Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAIN DEVELOPMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF
OLC MNSD FF

Preliminary Issues

It was undisputed that the respondent named on the Tenant's application is a principle officer of the Limited Company who is listed as Landlord on the tenancy agreement. Neither party objected to the Limited Company name being added to the style of cause for the Tenant's application. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section *64 (3)(c)* of the *Act.*

Introduction

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

The Landlord filed on March 13, 2014, to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; to keep all of the security and pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 16, 2014, to obtain a Monetary Order for: the return of double her security and pet deposits; to have the Landlord ordered to comply with the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord for her application.

The parties appeared at the teleconference hearing 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.

Upon review of service and receipt of evidence the Landlord confirmed receiving copies of the Tenant's application for dispute resolution and her evidence. The Landlord affirmed that he had sent the Tenant and the *Residential Tenancy Branch* (RTB) copies of his 36 pages of evidence on June 9, 2014, by regular mail.

The Tenant confirmed that she had received a copy of the Landlord's application for dispute resolution but she did not receive any evidence from the Landlord. I informed the parties that there was no evidence received on file, from the Landlord, and the record did not indicate receipt of any late evidence from the Landlord. The Landlord requested permission to send his evidence to the RTB once the hearing had started. The Tenant disputed the Landlord's request and argued that the Landlord had established a pattern of behavior in the past, where he would say he would send her documents and then would just get too busy to do it, so she is of the opinion that he simply did not send the evidence like he had planned to do.

After consideration of the foregoing, I found that it was not a mere coincidence that both the Tenant and the RTB had not received evidence from the Landlord, if it had been sent by Canada Post. Therefore, I refused the Landlord's requests to submit evidence after the hearing had commenced, in accordance with section 11.5(b) of the Residential Tenancy Branch Rules of Procedure. I did however consider the Landlord's testimony along with the Tenant's testimony and evidence that had been received on file in accordance with the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

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

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on November 1, 2012, and switched to a month to month tenancy after October 31, 2013. The Tenant was required to pay rent of $3,400.00 on the first of each month and on October 10, 2012, the Tenant paid $1,700.00 as the security deposit plus $1,700.00 as the pet deposit. The Tenant gave proper one months notice to end the tenancy effective February 28, 2014, and provided her forwarding address to the Landlord on February 28, 2014. The parties conducted a walk through inspection and completed a condition inspection report form at move in. The parties met and conducted an informal walk through at move out but no condition inspection report form was completed.

The Landlord testified that he is seeking monetary compensation for payment for the municipality utility bill and the cost to clean and or replace the carpets. He pointed to page two of the tenancy agreement provided in the Tenant's evidence which displays the notation: "The District of (municipality name) utility statement is NOT included" and argued that despite him sending the Tenant notices to collect payment she has never paid the municipality utilities.

The Landlord stated that he had sent three letters requesting payment of utilities, with copies of the invoices, to the Tenant prior to the end of the tenancy, and one e-mail since the tenancy ended. The Landlord testified that the letters were sent by mail or dropped off at the rental unit and the details of the letters and e-mail were as follows:

June 18, 2013 letter seeking $860.48 – comprised of:

(1) Billing period October 1, 2012 – December 31, 2013 – $372.41 – a 3 month period adjusted to 2 months for **$248.27** ($372.41 divided by 3 times 2)
(2) Billing Period January 1, 2013 to March 31, 2013 - **$488.07**

September 24, 2013 letter seeking $1,343.11 (outstanding $860.48 + $482.63) comprised of:

(1) Billing period April 1, 2013 to June 30, 2013 - **$482.63**

December 11, 2013 letter seeking $1,820.71 (outstanding $1,343.11 + $477.60) comprised of:

(1) Billing period July 1, 2013 – September 30, 2013 - **$477.60**

March 6, 2014 email seeking (outstanding $1,820.71 + $783.61) comprised of:

(1) Billing period October 1, 2013 – December 31, 2013 - **$457.81**
(2) Billing period January 1, 2014 – March 31, 2014 - $488.07 – a 3 month period adjusted to 2 months because tenancy ended February 28, 2014, for **$325.80** ($488.07 divided by 3 times 2)

The Landlord submitted that the rest of his claim pertains to problems with the carpets that were noticed after the move out walk through was conducted. He indicated that the Tenant had two large dogs and that he later noticed a foul "dog" smell in the carpets. He has not replaced the carpets and the amounts claimed are based on an estimate.

