Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC
MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed his application on March 10, 2014, seeking a Monetary Order for: damage to the unit site or property; for unpaid rent or utilities; to keep the security deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenants filed their application on March 18, 2014, seeking a Monetary Order for: the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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

1. Has the Landlord proven entitlement to a Monetary Order?
2. Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed written tenancy agreements for consecutive fixed term tenancies that commenced on November 1, 2011. The Tenants were granted early occupancy on October 15, 2011. The most recent fixed term tenancy ended on October 26, 2013, and switched to a month to month tenancy as no additional written agreements were signed.

The Tenants were initially required to pay rent of $1,595.00 which was later reduced to $1,545.00 and was payable on the 5th of each month. On or before October 15, 2011, the Tenants paid $797.50 as the security deposit. A move in condition inspection report form was completed with the Landlord's Agent and the Tenants on October 11, 2011.

On January 20, 2014 the Tenants gave written notice to end the tenancy effective February 28, 2014, which included their forwarding address. The Landlord confirmed receipt of this Notice, by mail, a few days after it was sent on January 20th, 2014.

The Landlord testified that the Tenants had not vacated the property by February 28th, and they left the rental unit damaged and requiring cleaning. In making arrangements to end the tenancy the Landlord stated that he instructed the Tenants to leave the keys for the house in the back yard shed.

The Landlord confirmed that he did not provide the Tenants with two dates or times to schedule the move out inspection and he did not issue them a final notice of inspection. He argued that they knew he was moving into the rental unit as soon as they vacated, so he planned to conduct the inspection after the Tenants had fully vacated. He said he assumed the Tenants would return sometime on March 2nd to do the walk through, while he was moving his possessions into the house, but they did not; so he completed the condition inspection form in their absence.

The Landlord submitted a monetary claim which consisted of the following:

(1) $1,545.00 for rent that was due February 5, 2014. The Landlords said that the Tenants refused to pay the rent and that they told him they did not have to pay the last month of rent because the Landlord was moving into the rental unit. The Landlord noted that he did not serve the Tenants with a notice to end tenancy; it was the Tenants who ended this tenancy.
(2) $600.00 to replace the carpet which was burnt. He provided an estimate of $558.00 which is proof that there are several burns on the carpet in the basement bedroom and one burn in the master bedroom. He suspects that the burns may be caused by smoking, even though there was to be no smoking in the house. This carpet was brand new at the start of the tenancy. The Landlord had indicated that renovations had just been completed in the basement, prior to this tenancy which included all new flooring, drywall, and paint. The damaged carpet has not yet been replaced.

(3) $300.00 for carpet cleaning. The Landlord had paid to have the carpets cleaned on April 6, 2014 at a cost of $145.00. He argued that the Tenants had kept pets, without his permission, and they did not have the carpets cleaned before they moved out.
(4) $400.00 + $500.00 + $300 to $500.00 for costs to repair the walls, shower ceiling, repair walls and trim damaged by animals, and labour and supply costs to repaint. The Landlord pointed to the quote provided in his evidence which was for $1,500.00 to complete this work.
(5) $300.00 to repair a broken window hinge and latch. The Landlord stated that he decided to take the window in to a repair shop to be repaired which cost a total of $16.80 to repair.
(6) $300.00 interior cleaning plus $200.00 for yard clean-up which includes labour, materials, and dump fees. The Landlord submitted a receipt from the landfill of $11.00 and argued that it took him five hours to clean the yard. He stated that they had to clean the inside of the house as the cupboards had to be wiped out, wash the floors, and were unable to get the ceramic tile grout cleaned. He submitted a quote from a maid service that would cost them $475.00 to get the cleaning professionally done. The Landlord stated that they have continued to reside in the unit since March 2, 2014 and they did the cleaning themselves. He argued that the Tenants left the chicken coop dirty and other items, such as tires and wood in the yard.
(7) $200.00 for travel costs from their previous home to the rental property. The Landlord argued that on February 28, 2014, they had travelled half way to the rental property before they found out that the Tenants were not vacating the property until March 1st. He said they had to turn around and go back to their original home and come back the next day. As evidence to support that they had been on the road on February 28th, 2014, and had to turn around, the Landlord submitted receipts dated March 1, 2014.

The Landlord attempted to submit claims for additional damages that were not listed on his original monetary claim submitted March 10, 2014. I declined to hear the submissions for the additional items as they were not identified in the original claim, pursuant to section 59 of the Act.

The Tenants testified that they were of the opinion that their tenancy would not end until the first of the month, so they did not feel they were late in moving out of the unit. They submitted that they had fully vacated the property by about 6:00 p.m. and they left the keys in the shed, as instructed by the Landlord in his February 19, 2014 text message. They acknowledged that they may have left a few articles in the yard, but could not say for certain because there was snow in the yard when they moved.

The Tenants confirmed they did not pay rent for February 2014 and argued that they were entitled to compensation equal to one month’s rent because the Landlord was moving into the rental unit. They confirmed that they were not served a 2 Month eviction Notice but argued that they began looking for a new place and gave their written notice because the Landlord had told them he was going to move in.

