Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF O

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of all or part of the security deposit, to recover their filing fee, and "other" although details of "other" are not clearly stated in the tenants' application.

The tenants and one of the two landlords, JL, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Both parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act.*

Preliminary and Procedural Matter

The tenants originally filed a monetary claim for $26,840.00, which is $1,840.00 over the $25,000.00 monetary claim limit under the *Act.* As a result, the tenants reduced their monetary claim to $25,000.00. The tenants write in the details to support their application that they are claiming $25,000.00 for "pain and suffering", however, the tenants did not reduce that amount in their written statement. Therefore, I find that the tenant's monetary claim is reduced to a claim for $23,160.00 for "pain and suffering", plus the other portions of their monetary claim which total $1,840.00 for a total monetary claim of $25,000.00, which is the amount being claimed in the tenants' amended Application for Dispute Resolution.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act,* and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act?*

Background and Evidence

The parties agreed that a month to month tenancy began on August 1, 2011, and ended on March 31, 2013, when the tenants vacated the rental unit. Originally, monthly rent was $850.00 per month and due on the first day of each month. Effective January 1, 2013, an increased monthly rent in the amount of $875.00 was due on the first day of each month. A security deposit of $425.00 was paid by the tenants at the start of the tenancy, which the landlords continue to hold.

The tenancy ended on March 31, 2013 when the tenants vacated the rental unit. The tenants stated that they provided their written forwarding address to the landlords on or about April 7, 2013, which landlord JL confirmed as correct. Landlord JL confirmed that the security deposit has not been returned to the tenants, nor have the landlords applied for dispute resolution claiming towards the security deposit. Furthermore, landlord JL confirmed that the tenants did not agree to surrender any portion of their security deposit to the landlords, nor has there been any prior Arbitration hearings that have dealt with the security deposit related to this tenancy. Landlord JL confirmed they failed to complete a move-in condition inspection and a move-out condition inspection. The tenants are seeking the return of their security deposit in accordance with section 38 of the *Act* and have not waived their right to double the security deposit under the *Act.*

The tenants are seeking $240.00 for a "shop toilet" for April 2013 and May 2013. The tenants submitted an invoice in evidence in the amount of $120.73 for the month of April 2013, and the address listed on the invoice does not match the address of the rental unit. The landlord disputed the tenants' claim as the tenancy ended on March 31, 2013, and the "shop toilet" being claimed by tenants relates to the tenants renting a portable outdoor toilet at their new residence, as they vacated the rental unit on March 31, 2013. The tenants confirmed that the toilet rental was for a different residential property other than the rental unit.

The tenants are claiming $300.00 in compensation for the tenants' labour to repair a broken toilet in the rental unit on February 22, 2013. The tenants confirmed they did not advise the landlords of the broken toilet on February 22, 2013. The landlord disputed the tenants' claim and stated that he would have fixed the toilet himself without incurring

additional costs, and should not have to be pay for the tenants' labour as a result, as the tenants failed to notify him.

The tenants are seeking $75.00 in compensation for "spoiled food" which consisted of $75.00 of spoiled meat due to the rental unit refrigerator failing. The tenants confirmed that they have submitted no receipts or photos to support that $75.00 in meat was spoiled. The tenants also confirmed that they did not notify the landlords that they lost $75.00 in meat due to the refrigerator failing. The landlord confirmed that he was not aware that the tenants suffered a loss of $75.00 until receiving their application and stated that as soon as the tenants advised him that their refrigerator failed, he offered the tenants to use the landlords' spare refrigerator until a new refrigerator could be ordered and installed. The tenants did not dispute that the landlords allowed them to use a spare refrigerator until a new refrigerator was installed about a week after the tenants advised the landlords that their rental unit refrigerator failed.

The tenants have claimed $23,160.00 for "pain and suffering". Tenant AO testified that their claim for pain and suffering is due to the landlords causing the tenants "stress" which exacerbated the medical conditions of the tenants which include Post Traumatic Stress Disorder (PTSD) and cancer. The tenant was asked if she submitted any medical evidence that the landlords exacerbated the medical conditions referred to by the tenants. Tenant AO confirmed that she did not submit medical evidence that supports that the landlords exacerbated the medical conditions of the tenants. Tenant AO testified that the PTSD began on April 29, 2003, which is approximately eight years before the tenancy began.

