Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 08, 2014, to obtain a Monetary Order for: damage to the unit, site or property; 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 hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Witness, and both Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by each 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) Has the Landlord met the burden to prove entitlement to monetary compensation?
2) How should the security deposit be disbursed?

Background and Evidence

The Landlord's Witness testified that he has occupied the rental unit since August 14, 2014. He submitted that the rental property was perfect and he has had no problems. Neither Tenant wanted to ask the Witness questions so the Witness was excused from the hearing.

It was undisputed that the Tenants entered into a month to month tenancy with the previous owner that began on July 1, 2011. The property was purchased by the current Landlord effective April 30, 2014. Rent of $600.00 was payable on the 5th of each month and a security deposit of $300.00 was transferred to the new owner in the disbursements from the sale of the property. The rental unit was described as a 1 bedroom basement suite, with in-suite laundry, located in a single detached home that was built in 1974. The Tenants vacated the property by June 30, 2014, and the Landlord received their forwarding address in writing on August 3, 2014.

The Landlord testified that on May 15, 2014 the Tenants gave notice to end their tenancy effective June 15, 2014. After informing the Tenants that their tenancy was a month to month tenancy the parties verbally agreed to end the tenancy effective June 30, 2014. No changes were made to the written mutual agreement.

The Landlord submitted that she sent each Tenant a text message on June 27, 2014 to schedule a move out inspection. When she did not receive a response to her text messages the Landlord said that on June 28, 2014 at 4:30 p.m. she left the Tenants a Notice of Final Inspection scheduled for June 30, 2014 at 12:30 p.m., in their mailbox. At 3:52 p.m. on June 30, 2014, she said she received a text message from the male Tenant stating that the keys had been left in her mailbox. She attended the rental unit at 4:30 p.m. and conducted the move out inspection as scheduled, in absence of the Tenants. The Landlord stated that she then texted the Tenants advising them that the rental unit looked clean but that there was still an animal smell. The Landlord then changed her submission and said she completed the inspection, documents, and cleaning over the next couple of days because she knew she had 10 days before having to report on the security deposit.

The Landlord asserted that she had advertised the rental unit as soon as she received the Tenants' notice and had secured a new tenant effective July 1, 2014 at the higher rent of $850.00. However, due to the pet odor she said she lost the new tenant. The Landlord argued that she had to replace the laminate flooring and paint the baseboards to remove the pet urine odor that was left in the rental unit.

The Landlord argued that upon further inspection she found pet hair, dander, moldy animal food and grease under the appliances. She stated that she had recently had surgery so she hired her friend who resides in the Landlord's home, to conduct a full cleaning of the rental unit. The Landlord now seeks damages in the amount of $2,945.48 which is comprised of the following:

$600.00	Cleaning at a flat rate charge, weeding which was charged @ $50.00 per hour, plus removal of baseboards and flooring, as supported by the invoice provided in evidence. The work was completed on June 30, 2014, July 1, 2014 and July 2, 2014.

$1,450.00	New Laminate flooring installation in the living room and new trim in the laundry room as per the invoice provided in evidence;
$850.00	Loss of rental income for July 2014 as the unit was not occupied until August 15, 2014;
$30.77	Pet neutralizer chemical, as per the invoice in evidence; and
$14.71	Light Bulbs and Paint to seal the trim and base of the wall

In support of her claim the Landlord submitted documentary evidence which included, among other things, copies of: a tenancy agreement; invoices for materials and labor as listed above; a written submission with a chronological list of events; the mutual agreement to end tenancy; a final notice of inspection; a move out inspection report completed in absence of the Tenants and dated July 1, 2014; a CD with pictures; and the Tenants' letter dated August 2, 2014 providing the Landlord their forwarding address in writing.

The Tenants disputed all of the items claimed by the Landlord and argued that the Landlord never contacted them or served them with two dates to choose an inspection time. Nor did they receive the final notice for the move out inspection that the Landlord said she placed in their mailbox. The Tenants stated that neither one of them received a text message from the Landlord about scheduling an inspection and noted that after an incident with the Landlord she was instructed to deal only with the male Tenant by text message. As per that agreement, they questioned why the Landlord would say she sent both of them a text about the inspection.

