Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The named tenant called in when the hearing commenced at 10:30 A.M. The landlord did not call into the hearing until 10:52 A.M. She called in with her son, who acted as her representative and translator. The landlord said that she did not call in because she expected that she would receive a telephone call, rather than having to call in herself to participate in the hearing. After the landlord called in to the hearing, I summarized the evidence that I had heard from the tenant and gave the landlord an opportunity to respond and to provide evidence about her claim.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit, including double the amount?
Are the tenants entitled to a further monetary award for return of improper rent increases and damage to property?
Is the landlord entitled to a monetary award for the cost of repairs?

Background and Evidence

The rental unit is a suite in the landlord's house in Vancouver. The tenancy began on May 1, 2008. The tenants paid a security deposit of $380.00 at the start of the tenancy. Initially the tenants live in the basement suite of the rental property, but in October, 2009 they moved into the upper suite and added $70.00 to their original deposit to bring it to $450.00; the rent for the upper suite was $900.00 per month plus 50% of the utilities.

The tenants gave the landlord a written notice with their June rent cheque on May 31, 2013, by leaving it in the mail box. The Notice informed the landlord that the tenants were moving out on June 30, 2013. They provided their new address in the notice.

The tenants also gave another notice of their new address by registered mail sent to the landlord on July 19, 2013.

On August 9, 2013 the landlord filed an application for dispute resolution. She claimed payment of a monetary award in the amount of $3225.00 made up of the following:

1. Under 30 days Notice:	$450.00
2. BSMT Suite damage:	$1,100.00
3. Put new carpet upstairs	$800.00
4. Put new floor upstairs	$800.00
5. Lawn motor	$75.00

The landlord submitted several invoices in support of her application. They included an invoice for laminate flooring dated October 15, 2009 in the amount of $1,117.39 and invoices for the purchase of flooring materials in July 2013 as well as a handwritten invoice for floor installation dated July 7, 2013 in the amount of $400.00. The landlord submitted an invoice for inside painting in the amount of $1,260.00 dated July 28, 2013. The landlord did not supply any photographs or condition inspection reports in support of her claims for damage to the rental property.

The tenants advanced several claims. They claimed the return of their security deposit, including double the amount of their security deposit.

The tenants claimed that the landlord gave them several illegal rent increases. The tenant testified that on April 1, 2010 the landlord verbally told the tenants that the rent would increase from $900.00 per month to $950.00 per month beginning on May 1, 2010. The tenants apparently paid the increase without protest. On September 1, 2011 the landlord gave the tenants a written notice of rent increase, this time to increase the rent to $1,000.00 beginning on October 1, 2011.

With respect to the first rent increase, the tenants claimed a refund of $250.00 calculated at $50.00 for five months because the increase was given five months before the October 1st anniversary of the start of the tenancy. The tenants claimed a further $678.40 because the increase exceeded the allowable amount by $21.20 per month.

With respect to the October, 2011 increase, the tenants claimed a $100.00 refund because they were not given the required three months' notice. The tenants said the increase should not have taken effect until January 1, 2012 and then should have been an increase of only $29.72 over what the previous increase should have been. The

tenants contended that they were overcharged a monthly amount of of $41.50 for a period of 17 months for a total of $705.50.

The tenants made a further complaint regarding damage to their property after a flood in September, 2009. The tenants were away at the time. When they returned they discovered the flood damage and found that some of their belongings had been damaged. The tenants said that some of the damage, notably to a rug and a futon bed were due to the landlord's neglect.

The landlord complained at the hearing that the tenant used the rental unit for improper purposes, she suggested that the tenant was taking care of children or operating a day care in the rental unit. The landlord complained that the tenant smoked in the unit and also kept a dog without permission.

Analysis

The landlord failed to provide any condition inspection reports or photographs to substantiate any of her claims that the tenants damaged the rental unit. I note that the landlord advanced a claim relating to the basement rental unit. On the evidence there were separate tenancies involving the basement rental unit and the upstairs rental unit. The basement tenancy ended on October 1, 2009 when the tenants moved into the upstairs suite gave the landlord an increased security deposit and commenced to pay a higher rent. Section 60 of the *Residential Tenancy Act* provides that:

> **60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The Act goes on to say that if an application is not brought within the 2 year period the claim ceases to exist for all purposes. I therefore find that the claim by the landlord for damage to the basement suite is barred by section 60 of the *Residential Tenancy Act*. The same principle applies to the tenant's claims for damage to their belongings; those claims are out of time and they are also dismissed without leave to reapply.

The landlord has failed to provide evidence to prove on a balance of probabilities that the tenants caused damage to the rental unit that exceeded reasonable wear and tear or were otherwise liable to the landlord for damage or loss due to a breach of the *Residential Tenancy Act* or the tenancy agreement. The landlord claimed not to have received the tenants notice ending the tenancy given with the may rent cheque. I did not find the landlord's testimony to be credible because the rent cheque given with the

notice was received and cashed. I find that the tenants gave the appropriate one month written notice to end the tenancy and that they are not responsible for any rent or loss of rental income as claimed by the landlord. The landlord did not submit any documentary evidence to show what steps, if any, that she may have taken to secure a new tenant for the rental unit. The landlord's claim for rent for any period after June 30th is dismissed without leave to reapply.

The landlord has been unsuccessful on her application and the landlord's application is dismissed without leave to reapply.

The tenants have claimed for refunds for illegal rent increases. The first of these claims dates back to April 2010 when the rent was increase from $900.00 to $950.00 effective May 1, 2010. The tenants did not protest the increase until they filed this application on October 29, 2013. The tenant said that she was unaware until later that the rent increase was improper. While the increase may have been contrary to the Act and in breach of the terms of the tenancy agreement, I find that the Limitation Act should be construed to apply to what amounts to a claim for compensation based on a breach of contract. I find that the delay of three years in advancing this claim precludes a claim from now being brought to undo the increase. This claim is dismisses without leave to reapply.

The second increase was given in writing using the required form. According to the form the increase was dated August 28, 2011 and the increase from $950.00 to $1,000.00 was to take effect on October 1, 2011. The tenants commence to pay the increase on October 1st, but based on the appropriate notice the increase should not have taken effect until December 1, 2011. The allowable rent increase for 2011 was 2.3%. Based on an established rent of $950.00, the allowable increase would have been $21.85 so the rent increase exceeded the allowed amount by $28.15. I find that the tenants are entitled to recover $100.00 for the months of October and November which should have formed part of the notice period and the further sum of $534.85 for the 19 months that followed when they paid more than $28.15 more than the permitted increase of $21.85. The total award for to the tenants for rent overpayment is the sum of $634.85

With respect to the tenants' claim for the return of their security deposit, Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the

tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants provided their forwarding address to the landlord with their notice ending the tenancy given on May 31st, 2013. I have already found as a fact that the landlord received this notice. The tenants also gave the landlord's their forwarding address in writing sent by registered mail on July 19, 2013. I am satisfied that the tenants provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act*. The landlord did not file an application to claim the deposit within 15 days of receiving the tenants' forwarding address and the doubling provision of section 38(6) therefore applies. I grant the tenants' application with respect to the claim for the return of their security deposit and award them the sum of $900.00, being double the deposit amount of $450.00.

Conclusion

The tenants have been awarded the sum of $634.85 as repayment for an illegal rent increase. They have been awarded a further $900.00, being double the amount of their security deposit. Their other claims have been dismissed without leave to reapply. All of the landlord's claims have been dismissed without leave to reapply. The tenants are entitled to recover the $50.00 filing fee for this application for a total award of $1,584.85 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the 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: November 22, 2013

Residential Tenancy Branch