Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MND, FF
Tenant: MNSD, FF

Introduction

This matter dealt with an application by the Landlords to recover unpaid rent, for compensation for cleaning and repair expenses and to recover the filing fee for this proceeding. The Tenant applied to recover the balance of a security deposit plus compensation equal to the amount of the full security deposit due to the Landlords' alleged failure to return all of the deposit within the time limits required under the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are there rent arrears?
2. Are the Landlords entitled to cleaning and repair expenses and if so, how much?
3. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on November 15, 2011 and was to expire on November 1, 2012 however it ended on May 15, 2012 when the Tenant moved out. Rent was $625.00 per month payable in advance on the 15th day of each month. The Tenant paid a security deposit of $350.00 at the beginning of the tenancy.

The Tenant sent the Landlord an e-mail on March 28, 2012 advising her that she was ending the tenancy as of May 15, 2012. In a responding e-mail of March 30, 2012, the Landlord asked the Tenant if she would be willing to move out by May 1st if the Landlord was able to re-rent it for that month or alternatively, if the Landlord was not able to re-rent it for May, if the Tenant would stay until the end of May 2012. In a responding e-mail of the same date, the Tenant agreed to those terms. The Landlord said she advertised the rental unit in two local on-line websites but did not find an acceptable Tenant who could rent the unit until June 1, 2012. Consequently, the Landlord said she lost rental income for the period, May 15 – 31, 2012. The Tenant argued that the Landlord told her on two separate occasions that she had secured a tenant but later advised her that they fell through. The Landlord denied this and said she told the Tenant that she might have another tenant not that she did have a tenant.

The Landlords did not complete a condition inspection report at the beginning or at the end of the tenancy. The Landlord, A.L., claimed that after the Tenant vacated, she asked the Tenant to return to address some cleaning issues but that the Tenant's boyfriend responded to her and accused her of "picking on the Tenant." The Landlord, A.L. admitted that she made no further attempts to arrange a move out inspection with the Tenant. A.L. said she took photographs of the rental unit on or about May 14, 2012.

The Landlords claim that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and as a result they spent 3 hours cleaning it. In particular, the Landlord, A.L., said the Tenant did not clean the oven and under the stove top burners and did not clean the floors, toilet or light switch plates. The Landlord also claimed that when the Tenant painted the rental unit, she left drips of paint on the floor, vanity and tub. The Landlord further claimed that the Tenant left behind a bathrobe, pair of underwear, coffee maker and 5 cans of paint.

The Tenant admitted that she did not clean the oven but claimed that it was not cleaned at the beginning of the tenancy. The Tenant also claimed that she cleaned the stove top, floors and toilet. The Tenant said any discoloration or staining in the toilet was the result of minerals in the water. The Tenant admitted that she did not wipe off switch plates and that she left some personal belongings behind. However, the Tenant claimed that the coffee maker was in the rental unit at the beginning of the tenancy and that she left the paint behind so that the Landlord would have matching paint if she needed to touch up the walls. The Tenant argued that the Landlord, A.L., told her not to worry about dripping paint on the floors because it could be easily removed.

The Tenant disputed that all of the baseboards and doorframes in the rental unit had to be re-painted due to her getting paint on them. The Tenant claimed that there was already paint from the previous paint colour on the baseboards and that she was just trying to match the paint. The Tenant also argued that the Landlord inspected the paint job when she finished it and approved of it. The Landlord claimed the baseboards could not have had paint on them at the beginning of the tenancy because they were removed before she painted.

The Parties agree that on May 11, 2012, the Tenant mailed the Landlords a letter containing her forwarding address. On May 23, 2012, the Landlords sent the Tenant a cheque dated May 30, 2012 in the amount of $250.00 in partial reimbursement of the security deposit. The Parties also agree that the Tenant did not give the Landlords written authorization to keep the balance of the security deposit and that it has not been returned to the Tenant.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the

tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 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.

I find that the Parties had a fixed term tenancy agreement that did not expire until November 1, 2012 but that Landlords agreed that the Tenant could end the tenancy on May 31, 2012 (unless she found a tenant for May 2012). Based on the evidence of both Parties, I find that the Landlords took reasonable steps to try to re-rent the rental unit by advertising it once they received the Tenant's notice. Although the Tenant argued that the Landlords entered into a tenancy agreement with another tenant but only later rejected them, she provided no evidence to support that assertion and it was denied by the Landlords. Consequently, I find that the Tenant is responsible for a loss of one-half of a month's rental income in the pro-rated amount of $322.58 ($625.00 / 31 x 16 days).

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

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). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

I find that there is insufficient evidence to award the Landlords compensation for 3 hours of cleaning. In support of this part of their claim, the Landlords provided photographs of a dirty oven, one dirty stove element, one soiled lights witch plate, a very faintly stained toilet bowl, one dirty cupboard and a housecoat and pair of underwear. The Tenant argued that the oven was not cleaned at the beginning of the tenancy and that the toilet always had staining from mineral deposits. RTB Policy Guideline #1 at p.1 states that a Tenant is not responsible for bringing the rental unit up to a higher level of cleanliness and repair than it was at the beginning of the tenancy. Consequently, I award the Landlords compensation for one hour of cleaning for a total of $20.00.

I also find that there is insufficient evidence to award the Landlords compensation of $350.00 to repaint baseboards and door frames in the rental unit. The Landlords provided only one photograph of a part of a baseboard in one room in support of their claim. The Tenant claimed that there was paint on the baseboards at the beginning of

the tenancy which she merely painted over however the Landlord, A.L. denied this. Given the contradictory evidence of the Parties on this issue and in the absence of any (or sufficient) supporting evidence by the Landlords of the condition of the rental unit at the beginning and end of the tenancy, I find that there is insufficient evidence to make out this part of their claim and it is dismissed without leave to reapply.

As the Landlords have proven less than ½ of their monetary claim, I find that this is not an appropriate case to order the Tenant to bear the cost of the filing fee they paid for this proceeding and that part of the Landlords' claim is dismissed without leave to reapply. Consequently, I find that the Landlords have made out a total monetary claim for $342.58.

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.

Section 90(a) of the Act says that a document delivered by mail is deemed to be received 5 days later. I find that the Tenant mailed her forwarding address to the Landlords on May 11, 2012 and the Landlords are deemed to have received it May 16, 2012. Consequently, unless the Landlords had the Tenant's written authorization to keep the security deposit, they were required to return it to her or apply for dispute resolution to make a claim against it no later than May 31, 2012.

I find that the Landlords returned $250.00 of the $350.00 security deposit on May 30, 2012 but did not have the Tenant's written authorization to keep the balance of $100.00. I also find that the Landlords did not apply for dispute resolution to make a claim against the security deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit less the amount returned to the Tenant or $450.00 (ie. $350.00 x 2 = $700.00 - $250.00= $450.00).

As the Tenant has been successful on her claim, I find that she is entitled to recover from the Landlords the $50.00 filing fee she paid for this proceeding. Consequently, I find that the Tenant has made out a total monetary claim for $500.00.

I Order pursuant to s. 38(4), 62(3) and 72(2) of the Act that the Parties' respective monetary awards be set off with the result that the Tenant will receive a Monetary Order for the balance owing of $157.42.

Conclusion

A Monetary Order in the amount of $157.42 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: August 02, 2012.

Residential Tenancy Branch