Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2013, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep the security and pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: her letter dated January 25, 2013; the Landlord's e-mails to the Witness on July 11, 2012 and July 12, 2013; a water bill; an advertisement for table and chairs; photos; and the move-in and move-out inspection report form.

The Tenant testified that she submitted documentary evidence to the Residential Tenancy Branch on April 9, 2013; however, that evidence had not been place on file in time for this hearing. The Landlord confirmed she had not checked her mail in a few days so does not know if there was evidence for her to pick up.

The parties confirmed they had entered into a month to month tenancy that began on October 1, 2012 and that the Tenant was allowed to occupy the unit as of September 27, 2012. Rent was payable on the first of each month in the amount of $1,750.00 and just prior to October 1, 2012 the Tenant paid $875.00 as the security deposit and $875.00 as the pet deposit. Both parties were represented at the move in inspection on September 28, 2012, and at the move out inspection on January 14, 2013. The Tenant provided her forwarding address on January 14, 2013.

The Landlord testified that the tenancy ended when she regained possession of the unit on January 14, 2013. She stated the Tenant vacated the unit after the Landlord was granted an Order of Possession on January 11, 2013.

The Tenant argued that she had vacated the unit on January 11, 2013, as supported by the e-mail sent to the Landlord on January 11, 2013 by the Tenant's witness.

The Landlord confirmed receipt of that e-mail on the Friday, January 11, 2013, and argued that because she resides in another province it took her a few days to arrange for the move out inspection which occurred the following Monday, January 14th. She stated the Order of Possession was effective two days upon service but that she told the Tenant she could stay in the unit until January 31, 2013.

The Landlord stated that she is seeking compensation of $1,750.00 which is comprised of the following:

(a) $641.66	eleven (11) days for use and occupancy (January 11 to January 14, 2013);
(b) $13.22	For the Water bill for January 2013;
(c) $200.00	For damage caused to seven boards of the bedroom laminate flooring. This has not been repaired and the Landlord does not have spare boards. This is an estimated based on the Landlord's calculation;
(d) $400.00	For the cost of a plumber to remove taps installed in the front hall closet. These taps were installed without the Landlord's permission and have not been removed. The amount claimed is a guess provided by the Landlord.

(e) $??? An unknown amount is being claimed for the table and six chairs which the Tenant took without permission. The Landlord stated that the house was up for sale and she was going to sell or give away the table and chairs. She said that she and the Tenant had discussions about the Tenant using the table and chairs but on January 11, 2013 she requested the Tenant's witness make sure they remain in the unit when the Tenant moves out.

(f) $175.00 For two shelves that the Tenant threw in the garbage. The Shelves were in the garage and were usable for storing items such as paint. The Landlord did not give permission for these to be thrown out.

The Landlord stated that the house is still up for sale, repairs have not been completed, and no one has occupied the unit since the Tenant moved out.

The Tenant confirmed that she stayed in the unit until January 11, 2013 and did not pay anything towards rent. She said she interpreted the previous decision to mean that if she stayed the entire month of January 2013 she would have to pay rent.

The Tenant stated that she paid the water bill that was provided in the Landlord's evidence and was due in December 2012. Upon closer review of the Landlord's evidence the Landlord had submitted a water bill to the Residential Tenancy branch that was due in March 2013 and the Tenant was served a bill that was due in December 2012.

The Landlord confirmed she did not serve the Tenant with a copy of the March 2013 bill. The Landlord argued that the bills are always the same amount so it should not matter that the Tenant was not served a copy of the most recent bill.

The Tenant admitted that there were some scratches on the bedroom floor that occurred during her tenancy. However, there was a full box of replacement laminate boards sitting in the garage at move out.

The Tenant argued that she had permission from the Landlord to install the taps; to keep the table and chairs; and to throw out the shelves from the garage. The Tenant read into evidence a string of e-mails that were between herself and the Landlord on October 3, 2012. In those e-mails the Tenant informed the Landlord about the insect infestation in the garage and the need to discard the shelves as well as questioned the Landlord about what to do with the Landlord's possessions that were left in the house. The Landlord had responded in her e-mails stating *"yes to everything asked, no problems".* The Tenant continued to read the e-mails where the Landlord spoke about

the table and chairs and said "*I will probably give them away so if you want you can have them, if you don't want them that's okay".* The Tenant responded in an e-mail stating her son had adopted the table and chairs.

The Witness confirmed he is a licensed real estate agent and he is not related to the Tenant. He questioned the Landlord's math about the eleven days of rent. He confirmed that he saw the scratched floor at move out and that he also saw a full box of replacement boards in the garage on January 14, 2013.