The Tenants testified that they had cleaned the rental property and left it without damage. They argued that the downstairs bedroom was their 17 year old daughter's bedroom and the carpet did not have burns in it when they moved out. They did not smoke in the house and they did not have animals inside the house. They had looked after a small puppy back in June 2013 for a few days, but they did not own a cat or dog or other house animal. They had chickens that were in the chicken coop in the back yard.

The Tenants submitted that the walls did incurred scratches and marks as the result of normal living over a period of three years. One wall had a dent because there was no door stopper and there was one larger scratch in the master bedroom. They puttied and sanded all the marks on the walls as required. They had numerous people help them clean and just because it is not cleaned to the Landlord's standards it does not constitute a claim for cleaning costs.

The Tenants disputed that the widow latch was broken during their tenancy, as they have no knowledge of it. They stated that the yard was left in good condition but there were a couple of 2 x 6 pieces of wood and some fluorescent light bulbs left behind. There was two feet of snow covering the yard so they could not see the items left behind. They acknowledge that they left the corn cobs in the chicken coop.

The Tenants argued that they were never given an opportunity to acknowledge or discuss anything about the property because no walk through was completed at move out. They were told to leave the keys in the shed, which they did, and then they received a text message from the Landlord saying he was coming back to move into the unit on March 2, 2014. Then on March 4, 2014 they received a text from the Landlord that stated they knew the Landlord would be at the unit on March 2 and because the Tenants did not attend the unit then the Landlord does not need to do a walk through. They attempted to contact the Landlord for several weeks afterwards about their deposit and the first response they got was the Notice of Dispute Resolution.

In closing, the Landlord confirmed that he had requested the keys be put in the shed and argued that was so he could do the inspection after the Tenants moved. He also confirmed that there was snow on the ground that day but stated that it had melted as soon as it rained the next day. He stated that his photos provided in evidence clearly show that the carpet is burnt, as does his written estimate.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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*.

Landlord's Application

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement, despite any disputes the tenant may have with their landlord.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Notwithstanding the Tenants submission that the Landlord had told them verbally that the Landlord would be moving into the rental property when they moved out, the undisputed evidence was the Tenants were not served a 2 Month Notice to end tenancy for landlord's use of the property. Rather, the Tenants served the Landlord with written notice that they were ending their tenancy.

Based on the above, I find the Tenants were not entitled to compensation under Section 51 of the Act, as they were not issued a Notice under section 49 of the Act. Therefore, they were required to pay their rent that was due on February 5, 2014. Accordingly, I award the Landlord February unpaid rent in the amount of **$1,545.00.**

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In this case, the Landlord did not offer the Tenants two dates and times to schedule the move out inspection and he did not issue the Tenants a notice of final inspection prior to the Landlord moving into the rental property. Instead, the Landlord conducted the inspection days after the Landlord moved into the house. The Tenants disputed all of the damage claims and argued that they had cleaned the property to their standards and they left the inside of the house undamaged, except for normal wear and tear. Accordingly, I find there to be insufficient evidence to prove the Tenants caused any damage and the Landlord's claim for damage and cleaning claims relating to the interior of the house, are dismissed, without leave to reapply.

The undisputed evidence supports that there was snow on the ground when the Tenants vacated the property and that the Tenants had left debris in the yard and inside the chicken coop. Accordingly, I award the Landlord labour and dumping fees as claimed, of **$211.00.**

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 (1) of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case rent was payable on the 5th of each month. Therefore, as the Tenants provided their written notice to end their tenancy on January 20, 2014, their tenancy would end on March 4, 2014, the day before rent is due, in accordance with section 45 of the Act, as listed above.

Based on the foregoing, I find the Tenants did not over hold the rental property; rather, they vacated the property three days early. Therefore, the Tenants were not responsible for costs incurred by the Landlord for his travels to the rental property and the claim is dismissed, without leave to reapply.

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 Tenants' pet and security deposit plus interest as follows:

Unpaid February 2014 Rent	$1,545.00
Yard cleaning	211.00
SUBTOTAL	$1,756.00
LESS: Security Deposit $797.50 + Interest 0.00	-797.50
Offset amount due to the Landlord	**$ 958.50**

Tenants' Claim

The Tenants have filed for the return of double their security deposit because the Landlord refused to return their deposit and denied them the opportunity to conduct a walk through and complete a condition inspection report form.

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 in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

If a landlord has failed to comply with Section 38(1) of the *Act* the landlord would be subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

As noted above, the Landlord filed his application claiming against the security deposit for unpaid rent and damages and his monetary claim was offset against the security deposit in accordance with section 72 of the Act. The Landlord's application was filed on March 10, 2014, nine days after the tenancy ended; therefore, the doubling provision does not apply. Accordingly, I dismiss the Tenants' claim, without leave to reapply.

The Tenants have succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

The Landlord has been awarded a Monetary Order for **$958.50**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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.

The Tenants' application 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 30, 2014

Residential Tenancy Branch