Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' Application filed December 17, 2013: MNSD; FF

Landlord's Application filed April 17, 2014: MNSD; MNR; MNDC; FF

Introduction

This matter was originally scheduled for April 8, 2014, to hear the Tenants' application for return of the security deposit; for compensation pursuant to the provisions of Section 38(6) of the Act; and to recover the cost of the filing fee from the Landlord. During the initial Hearing, I made a finding that the Landlord had received the Tenants' forwarding address on April 8, 2014 (the address the Tenants gave on their Application for Dispute Resolution). I adjourned the matter and also gave the Landlord leave to file his own Application for Dispute Resolution. An Interim Decision was provided on April 8, 2014, which should be read in conjunction with this application.

The Landlord filed an Application for Dispute Resolution on April 17, 2014, seeking a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

Both Applications were scheduled to be heard together on June 5, 2014. The Tenant ER gave affirmed testimony at the reconvened Hearing. The Landlord did not sign into the Hearing, which remained open for 12 minutes. The Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution and documentary evidence. She stated that she was prepared to proceed on both files.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

> **Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I find that that the Landlord has abandoned her application, and therefore I dismiss the Landlord's application without leave to re-apply.

Issue to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenants paid a security deposit to the Landlord in the amount of $475.00 on October 10, 2013. The Tenant ER testified that no tenancy agreement was signed between the parties.

The Tenants' evidence is that rent was to be $950.00, including hydro and parking. If the Tenants chose not to have a parking spot, then rent would be $925.00. The Tenants submitted that they did not move into the rental unit on November 1, 2013, because the Landlord unilaterally changed the terms of the tenancy before they took possession of the rental unit. The Tenants' evidence provides that on October 28, 2013, the Landlord advised the Tenants that they could no longer have the parking spot but that rent would remain at $950.00. In addition, the Landlord stated that if hydro costs increased the rent would increase. Therefore, the Tenants declined to move into the rental unit and returned the keys to the rental unit on October 28, 2013.

Analysis

The Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Based on the undisputed affirmed oral testimony of the Tenant ER and the Tenants' documentary evidence, I find that the parties had an implied tenancy agreement. The Landlord accepted a security deposit and provided the Tenants with keys to the rental unit.

A security deposit is held in a form of trust by the Landlord for the Tenant, to 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 consent to retain 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, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

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.

In this case, I find that the Landlord filed an application for dispute resolution claiming against the security deposit within 15 days of receiving the Tenants' forwarding address, Therefore, I find that the Tenants are not entitled to compensation under the provisions of Section 38(6) of the Act.

Based on the undisputed affirmed testimony of the Tenant ER, I find that the Landlord breached the implied tenancy agreement by attempting to unilaterally change the terms of the agreement before the Tenants took possession. I also find that the Tenants are entitled to return of the security deposit in the amount of $475.00.

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.

Conclusion

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

I hereby grant the Tenants a Monetary Order in the amount of **$525.00** 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: June 05, 2014

Residential Tenancy Branch