Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On December 12, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution. The male Landlord stated that the Landlord's Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via registered mail, on December 12, 2012. The Tenant acknowledged receipt of these documents.

On October 01, 2012 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution. The male Tenant stated that the Tenant's Application for Dispute Resolution and Notice of Hearing were sent to the address listed as the service address for the Landlord on the Application for Dispute Resolution, via registered mail, on October 02, 2012. The Landlord acknowledged receipt of these documents.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch that the Landlord wished to rely upon as evidence. The male Landlord stated that the Landlord did not understand that copies of these documents needed to be served to the Tenant and that the documents were not, therefore, served to the Tenant. As these documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch that the Tenant wished to rely upon as evidence. The male Tenant stated that these documents were mailed to the address listed as the service address for the Landlord on the Application for Dispute Resolution, via registered mail, on December 06, 2012. The female Landlord stated that this evidence was not received and that the Landlord did not receive notification from Canada Post that registered mail had been sent to them.

The Tenant declined the opportunity to request an adjournment for the purposes of re-serving this evidence to the Landlord. The Tenant opted to proceed with the hearing with the understanding that the Tenant would have the opportunity to testify regarding the nature of the evidence they had submitted and to request an adjournment during the hearing if it became apparent that their documentary evidence should be viewed.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for damage to the rental unit; is the Tenant entitled to the return of the security deposit; and is either party entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2011; that the tenancy ended on July 31, 2012; that the Tenant paid a security deposit of $825.00; that the Tenant did not authorize the Landlord, in writing, to retain any portion of the security deposit; and that the Landlord did not return any portion of the security deposit.

The male Landlord stated that the parties jointly inspected the rental unit on October 01, 2011, at which time the Landlord pointed out some deficiencies with the rental unit. The male Tenant stated that the parties walked through the rental unit on October 01, 2012 but they did not discuss deficiencies with the rental unit at that time. The parties agree that a condition inspection report was not completed on October 01, 2011 or at any other time during the tenancy.

The male Tenant stated that the Tenant mailed their forwarding address to the address listed as the service address for the Landlord on the Application for Dispute Resolution, via registered mail, on August 30, 2012. The male Tenant cited a tracking number to corroborate this testimony. The male tenant stated that he checked the Canada Post website, which indicates this package was delivered to the service address on August 31, 2012. Both Landlords deny receiving the registered mail that was allegedly sent on August 30, 2012.

The Landlord is seeking compensation, in the amount of $323.50, for cleaning the rental unit. The male Landlord stated that the rental unit was very dirty and that he and his daughter spent approximately 12 hours cleaning the rental unit. The male Tenant stated that the rental unit was left in clean condition; that the carpets were steam cleaned in April of 2012; and that they did forget to clean the blinds.

Analysis

Section 23(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord and a tenancy must jointly inspect the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. On the basis of the

undisputed evidence, I find that the Landlord and the Tenant walked through the rental unit on October 01, 2012. Although the parties do not agree that they discussed deficiencies with the rental unit on that date, I find that they did comply with their obligation to jointly inspect the rental unit at the start of the tenancy.

Section 23(4) of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy. The undisputed evidence is that the Landlord did not complete a condition inspection report at any point during this tenancy.

Section 24(2)(c) of the *Act* stipulates that the Landlord's right to claim against a security deposit for damage to the property is extinguished if the landlord does not complete a condition inspection report and provide a copy of the report to the tenant. As the Landlord did not complete a condition inspection report at the start of the tenancy, I find that the Landlord did not have the right to claim against the security deposit for damage to the rental unit.

I find that the Tenant did serve the Landlord with a forwarding address, via registered mail, on August 30, 2012. In reaching this conclusion I was heavily influenced by the testimony of the male Tenant, who stated that the address was sent by mail; by the fact that the Tenant was able to cite a Canada Post tracking number; and by the testimony of the male Tenant, who stated that the Canada Post website shows the package was delivered.

As both Landlord's denied receiving the registered mail that was sent on August 30, 2012, I find that I cannot conclude, with certainty, that they <u>received</u> the forwarding address. In reaching this conclusion I recognize that there is a possibility that Canada Post delivered this package to an incorrect address.

On the basis of the undisputed evidence, I find that the Landlord was also served with a forwarding address for the Tenant when the Application for Dispute Resolution was mailed to the Landlord on October 02, 2012. Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received a forwarding address for the Tenant on October 07, 2012.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. As the Landlord has not yet

returned the security deposit, I find that the Landlord did not comply with section 38(1) of the *Act.*

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires a tenant to leave a rental unit in reasonably clean condition at the end of a tenancy. I find that the Landlord has submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the absence of evidence which corroborates the Landlord's claim that the rental unit required cleaning or which refutes the Tenant's claim that the rental unit did not require cleaning. When two parties cannot agree on the cleanliness of the rental unit, the party making the claim has the burden of providing some corroborating evidence, such as photographs, that allows me to determine whether the unit was left in a manner that complies with the *Act.*

Although the Tenant acknowledged that the blinds were not cleaned at the end of the tenancy, I find that this admission is not sufficient to conclude that the blinds were not left in reasonably clean condition, as blinds do not necessarily need to be cleaned after a tenancy of only 10 months. As the Landlord has failed to establish that the unit was not left in reasonably clean condition, I dismiss the Landlord's claim for cleaning costs.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution from the Landlord.

I find that the Landlord has failed to establish the merit of the Landlord's Application and I dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of $1,700.00, which is comprised of double the security deposit and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount $1,700.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: December 20, 2012.

Residential Tenancy Branch