Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harob Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on April 25, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on August 13, 2014 documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and compensation for being unable to properly close two windows in the rental unit?

Background and Evidence

The Landlord and the Tenant agree:

- that the tenancy began on December 01, 2011
- that a condition inspection report was completed at the start of the tenancy
- that a security deposit of $650.00 was paid
- that a laundry card deposit of $20.00 was paid

- that this tenancy ended on March 31, 2014
- that a condition inspection report was completed at the end of the tenancy
- that the Landlord received a forwarding address for the Tenant, in writing, on April 01, 2014
- that the Tenant did not authorize the Landlord to retain the security deposit
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that the security deposit of $650.00 and the laundry card deposit of $20.00 were refunded to the Tenant. She stated that a cheque for $670.00 was mailed to the Tenant, via regular mail, on April 11, 2014. The Landlord submitted a copy of a cheque dated April 11, 2014, which is made out to the Tenant and which includes her correct current address. She stated that this cheque has not been cashed and it has not been returned to the Landlord.

The Tenant stated that she has not received the aforementioned cheque and she speculates that the cheque was created after the dispute was filed and that it was never mailed. The Tenant submitted no evidence in support of her speculation.

The Agent for the Landlord stated that the Landlord is a reputable company that would not fabricate a document.

The Tenant alleged that the letter in the Landlord's evidence package, labelled document #4, is fraudulent, as it was written by the Resident Manager. The Resident Manager stated that she wrote the letter at the request of another occupant of the residential complex and that the occupant then signed the letter.

The Tenant alleged that the letter in the Landlord's evidence package, labelled document #6, is also fraudulent. She based this allegation on her opinion that she and the author are polite to each other so the author would not have indicated otherwise.

The Landlord and the Tenant agree that new windows were installed in the dining room of the rental unit on November 01, 2013.

The Tenant stated that after they were installed she could close one of the windows, with considerable force and that there was a gap of approximately 6 centimeters between the window and the frame of the second window after it was forced close. The Resident Manager stated that she viewed the windows on November 03, 2013 and determined they both could be closed with considerable force.

The Agent for the Landlord stated that several windows in the residential complex were installed at the same time; that the Landlord completed a list of deficiencies, which was provided to the company that installed the windows; and that the company had repaired all of the deficiencies by December 11, 2013. The Tenant stated that the windows in her unit were not repaired until December 11, 2013.

The Tenant is seeking compensation as a result of the deficiencies with the windows, as she was “freezing” in her rental unit.

The Agent for the Landlord stated that the Tenant made several complaints via email during her tenancy, including one that she sent on November 20, 2013. She argued that if the windows had been problematic for the Tenant she would expect the Tenant’s concerns would have been address in this email, which they were not.

The Tenant acknowledged that she had previously reported problems via email but she did not do so in the email she sent on November 20, 2013 simply because she has already told the Resident Manager that she was “freezing”. The Resident Manager stated that the Tenant did inform her that the windows did not close properly, but she did not tell her that it was cold in her unit.

In support of her allegation that one of the windows did not fully close, the Tenant stated that somebody installed plastic over that window on December 03, 2013. The Agent for the Landlord stated that the rental unit was inspected on December 03, 2013; however she has no record of plastic being installed.

The Tenant is seeking $100.00 in compensation for the time she spent preparing for these proceedings and for gas used in relation to filing this claim.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the testimony of the Agent for the Landlord and the cheque that was submitted in evidence, I find, on the balance of probabilities, that the Landlord complied with section 38(1) of the *Act,* when a full refund was mailed to the Tenant on April 11, 2014. I can find no reason to discount the Agent’s testimony and I find the cheque strongly corroborates her testimony.

I can find no reason to discount the Tenant’s testimony that she did not receive this payment. In rendering this decision, however, I find it entirely possible that both parties are being truthful and that the cheque for $670.00 was simply lost due to an administrative error. Although it is possible that the Landlord was responsible for the error, it is equally possible that the Tenant or Canada Post was responsible.

Section 62(3) of the *Act* authorizes me to make any order necessary to give effect to the rights and obligations under the *Act*. As it appears the original cheque is missing, I order the Landlord to issue another cheque for $670.00, which represents a full refund

of the security deposit and laundry card deposit. The Landlord is directed to mail the cheque to the Tenant, via registered mail, after the Landlord has had the opportunity to place a "stop payment" on the original cheque and ensure that it has not been cashed.

As I have determined that the Landlord complied with section 38(1) of the *Act*, the Landlord is not obligated to pay double the security deposit.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Temporary discomfort or inconvenience does not generally constitute a basis for a breach of the covenant of quiet enjoyment. It is always necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

The Landlord has acknowledged that between November 01, 2013 and December 11, 2013 it was difficult to close two of the newly installed windows. I find that having to force a window to close during the winter months for a period of less than 6 weeks, is not a significant inconvenience, given that windows are typically left closed during the winter months. Given that the Landlord was repairing several deficiencies with windows installed throughout the residential complex, I do not find the delay of 6 weeks to be unreasonable. Given the relatively minor nature of this inconvenience, I find that the Tenant is not entitled to compensation for this acknowledged deficiency.

I find that the Tenant has submitted insufficient evidence to establish that one of the windows did not fully close, even with force. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, a written report or email regarding the deficiency, or documentary evidence from an unbiased party, that corroborates the Tenant's testimony that it did not close or the refutes the Resident Manager's testimony that it did close. As the Tenant has not established that the window could not be closed, I find that she is not entitled to any compensation for the alleged deficiency.

In determining this matter I have placed no weight on the Tenant's testimony that plastic was installed over one of the windows, as the Landlord does not agree that plastic was installed. Without evidence to corroborate the Tenant's testimony that it was installed by the Landlord, I find her testimony has little probative value.

In determining this matter I have placed no weight on the Tenant's allegations that the Landlord has falsified evidence, as there is no credible evidence to support that allegation.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for compensation for the time she spent preparing for these proceedings and any other incidental costs she may have incurred.

I dismiss the Tenant's application to recover the fee for filing this Application for Dispute Resolution as the Tenant has failed to establish that the Landlord did not comply with the *Act*. This hearing may not have been necessary if the Tenant had simply phoned the Landlord and inquired regarding the status of her security deposit.

Conclusion

I grant the Tenant a monetary Order for $670.00, which represents a full refund of her security deposit and laundry card deposit. In the event that the Landlord does not pay this amount to the Tenant by September 30, 2014, the 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: August 27, 2014

Residential Tenancy Branch