The Witness stated that there is a lot of grey areas with the parties' agreements because they were initially operating under the assumption that the Tenant would eventually purchase the property. He stated that the Landlord had basically said that the Tenant could do any improvements she wanted to because she was going to own the house eventually. However, when the purchase did not go through their relationship changed.

The Witness could confirm that the table and chairs were a plain set and were not in the unit at move out. He did see the garage shelves at move-in located in and amongst a pile of garbage and refuse. He can also confirm there was an insect infestation in the garage at move in.

In closing, the Landlord stated that she did not know about the box of laminate left in the garage. She also confirmed what was said in the string of e-mails dated October 3, 2013 that was read into evidence by the Tenant. She argued that those were written in the context that the Tenant was purchasing the home but that deal fell through. The Landlord said that since then she changed her mind and anything she had previously agreed to was cancelled. She was adamant that she never had a discussion with the Tenant about installing taps.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The actual value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

The undisputed testimony is that the Tenant occupied the rental unit for eleven (11) days in January 2013 and did not pay for use or occupation. Payment is required for use and occupation if a tenant delays in moving out and continues to occupy the unit once a Notice to end tenancy is issued. Accordingly, I award the Landlord use and occupation up to January 11, 2013, in the amount of **$632.88** ($1,750.00 x 12 month divided by 365 days x 11 days).

Upon the review of the evidence before me, I favor the evidence of Tenant over the Landlord. I favor the Tenant's evidence because it was forthright, credible, and never varied. The Landlord changed her testimony on several issues after the Tenant presented her arguments. Specifically the Landlord changed: (1) the end date of the tenancy from January 14th to January 11; (2) that she provided the Tenant with a copy of the water invoice and later confirmed it was not the same invoice; (3) that she didn't agree that the Tenant could keep the table and chairs and then later said she had and unilaterally changed that agreement when the purchase agreement fell through; and (4) she never discussed the garage shelves with the Tenant or gave her permission to throw them out and later stated that the October 3, 2013 e-mail where she said it was okay was all in the context of the Tenant purchasing the property and because that did not go through the Landlord unilaterally changed those agreements.

In this instance, I find the Landlord has insufficient evidence to prove or verify the value of the remaining losses or damages claimed. The Landlord has not completed any of the repairs and has no intention of replacing the table and chairs or the garage shelves. In an instance where a party is relying on estimates for work not yet performed or purchased not yet made, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost $400.00 to remove the water tap, yet there is no evidence such as a quote from a plumber to support this estimate. These were, simply put, guesses made by the Landlord in her attempt to keep the security and pet deposits.

As for the Tenant being given permission to throw out the garage shelves or to keep the table and chairs, I find that the Tenant had been given permission to keep the table and chairs and to dispose of the shelves. A party cannot unilaterally renege on an agreement several months after entering into that agreement simply because the relationship changed.

Therefore, with the aforementioned in mind I find there to be insufficient evidence to prove the test for damage or loss, as listed above, and the Landlord's claims repairs, table and chairs, and the garage shelves, are dismissed without leave to reapply.

Section 38(7) of the Act stipulates a pet damage deposit may be used **only for damage caused by a pet to the residential property**, unless the tenant agrees otherwise [emphasis added].

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord must repay the pet deposit or file a claim for dispute resolution for damage caused by a pet.

In this case, where no damage was caused by the pets, I find the Landlord was required to return the Tenant's pet deposit in full no later than January 29, 2013.

Section 38 (6) of the Act stipulates that if the pet deposit is not returned within fifteen days of the tenancy ending or when the Landlord receives the tenant's forwarding address, then the landlord must pay the Tenant double the pet deposit.

The *Residential Tenancy Policy Guideline # 17* provides that an Arbitrator will order the return of double the deposit if the Landlord's right to retain the deposit has been extinguished. In this case, I find the Tenant is entitled to the return of double her pet deposit plus interest in the amount of **$1,750.00 (**2 x $875.00 + $0.00 interest)**.**

The Landlord has not been primarily successful with her application; therefore I award only partial recovery of the filing fee in the amount of **$10.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and pet deposits plus interest as follows:

Use and Occupancy to January 11, 2013	$ 632.88
Filing Fee	10.00
SUBTOTAL	$642.88
LESS: Doubled Pet Deposit $875.00 + Interest 0.00	- 1,750.00
LESS: Security Deposit $875.00 + Interest 0.00	- 875.00
Offset amount due to the TENANT	**($1,982.12)**

The Landlord is hereby Ordered to pay the Tenant the offset amount of the pet and security deposits forthwith.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **$1,982.12**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be 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: April 16, 2013

Residential Tenancy Branch