said they did not receive one month notice from the Tenant as required under the Act and therefore they sought one month's compensation. The Landlords admitted that they did not try to re-rent the rental unit after the tenancy ended because they decided to list it for sale instead.

The Landlords did not complete a condition inspection report at the beginning or at the end of the tenancy. The Landlords claim however, that at the beginning of the tenancy, the rental unit had been professionally cleaned (including the carpets) and was in a good state of repair. The Landlords also claim that the carpeting in the rental unit was approximately 5 years old and in good condition. The Landlords further claim that some furnishings, including a sofa, kitchen table and 2 chairs were left in the rental unit and although old, were clean and in good condition.

The Landlords said that at the end of the tenancy, two bathrooms and the carpets required cleaning, a vacuum belt was broken and a kitchen table and two chairs were missing. The Landlords also said they believe that a section of carpeting in a doorway of a bedroom had been clawed by the Tenant's cat because sections of the material were missing and the door frame also had scratches. The Landlords said they repaired this area with a spare piece of carpet that they had on hand. The Landlords also claimed that a section of carpeting in a small storage room was damaged by cat urine and had to be removed and replaced with linoleum. The Landlords further claim that the Tenant's cat clawed a sofa and that the Tenant agreed to compensate them for the cost of a slip cover. In support of their claim for damages, the Landlords provided copies of invoices for general cleaning, carpet cleaning and furniture cleaning prior to the tenancy and copies of e-mail correspondence with the Tenant.

The Tenant's agent (who is her mother) said she was present at the rental unit when the Tenant moved in, periodically during the tenancy and again when the Tenant moved out of the rental unit. The Tenant's agent claimed that the carpets in the rental unit at the beginning of the tenancy appeared very old and had an odour despite having just been cleaned. The Tenant's agent claimed that the section of carpeting in a bedroom doorway was damaged as a result of wear and tear. In particular, the Tenant's agent claimed two pieces of carpeting were joined in that area and that there were only a few pulls (no pieces of material missing). The Tenant's agent denied that the Tenant's cat clawed the carpet or bedroom door frame and argued that at best the carpet pulls could have been repaired and that the piece did not need to be replaced.

The Tenant's agent also denied that the carpet in the storage room had to be removed due to cat odour. The Tenant's agent admitted that the cat box was located in that room but claimed that it was enclosed so that it was unlikely that any urine would escape. The Tenant's agent also claimed that plastic was spread under the cat box. The Tenant's agent said she cleaned this area after the tenancy ended and it did not smell of urine as alleged by the Landlords. The Tenant's agent also argued that the Landlords' claim to replace the carpeting was unreasonable given that the carpeted

area was small (approximately 4 feet x 3 feet). The Landlords claim it was much larger (or approximately 6 feet x 8 feet).

The Tenant's agent said she helped the Tenant clean the rental unit at the end of the tenancy including cleaning the carpets and that it was left reasonably clean. The Tenant's agent admitted that there were rust stains on some of the bathroom fixtures that could not be removed but argued that was due to the high mineral content in the water and she argued that the fixtures were also stained at the beginning of the tenancy. The Tenant's agent said the Tenant never used the vacuum in the rental unit because it was not working at the beginning of the tenancy. The Tenant's agent admitted that there was some fraying on a section of the sofa but argued that it was not in a spot that a cat would normally claw and that it was very old in any event.

The Tenant's agent admitted that the Tenant removed an old glass top patio table and two broken chairs stored in the kitchen by the Landlords but claimed that the Tenant had the Landlords' permission to dispose of them to make room for her furnishings.

The Parties agree that the Tenant gave the Landlords her forwarding address in writing on May 4, 2012 during a move out inspection. The Landlords said they initially did not return the Tenant's security and pet deposits because the Tenant agreed to wait to hear back from them about their estimate for damages. However, the Landlords admitted that once they gave the Tenant their estimate, she did not give them written authorization to keep her deposits but instead filed her application for dispute resolution to have them returned. The Parties also agree that the Landlords have not returned the security deposit or pet damage deposit to the Tenant. The Landlords filed their application for dispute resolution to make a claim against the security deposit and pet damage deposit on June 13, 2012.

Analysis

Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one full, calendar month's notice in writing they are ending the tenancy. Consequently, the earliest the Tenant's notice given by e-mail on April 4, 2012 could have taken effect would have been May 31, 2012. However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. Consequently, the Tenant was potentially liable for any loss of rental income suffered by the Landlords ***but only if*** they were unable to re-rent the rental unit for May 2012. The Landlords admitted that they made no efforts to re-rent the rental unit because they had decided instead to sell it. In the circumstances, I find that the Landlords did not suffer a loss of rental income and their claim for $1,000.00 for May 2012 is dismissed without leave to reapply.