The Tenant testified that she did not dispute that she was required to pay the municipal utility bills; rather, she disputed the amounts claimed in adjusted bills at the start and end of her tenancy and she questioned whether the Landlord had made his claim within the limitation period for residential tenancy matters. The Tenant confirmed receipt of copies of all the utility bills at some point prior to this hearing. He noted that the latest copies were received in the Landlord's email of March 6, 2014 and confirmed she had not paid any of the bills. She argued that the Landlord was always busy and out of the country and he would forget to provide her with additional information when she requested it. Therefore, she never thought to pay the bills as he did not provide her with the requested information.

The Tenant disputed the claim for carpet cleaning or replacement and argued that the Landlord did not mention anything about smells during the walk through. She had the carpets shampooed at the end of her tenancy and there were no dog smells. She said the Landlord told her she would be getting all of her security deposit back and the first time she heard about dog smells in the carpet was the first week of March. She argued that there were never any letters sent to her seeking payment for the utilities and the claim for dog smells is a complete fabrication.

The Tenant confirmed that her application was for double the return of her deposits and to Order the Landlord to treat the deposits as a separate issue from the Landlord's claim.

In closing, the Landlord confirmed that at the time he filed his application he did not have the final utility bill, which is why he sent it via email to the Tenant when he received it. He stated that he did tell the Tenant about the strong odour during the move out inspection.

Analysis

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

Landlord's Claim

Limitation Periods for Filing Claims

Section 60 of the Act stipulates the time period in which an application for dispute must be made as follows:

> (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.
> (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded [emphasis added].

The *Residential Tenancy Branch* Policy Guideline # 16 provides that in 2013, a new *Limitation Act* came into force that explicitly states that the *Limitation Act* does not apply to claims made under other acts which establish a limitation period. Because both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* establish a limitation period, as noted above, the *Limitation Act* does not apply to claims made under these Acts through the Residential Tenancy Branch.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. For example, a tenant is expected to pay rent and utilities if required and a landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent or utilities, the landlord is entitled to damages.

The undisputed evidence was the tenancy agreement required that the Tenant pay the municipality utility bills and the Tenant confirmed receipt of copies of the bills on or before March 4, 2014. As such, I find that the Tenant was required to pay the Landlord for the municipal utilities.

The matter that is in dispute relates to the manner in which the first and last bills were adjusted by dividing each bill by 3 and multiplying it by 2 for the months covered during the tenancy. I accept that the manner in which the Landlord adjusted the first and last bills is not appropriate because several months have a different number of days in them. I have adjusted the amounts owed for the first and last bills as follows:

First billing period October 1, 2012 – December 31, 2013 – $372.41 adjusted to **$246.92** ($372.41 divided by 92 days times 61 days of tenancy).

Last Billing period January 1, 2014 – March 31, 2014 - $488.07 adjusted to **$319.96** ($488.07 divided by 90 days times 59 days of tenancy).

Based on the above, I find the Landlord is entitled to monetary compensation in the amount of **$2,472.99** ($246.92 + $488.07 + $482.63 + $477.60 + 457.81 + $319.96).

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 the absence of a move out condition inspection report form, I find there to be insufficient evidence to prove the carpets require additional cleaning or replacement. Accordingly, I dismiss the Landlord's claim for monetary compensation for the dog smell left in the carpet, without leave to reapply.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

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 Tenant's pet and security deposit plus interest as follows:

Municipal Utilities	$2,472.99
Filing Fee	50.00
SUBTOTAL	$2,522.99
LESS: Pet Deposit $1,700.00 + Interest 0.00	-1,700.00
LESS: Security Deposit $1,700.00 + Interest 0.00	-1,700.00
Offset amount due to the Tenant	**($ - 877.01)**

I hereby order the Landlord to return the balance of the deposits of **$877.01** to the Tenant, forthwith.

Tenant's Claim

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 and pet deposits, to the tenant with interest "or" make application for dispute resolution claiming against the security and pet deposits.

In this case the tenancy ended February 28, 2014, the Tenant provided the Landlord her forwarding address on February 28, 2014, and the Landlord filed his application claiming against the deposits thirteen days later on March 13, 2014.

Based on the foregoing, I find the Landlord complied with section 38(1) of the Act. Accordingly, I dismiss the Tenant's claim in its entirety.

The Tenant has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

The Landlord was granted monetary compensation in the amount of $2,522.99 which was offset against the security and pet deposits, leaving an offset amount due to the Tenant. In the event the Landlord does not return the offset amount of $877.01 to the Tenant forthwith, the Tenant may serve the Landlord the enclosed Monetary Order.This Order may be filed with the Province of British Columbia 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: July 02, 2014

Residential Tenancy Branch