Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF
MNDC MNSD FF

Introduction

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

The Landlord filed their application on September 16, 2014, to obtain a Monetary Order to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their application on May 12, 2014, seeking a Monetary Order for the return of double their security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony and confirmed receipt of evidence served by the other. 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. Have the Landlords proven entitlement to monetary compensation?
2. Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on June 1, 2011. The Tenants were required to pay rent of $1,200.00 on the first of each month and on June 1, 2011 the Tenants paid $600.00 as the security deposit. On or prior to February 28, 2014, the Tenants gave verbal notice to end the tenancy effective April 1, 2014. The parties conducted a walk through inspection and completed condition inspection report form at move in on May 28, 2011; however, no move out inspection was scheduled by the Landlord. The Tenants provided a forwarding address to the Landlord by email on April 7, 2014.

The Tenants submitted evidence that included copies of an email sent by the Landlord on April 16, 2014, outlining deductions from the security deposit; a cheque issued by the Landlord April 20, 2014, for a partial refund of their security deposit in the amount of $450.00; and the envelope the refund cheque was mailed in that was post marked April 23, 2014. The Landlord confirmed the dates the cheque was issued and mailed. The Tenants confirmed that they have cashed the partial refund.

The Landlord testified that she did not have the Tenants' permission, in writing, to keep any portion of the security deposit; she did not have an Order issued by the *Residential Tenancy Branch* granting her authority to keep any portion of the security deposit; and she had not make an application to keep the deposit until she filed this claim on September 16, 2014.

The Landlord submitted that after the Tenants served her with their claim for double their deposit she decided to file her claim for loss. The Landlord stated that she increased the amount of her claim from $150.00, the original amount she deducted from the security deposit, to $1,072.96. The new amount claimed was comprised of $660.00 for 4 cleaning charges, $8.98 for light bulbs, $13.98 for soil to repair dog damage in the back yard, $365.00 as estimated charges for the handyman to conduct repairs, and $25.00 for the Landlord's lost wages to attend the rental unit.

To support the amount claimed for damage and loss the Landlord submitted photographs which she initially stated were all taken at approximately 3:00 p.m. when she first arrived at the rental unit; a garden supply invoice dated August 26, 2014; an partial copy of an invoice for light bulbs that did not display a date; and a written estimate from a handyman.

The Tenants disputed the Landlord's claims and argued that they had multiple people cleaning the rental unit on their last day and just prior to their move out. They stated that the Landlord's mother attended the rental unit sometime mid day and asked which

areas had been cleaned and then went in and re-cleaned them, which was not necessary. The Tenants argued that when the Landlord attended the rental unit they were still moving and cleaning and most of the Landlord's photos were taken of areas prior to them cleaning them. The Tenants worked until 8:00 p.m. cleaning the unit and were still cleaning when the new tenants were moving their possessions inside the unit.

The Tenants noted that the Landlord's photo of the yard had to have been taken before or long after their tenancy because the back yard did not look that way. They also argued that the Landlord's photo of the oven was taken before they even started to clean it and noted that the oven did not look that way when they were finished cleaning.

The Tenants testified that the shelf was damaged at the outset of their tenancy and that the remaining items were simply normal wear and tear. They argued that there were burnt out light bulbs at the start of their tenancy and they are not responsible for light bulbs purchased after they had moved out.

In closing, the Landlord confirmed that she did not consider increasing the amount claimed until she received the Tenants' application seeking double their deposit. She confirmed that the Tenants and their friend were still at the rental unit cleaning into the evening hours. The Landlord confirmed that her photos were taken before the Tenants' cleaning was completed. She acknowledged that the new tenants began moving their possessions into the unit before the Tenants were finished cleaning and argued the new tenants were entitled to possession of the unit at 1:00 p.m. The Landlord also changed her testimony of when the photos were taken and acknowledged that some photos, like the yard and oven photos; were taken after the Tenants moved out.

Analysis

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 35of the Act stipulates that the landlord and tenant together must inspect the condition of the rental unit, once the tenant's possessions have been removed, and ***before*** a new tenant begins to occupy the rental unit. The Landlord must schedule a date and time to conduct the inspection and must offer the tenant two opportunities or times to choose from.

In this case, the Landlord did not schedule a date and time to conduct the move out inspection; rather she simply arranged to have her mother attend the unit to begin cleaning, expecting that the Tenants would be finished moving and cleaning. There is no evidence before me that would suggest the Tenants were advised that their move had to be completed by a specific time or that they were informed of the time the Tenant's mother would be attending the unit.

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.

The Landlord provided contradictory testimony as to the date and time her photographic evidence was taken and the receipts provided in support of her claim either do not display a date or are dated four months after this tenancy ended. Therefore, in consideration of the foregoing and in the absence of a move out condition inspection report form, I find the Landlord has provided insufficient evidence to prove the condition of the rental unit at the time she gained legal possession of the unit. Given the circumstances I question if the Landlord regained possession at all as the evidence suggests that the new tenants took possession and began moving in prior to these Tenants completely vacating. The legislation stipulates that a landlord must conduct the move out inspection when the unit is vacant and conduct the move in inspection with the new tenant while the unit is vacant; hence the requirement for a landlord to schedule inspection times.

Based on the above, and in consideration that the Landlord confirmed she inflated her claim in retaliation to the Tenant's application for Dispute Resolution, I find the Landlord has failed to establish a claim for damages and I dismiss her application in its entirety, without leave to reapply.

Tenants' Application

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.

In this case the tenancy ended April 1, 2014 and the Landlord was provided the Tenants' forwarding address on April 7, 2014. Therefore, the Landlord was required to

return the Tenants' security deposit in full or file for dispute resolution no later than April 22, 2014. The Landlord returned a partial amount of the deposit via mail which was post marked April 23, 2014 and she did not file her application until September 16, 2014.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now 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.

Based on the aforementioned I find the Tenants have met the burden of proof to establish their claim and I award them double their security deposit plus interest in the amount of **$750.00** (2 x $600.00 + $0.00 interest LESS payment received of $450.00).

The Tenants have succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

Conclusion

The Tenants have been awarded a Monetary Order for **$800.00** ($750.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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.

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: October 03, 2014

Residential Tenancy Branch