Section 32 of the Act says that a Tenant is responsible for damages caused by his 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, in this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean or that she caused damages that were not the result of 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.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days, respectively). A condition inspection report is intended to serve as some objective evidence of what damages occurred during the tenancy and whether the rental unit was left reasonably clean at the end of the tenancy. In the absence of a condition inspection report, other evidence (eg. such as photographs or witness evidence) may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this case, the Landlords did not complete a move in or a move out condition inspection report or provide any photographs or other witness evidence of the rental unit. Consequently, I find that there is little evidence of the condition of the rental unit either at the beginning or at the end of the tenancy to corroborate the Landlords' oral evidence regarding the alleged damages. In particular, given the contradictory evidence of the Tenant regarding the cleanliness of the bathrooms and the carpets at the end of the tenancy and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the bathrooms and carpets were not reasonably clean and the Landlords' claim for cleaning and carpet cleaning expenses are accordingly dismissed without leave to reapply.

The Landlords also claimed that the Tenant was responsible for a broken vacuum cleaner belt. However the Landlords claimed that the vacuum was at least 10 years of age and they were uncertain whether or when the belt would have been previously replaced. In the circumstances, I cannot conclude that the vacuum belt broke due to an act or neglect of the Tenant rather than reasonable wear and tear and that part of their claim is also dismissed without leave to reapply.

The Landlords also claim that an old sofa (approximately 10 years of age) was damaged by the Tenant's cat and they sought compensation of $150.00 for a slip cover. The Tenant's agent disputed that the damage to the sofa was caused by the Tenant's cat and suggested that it might have been the result of reasonable wear and tear. The Landlords provided no evidence of the condition of the sofa either at the beginning or at the end of the tenancy. Furthermore, RTB Policy Guideline #40, Table 1 at p. 6 says that the useful lifetime of furniture is 10 years. This means that after 10 years, a

furnishing such as a sofa will have no depreciable market value. Consequently, even if the Tenant's cat was responsible for the damage to the sofa, I find that it has not lost value as a result of that. Furthermore, the Landlords provided no corroborating evidence to support their allegation that the Tenant agreed to pay for a slip cover. Consequently, this part of the Landlords' claim is dismissed without leave to reapply.

Similarly, the Landlords claim that the Tenant's cat damaged two different areas of the carpeting in the rental unit which they estimated was 5 years old at the beginning of the tenancy however they provided no corroborating evidence to support those allegations. The Tenant's agent denied that there was carpet damage in the storage room, argued that the pulls to the area in a doorway were the result of reasonable wear and tear and claimed that the carpets appeared old and smelled at the beginning of the tenancy. Given the contradictory evidence of the parties on this issue and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find there is insufficient evidence to conclude that the Tenant was responsible for carpet damages during the tenancy and that part of their claim is dismissed without leave to reapply.

The Landlords also sought to recover $75.00 for a 3 x 3 glass top patio table and 2 chairs that they claim the Tenant disposed of. The Tenant's agent argued that the Landlords gave the Tenant permission to dispose of them but this is contradicted by an e-mail dated February 11, 2010, in which the Landlords consented only to the disposal of a dresser, a coffee table and a table lamp. The Tenant's agent also argued that the table was very old and inexpensive and that the 2 chairs were also old and broken. The Landlords admitted that these items were old and provided no evidence of their value. In the absence of such evidence, I cannot conclude that the table and chairs disposed of by the Tenant had any depreciable market value and the Landlords' claim for compensation for them is dismissed without leave to reapply.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date 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 damages like cleaning and repairs however she may not offset those damages from the security deposit or pet damage deposit.

I find that the tenancy ended on May 3, 2012 and that the Landlords received the Tenant's forwarding address in writing on May 4, 2012. Consequently, pursuant to s.

38(1) of the Act, ***the Landlords had until May 21, 2012 at the latest*** to either return the Tenant's combined security deposit and pet damage deposit of $950.00 to her or to file an application for dispute resolution to make a claim against the security deposit and pet deposit (but only for unpaid rent or a loss of rental income given that they extinguished their rights to use it for damages to the rental unit under s. 24(2) and s. 36(2) of the Act).

I find that the Landlords did not return the security deposit and pet damage deposit to the Tenant and did not have her written authorization to keep them. Although the Landlords made an application for dispute resolution on June 3, 2012 to make a claim against the deposits, I find that their application was filed after the 15 day time limit required under s. 38(1) of the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the combined security deposit and pet damage deposit of $1,900.00 to the Tenant.

Conclusion

The Landlords' application is dismissed in its entirety. The Tenant's application is granted. A Monetary Order in the amount of $1,900.00 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: July 27, 2012.

Residential Tenancy Branch