The last portion of the tenants' monetary claim is for $800.00. This portion of the tenants' monetary claim is what the tenants stated was compensation to look after the landlords' animals on five occasions. The tenants did not submit dates in evidence for the five occasions related to this portion of their claim.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' claim for the return their security deposit – The parties agree that the tenants vacated the rental unit on March 31, 2013. The parties also agree that the tenants provided their written forwarding address to the landlords on or before April 7, 2013. Landlord JL confirmed that the landlords continue to hold the security deposit of the tenants, have not filed an application to retain the security deposit, were not given permission by the tenants to keep any portion of the security deposit and do not have an order from an Arbitrator giving them permission to retain any portion of the security deposit. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) **If a landlord does not comply with subsection (1)**, the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

In the matter before me, **I find** that the landlords did not repay the security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, **I find** the landlords breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on or about April 7, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenants have met the burden of proof and are entitled to the return of double their original security deposit of $425.00 for a total of **$850.00.** This amount represents the original $425.00 security deposit doubled to $850.00 due to the landlords breaching section 38 of the *Act.* I note that the security deposit has accrued $0.00 in interest since the start of the tenancy.

In addition to the landlords breaching section 38 of the *Act,* I note that the landlords also failed to complete a move-in condition inspection report in accordance with section 23 of the *Act*, and failed to complete a move-out condition inspection report in accordance with section 35 of the *Act.* As a result, **I caution** the landlords to comply with the *Act* in the future.

Tenants' claim for a "shop toilet" – The tenants submitted a receipt for a portable rental toilet for April 2013, which is after the tenancy ended and lists a different address than the rental unit address. The landlord testified that the portable toilet was not for the rental unit, and was for the tenants to use at their new residence, having vacated the rental unit on March 31, 2013. The tenants did not dispute the landlords response to this

portion of their claim. **I find** the tenants have claimed for a cost that relates to a different residential address other than the rental unit, and for a cost that was incurred after the tenancy ended on March 31, 2013. Furthermore, the tenants' invoice for this portion of their claim did not match the amount being claimed. Therefore, **I dismiss** this portion of the tenants' application without leave to reapply.

Tenants' claim for labour to install broken toilet - The tenants are seeking $300.00 in compensation for the tenants' labour to repair a broken toilet in the rental unit which occurred on February 22, 2013. The tenants confirmed they did not advise the landlords of the broken toilet on February 22, 2013. The landlord disputed the tenants' claim and stated that he would have fixed the toilet himself had the tenants notified him. Based on the testimony of the parties, **I find** the tenants have not met the burden of proof for this portion of their claim. The tenants testified that they did not advise the landlord of the broken toilet on February 22, 2013, and as a result, did not give the landlord an opportunity to fix the toilet himself to avoid a claim for $300.00 in labour by the tenants. **I dismiss** this portion of the tenants claim due to insufficient evidence that the landlords breached the *Act*, regulation or tenancy agreement, without leave to reapply. At the very least, the tenants should have advised the landlords on February 22, 2013 so the landlords could have determined whether they would repair the broken toilet themselves or hire someone to repair the toilet.

Tenants' claim for compensation to take care of landlords' animals - The tenants have claimed $800.00 for what the tenants stated was compensation to look after the landlords' animals on five occasions. The tenant did not provide dates for the five occasions in evidence. **I find** that such an arrangement would constitute a contract made outside of the *Act*. Therefore, **I dismiss** this portion of the tenants' claim in full without leave to reapply as there is no remedy to enforce contracts made between the parties that are outside of the *Act.*

Tenants' claim for pain and suffering - The tenants have claimed $23,160.00 for "pain and suffering". Tenant AO testified that their claim for pain and suffering is due to the landlords causing the tenants "stress" which the tenants allege to have exacerbated the medical conditions of the tenants, including Post Traumatic Stress Disorder and cancer.

The *Act* does not provide for claims for pain and suffering that are not part of a claim for aggravated damages under the *Act.* The tenants have not claimed for aggravated damages. The tenants wrote in their application and testified during the hearing that they were seeking compensation due to the landlords causing them "stress" which the tenants allege have exacerbated their medical conditions. Tenant AO confirmed that

she did not submit medical evidence that supports that the landlords exacerbated the medical conditions of the tenants.

Based on the above, **I dismiss** this portion of the tenants' claim in full due to insufficient evidence, without leave to reapply. At the very least, I would have expected the tenants to have claimed for aggravated damages and to have provided medical evidence to support their claim, and evidence to support that the landlords breached the *Act*, regulation or tenancy agreement, which they failed to do. I do not find it necessary to include the test for aggravated damages in this Decision as the tenants have not applied for aggravated damages, nor have the tenants provided medical evidence to support that the tenants' medical conditions were exacerbated a result of the landlords' actions or behaviour towards the tenants.

As the tenants were successful with a portion of their application, **I grant** the tenants the recovery of half of their $100.00 filing fee in the amount of **$50.00.**

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **$900.00**, comprised of $850.00 for the return of the tenants' doubled security deposit, plus $50.00 of their filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **$900.00**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenants have established a total monetary claim of $900.00 as described above. I grant the tenants a monetary order under section 67 in the amount of $900.00. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I dismiss the remainder of the tenants' application without leave to reapply.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2013

Residential Tenancy Branch