Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, OLC, FF

Introduction

The hearing was convened to deal with an application by the landlord for a monetary order for damages and loss.

The application was also convened to hear a cross application by tenant for the return of the tenant's security and pet damage deposits and compensation for damages and loss.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided for the Tenant's Application

- Is the tenant entitled to the return of the security and pet damage deposits?
- Is the tenant entitled to compensation for loss of value to the tenancy?

Issues to be Decided for the Landlord's Application.

- Is the landlord entitled to compensation under section 67 of the *Act* for cleaning and damages?

Preliminary Matters

Landlord's Evidence

The tenant stated that they were never served with the landlord's evidence

The landlord had submitted two different evidence packages, which were received by Residential Tenancy Branch prior to the hearing. However, the tenant testified that he received the first package on December 3, 2012 but did not receive the second package at all.

Residential Tenancy Rules of Procedure, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the other party as soon as possible and at least five (5) days before the dispute resolution proceeding or, if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the other party at least two (2) days before the dispute resolution proceeding.

I find that, although the landlord submitted their evidence to Residential Tenancy Branch within the deadline, the landlord could not verify that their second evidence package was also served on the tenant as required under Rules 3 and 4 of the Residential Tenancy Rule of Procedure.

Given the above, I find that the landlord's evidence package will not be accepted nor considered. That being said, the landlord is entitled to give verbal testimony and the tenant is equally entitled to respond verbally.

Previous Hearing

The landlord testified that the tenant's application seeking the return of the security deposit could not be dealt with because at a previous hearing, the landlord had already been ordered to retain the security deposit in partial satisfaction for unpaid rental arrears.

A copy of a previous hearing decision dated February 19, 2014, is in evidence and verifies that the landlord had been awarded the security deposit of $450.00 plus a Monetary Order against the tenant for the remaining rental arrears of $1,800.00.

The tenant pointed out that the landlord had never refunded the tenant's pet damage deposit of $325.00, nor had the landlord made an application to keep the pet damage deposit. The tenant testified that they paid this pet deposit to the landlord after they moved in because they had a dog.

The landlord denied that he had ever collected a pet damage deposit from the tenants. In support of this, the landlord pointed out that the tenancy agreement that the tenant signed clearly contains a restriction against pets. A copy of the agreement is in evidence.

The landlord testified that he was aware that the tenants had brought a dog into the suite in violation of the agreement, but the tenants had repeatedly denied that it was their dog.

The tenants argued that the landlord did not enforce the no pets policy, but instead collected a fee of $325.00 pet damage deposit for the dog. The tenant testified that the landlord neglected to issue receipts for the pet damage deposit, and in fact never gave them any receipts for any payments they made for rent throughout their tenancy.

The landlord acknowledged that no receipts were issued, but stated that the tenants never asked for receipts. The landlord's position is that no pet damage deposit was ever paid.

Based on the evidence, I find that the tenant's $450.00 security deposit was already dealt with at the previous hearing and the landlord was granted the right to keep it. Therefore, the tenant's claim for the return of their security deposit is *res judicata.* This is a legal term meaning that I have no authority to revisit this issue because another arbitrator already heard the matter and granted a final order respecting the security deposit .

However, in regard to the issue of a *pet damage deposit*, I find that this was not dealt with previously and the landlord had never made an application seeking to retain the deposit.

I find that, if the landlord knew about, and objected to, the tenant's dog, as he stated, it is likely that the landlord would have proceeded to issue the tenants a Notice to End Tenancy for Cause early on in this tenancy based on the violation.

On a balance of probabilities, I accept the tenant's testimony that they paid the landlord $325.00 as a pet damage deposit and that they were never issued a receipt as required under the Act. I find that it was an admitted practice by the landlord not to give receipts.

Accordingly, I find as a fact that the tenant's $325.00 pet damage deposit was paid and is still being held in trust by the landlord. Because the tenancy has now ended, I find that the disposition of the pet damage deposit funds still retained by the landlord must be dealt with at this hearing.

At the previous hearing held on February 19, 2014, the landlord was ordered to reinstate the tenant's electricity, heat and water until the tenancy ends, which occurred on February 28, 2014.

However, according to the tenants, the landlord did not comply with the order and only restored the above services for a single day, after which the tenants were again deprived of heat, hydro and water. The tenants are seeking compensation in the form of a retroactive rent abatement for the loss of value to the tenancy for this period.

