Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlords said they served the Tenants on June 12, 2012 with the Application and Notice of Hearing (the "hearing package") via registered mail to a forwarding address provided by the Tenants. The Tenants did not pick up the registered mail and it was returned to the Landlords. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later even if the recipient fails or refuses to pick up the mail. I find that the Tenants were served with the Landlords' hearing packages as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for cleaning and repair expenses?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on November 1, 2010 and ended on March 15, 2012 when the Tenants moved out. Rent was $1,400.00 per month. The Tenants paid a security deposit of $700.00 at the beginning of the tenancy. The Parties completed a condition inspection report at the beginning of the tenancy. The Landlords said they did not complete a condition inspection report at the end of the tenancy because their relationship with the Tenants had broken down. The Landlords relied on photographs they said they took of the rental unit at the end of the tenancy. The Landlords said the Tenants gave them their forwarding address in writing on May 30, 2012.

The Landlords said the Tenants did not clean the carpets at the end of the tenancy and as a result, they incurred expenses of $112.00 to clean them. The Landlords also claimed that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy and in particular did not clean appliances, bathrooms or floors and left some garbage. The Landlords said they incurred cleaning expenses of $420.00.

The Landlords said the Tenants damaged a bi-fold closet door by putting a hole in it which could not be repaired. Consequently, the Landlords said they incurred expenses of $130.00 to replace the damaged section of the closet door. The Landlords also claim the Tenants failed to empty a central vacuum canister with the result that it had to be re-set, emptied and the contents (together with other garbage) disposed of at a cost to them of $140.00.

Analysis

Section 37(1) says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except 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."

Based on the condition inspection report at the beginning of the tenancy and the Landlords' photographs, I find that the Tenants damaged a bi-fold closet door during the tenancy. Consequently, I find that the Landlords are entitled to recover repair expenses of $130.00. In the absence of any evidence from the Tenants to the contrary, I also find that the Landlords are entitled to recover their repair expenses for the central vacuum and disposal costs in the amount of $140.00 and carpet cleaning expenses of $112.00. However, I find that there is insufficient evidence to support the amount sought by the Landlords for cleaning expenses. The cleaning invoice provided by the Landlords states that it is based on 12 hours of cleaning, however the Landlords' photographs show a dirty oven and microwave oven, some plastic bags and a small amount of debris in two cupboards, some debris in a refrigerator crisper and a few abandoned belongings. I find that this evidence is insufficient to support compensation for 12 hours of cleaning and instead, I award the Landlords $260.00.

I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the $50.00 filing fee they paid for this proceeding. Consequently, I find that the Landlords have made out a total monetary claim for $692.00.

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

Section 36(2) of the Act says that if a Landlord does not complete a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In

other words, the Landlord may still bring an application for compensation for damages however she may not hold the security deposit in payment of those damages but must instead return it to the Tenants within 15 days of receiving their forwarding address in writing.

I find that the Landlords received the Tenants' forwarding address in writing on May 30, 2012 when the Tenants also requested that their security deposit of $700.00 be returned to them. I find that the Landlords did not return the Tenants' security deposit and did not have the Tenants' written authorization to keep the security deposit. Although the Landlords made an application for dispute resolution to make a claim against the deposit within the time limits required under s. 38(1) of the Act, I find that their right to do so was extinguished under s. 36(2) of the Act because they did not complete a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords are liable to return double the amount of the security deposit or $1,400.00 to the Tenants.

I Order pursuant to s. 62(3) and s. 72(2) of the Act that the Landlords' monetary award of $692.00 be set off of the amount owed to the Tenants with the result that the Tenants will receive a Monetary Order for the balance owing of $708.00.

Conclusion

A Monetary Order in the amount of $708.00 has been issued to the Tenants 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: August 13, 2012.

Residential Tenancy Branch