DECISION

Dispute Codes:

Tenants' application filed July 20, 2012: MNSD; FF

Landlord's application filed July 27, 2012: MND; MNR; OPL; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a Monetary Order for unpaid rent and damages to the rental unit; an Order of Possession for Landlord's Use; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenants served the Landlord with their Notice of Hearing documents by registered mail sent July 27, 2012 and with copies of their documentary evidence , by mail, on September 10, 2012. The male Tenant acknowledged receiving the Landlord's Notice of Hearing documents and documentary evidence, by personal service at his work place. Although the Landlord did not serve the female Tenant as required in accordance with the provisions of Section 89(1) of the Act, she attended the Hearing and therefore I found that she had been sufficiently served for the purposes of the Hearing.

Preliminary Matter

At the outset of the Hearing, it was determined that the Tenants moved out of the rental unit on May 31, 2012, and that the Landlord has taken back possession of the rental unit. Therefore the Landlord's application for an Order of Possession is dismissed.

Issues to be Decided

1. Are the Tenants entitled to return of the security deposit?
2. Is the Landlord entitled to a Monetary Order for unpaid rent or damage to the rental unit?

Background and Evidence

Neither party provided a copy of the tenancy agreement, however they agreed that monthly rent was $1,300.00, due on the first day of each month and that the Tenants paid a security deposit in the amount of $650.00 in February, 2011.

The Landlord stated that there was a walk through the rental unit at the beginning and at the end of the tenancy. The Tenants testified that there was no Condition Inspection Report completed at the beginning or the end of the tenancy and no walk through at the beginning either, but that the Landlord's mother did a walk through with them at the end of the tenancy.

The Landlord testified that the rental unit was approximately 4 years old when the Tenants moved in, in February 2011. He stated that the Tenants damaged the walls by not properly filling holes, sanding and painting them at the end of the tenancy. He said that the Tenants were not finished painting the walls until June 4, 2012, so he is seeking pro-rated rent from June 1 to June 4, 2012, in the amount of **$173.33**. He also seeks a monetary award for the cost of sanding and repairing small holes, filling and repairing larger holes, and touching up the paint. The Landlord provided an estimate in the amount of **$526.85** for this work.

The Tenants testified that some of the holes referred to by the Landlord were already there when they moved into the rental unit. They stated that the walls had not been painted since the previous owner had possession of the rental unit. The Tenants testified that the Landlord required them to fill in all of the holes and repaint those walls at the end of the tenancy. The Tenants stated that they purchased paint to match the existing paint, filled all of the holes and repainted the walls. The Tenants provided a copy of a receipt in the amount of $118.63 for the cost of purchasing the paint. The Tenants testified that they were expecting a child, so they had to wait until the female Tenant's mother could assist with painting because of the fumes. They stated that they moved their furniture out of the rental unit on May 28, 2012, and that the rental unit was empty until June 3, 2012, when the female Tenant's Mom came to help paint.

The Landlord testified that the parties had an agreement that he could hold on to the security deposit until July, 2012, when he returned to the City. He stated that he received the Tenants' forwarding address on July 18, 2012, but that it was a business address. Copies of correspondence between the parties were provided in evidence.

Analysis

Regarding the Tenants' Application for Dispute Resolution

The security deposit is held in a form of trust by the Landlord for the Tenants, and must be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain all or a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that he received the Tenant's forwarding address on July 18, 2012. A forwarding address does not have to be a residential address. It is merely an address for service of documents or for the purposes of returning the security deposit. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address. Although the Landlord filed an Application for Dispute Resolution within 15 days, he did not include a claim against the security deposit in his application.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.
Therefore, I find that the Tenants are entitled to a monetary order for double the security deposit, in the amount of **$1,300.00**.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **$50.00** filing fee from the Landlord.

Regarding the Landlord's Application for Dispute Resolution

There was conflicting testimony with respect to damage to the walls. The onus is on the Landlord, as applicant, to provide sufficient evidence on the balance of probabilities that the Tenants caused the damage to the walls.

The Act requires the Landlord to perform condition inspections at the beginning and at the end of the tenancy, and to complete Condition Inspection Reports in accordance with the provisions of Sections 23 and 35 of the Act and Part 3 of the Regulation. The Landlord did not comply with the legislation in this regard. A condition inspection report completed in accordance with Part 3 of the Regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary. In this case, the Landlord provided photographs of the rental unit taken at the end of the tenancy but provided no photographs of the rental unit from the beginning of the tenancy for the purposes of comparison.

Residential Tenancy Branch Policy Guideline 1 clarifies the responsibilities of a landlord and tenant regarding maintenance, cleaning and repairs of residential property. The Guideline provides that a landlord is responsible for painting the interior of the rental unit at reasonable intervals.

Residential Tenancy Policy Guideline 40 provides the useful life of building materials under normal circumstances and is used when determining applications for damages. Guideline 40 provides a useful life for indoor paint of 4 years.

I find that there is insufficient evidence that the Tenants caused the holes in the walls. Furthermore, the paint is more than 4 years old and therefore has outlived its useful life. The Landlord would have

had to repaint in any event. For those reasons, I find that the Landlord has not provided sufficient evidence to support his claim for damages and therefore this portion of his application is dismissed.

As stated above, it is the Landlord's responsibility to paint the rental unit at reasonable intervals, not the Tenants'. I accept the Tenants' testimony that they had moved out of the rental unit on May 28, 2012, and therefore I dismiss the Landlord's application for pro-rated rent from June 1 – 4, 2012.

The Landlord has not been successful in his application and I find that he is not entitled to recover the cost of the filing fee from the Tenants.

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenants a Monetary Order in the amount of $1,350.00 for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 10, 2012.

Residential Tenancy Branch