Background and Evidence

Tenant's Application

The tenancy began on October 1, 2013 and ended February 28, 2014. The monthly rent was $1,100.00. A security deposit of $450.00 was paid but was ordered by the arbitrator of the previous hearing, to be retained by the landlord in partial satisfaction for rental arrears owed by the tenants.

It was established that a pet damage deposit of $325.00 was also paid to the landlord and this is still being held in trust for the tenants. The tenants are claiming a refund of the pet damage deposit, which they claim the landlord has retained without authorization.

The tenant pointed out that the landlord has had their forwarding address since March 4, 2014 when they made their application for dispute resolution. Although the landlord made a cross application seeking damages, no claim was made by the landlord to retain the pet damage deposit.

The tenant is also claiming compensation for loss of value to the tenancy due to the landlord's failure to address a serious flooding problem and the landlord's violation of the order previously issued that ordered the landlord to restore the heat, hydro and water.

The landlord denied restricting these services and made reference to the utility bills in evidence. According to the landlord, the utility costs serve as proof that the services were not restricted. The landlord acknowledged that the utilities

were on one account shared by two units. The landlord disputes the tenant's claim that a rent abatement is warranted for denial of services.

Landlord's Application

The landlord is seeking monetary compensation of $5,000.00 for cleaning and repairs. The landlord acknowledged that they did not conduct move-in and move-out condition inspection reports. The landlord described the suite as being left in a damaged and dirty condition by the tenants, which resulted in costs to the landlord.

The tenant denied the landlord's allegation that they left the rental unit damaged and not reasonably clean. The tenant pointed out that the unit had been soiled and damaged by water flooding due to the landlord's failure to properly repair and maintain the unit.

Analysis

Tenant's Claim for Return of Pet Damage Deposit

In regard to the return of the pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and pet damage deposit to the tenant or make an application for dispute resolution to claim against the deposits.

I find as a fact that the tenant provided their written forwarding address to the landlord in March 2014 and that the landlord has never made an application to retain the pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

Although the tenancy agreement clearly restricts pets, I find that there was a dog living in the unit and the landlord was aware of this fact, but did not terminate the tenancy. I accept that a deposit was paid and the landlord did not refund this deposit. I further find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the per damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this instance I find that the tenant's security deposit was $325.00 and that the landlord failed to follow the Act.. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to $650.00.

Tenant's Claim for Devalued Tenancy

With respect to a monetary claim for damages, it is important that the evidence furnished by each applicant/claimant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I accept the evidence that indicates on a balance of probabilities that the landlord violated the Act by depriving the tenant's of services including heat, electricity and water and that the landlord persisted in this even after being ordered to comply with the Act.

I find that the tenancy was devalued as a result. I find that all elements of the test for damages and loss were satisfied by this claim and I grant the tenant a retroactive rent abatement of $1,100.00 for the month of February 2014.

Analysis – Landlord's Application

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit‘s condition as it was when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party’s signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the landlord’s failure to comply with the Act, and the absence of these reports, has hindered the landlord’s ability to prove that the tenant caused the damage and that the tenant should be held accountable for the costs of cleaning or repairs.

Even if I accept as a fact that there was damage, I find that it is not possible to verify what condition the rental unit was in when the tenancy began due to the missing move-in condition inspection report. Therefore, I am unable to determine what damage had actually occurred during the tenancy, by the actions of these tenants. For this reason, I must find that most of the landlord’s monetary claims fail to meet element 2 of the test for damages and must be dismissed.

Accordingly, I find that the above claims are not adequately supported by evidence and must therefore be dismissed.

Based on the evidence before me, I find that the tenant is entitled to total monetary compensation in the amount of $1,750.00 comprised of $650.00 refund of double the pet damage deposit and $1,100.00 rent abatement for devalued tenancy.

I hereby grant a monetary order of $1,750.00 in favour of the tenant. This order must be served on the landlord and may be enforced through an order from BC Small Claims Court

I hereby order that the landlord's monetary claims are dismissed without leave for insufficient evidentiary support.

Conclusion

The tenant is successful in the application and is granted a monetary order for a refund of double the pet damage deposit and a rent abatement.

The landlord is not successful in the cross application and the monetary claim is dismissed without leave to reapply.

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 02, 2014

Residential Tenancy Branch