Furthermore, the Tenants argued that there was a lock on the mailbox outside their door so they never used it. Rather, they received their mail in the main mailbox that was located at the front of the house. The Tenants questioned why the Landlord would allegedly put the notice of final inspection in a locked mailbox that they could not access and argued that they did not receive that notice. The Tenants submitted that in the past, the Landlord had handed their mail to them on a couple of occasions so she knew their mail was being placed in the same mailbox at the front of the house.

The male Tenant testified that prior to the end of their tenancy he had had discussions with the Landlord about the move out. He submitted that he had sent a text to the Landlord about the move out and that she responded saying the rental unit looked "generally good".

The Tenants submitted that they had moved the majority of their possessions out by June 28th and were returning at various times to complete the cleaning. They stated that when they finished cleaning a room they would close the door to indicate that cleaning in that room had been completed. Before leaving on the 28thy they closed the bathroom and bedroom doors. When they returned on the 29th to continue cleaning they found that the Landlord had been inside their suite, because the bathroom and bedroom doors were open and she was using their laundry machines without their prior knowledge, as the dryer was still going when they arrived at the rental unit. The Tenants argued that

they cleaned the rental unit, including under the appliances, and anything else would be considered wear and tear.

In response to the claims for new flooring and trim, the Tenants argued that the flooring was already damaged when they moved into the rental unit. They noted that the previous tenant had occupied the suite for over 15 years and he had cats. They submitted that the laminate flooring was in the unit prior to them moving into the suite.

The Tenants questioned the validity of the Landlord's photographs and argued that the picture of the laundry room did not appear to be the same shape as their laundry room was. They argued that they had moved the fridge and stove and cleaned beneath them and all that remained was a rust stain. Therefore, they questioned when the Landlord took her photos. They do not believe they should have to pay loss of rent when they did not cause the damages. They did however, confirm they did not replace a couple of burnt out lightbulbs in the kitchen during their tenancy, as there were too many lights in the kitchen and they preferred it to be dimmer.

In closing, the Landlord testified that prior to finalizing the purchase of the home she did have a building inspection completed, but that was a few months prior to taking possession. She did not conduct another inspection in the rental unit at the time she took possession. The Landlord confirmed entering the rental unit and using the dryer but argued that she sent a text to the Tenants on June 28, 2014, the afternoon before she entered, to advise the Tenants of her need to use the dryer. She argued that the Tenants had already moved out all of their possessions and she walked straight to the dryer and out again. She acknowledged giving the Tenants some mail that had been placed in her mailbox and denied knowing they were receiving mail in her mailbox. She argued that there was no lock on the Tenants' mailbox and stated that she assumed they received the notice of final inspection because it was no longer in the mailbox.

Analysis

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

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As such, the party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent(s) in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Section 17 of the Regulation provides that it is the landlord who must initiate scheduling of the condition inspection as follows:

> **17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
>
> (2) If the tenant is not available at a time offered under subsection (1),
>
> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
>
> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
>
> (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove she served the Tenants with notice of times and dates for the final inspection and that the Tenants received the notice of final inspection. The Landlord submitted that she sent a text message to the Tenants and when they failed to respond she allegedly placed a notice of final inspection in their mailbox. Text messages do not meet the definition of written notice under the Act. Furthermore, there was no documentary evidence to support that the text message had been sent and received by the Tenants. With respect to the notice of final inspection, the Tenants may be ***deemed*** to have received the final notice based solely on the Landlord's oral testimony.

Section 90(c) of the Act provides that a document served by posting on a door or placing it in a mailbox is ***deemed*** received on the third day after it is posted or placed int eh mailbox. Common law has established that deemed service is a rebuttable presumption.

In absence of evidence to prove the contrary, and in the presence of the Tenants disputed testimony that they did not receive a text message or the notice of final opportunity for inspection, the service presumption has been rebutted. Accordingly, I find the Tenants were not sufficiently served notice of the move out inspection.

Section 29(1) of the Act stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>> (i) the purpose for entering, which must be reasonable;
>> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

It was undisputed that the Landlord entered the rental unit and used the Tenants' laundry machine(s) on June 29th, 2014, without prior written notice and without the Tenants' permission, in breach of section 29(1) of the Act. Notwithstanding the Landlord's submission that she did not enter any other area of the rental suite during that entry, I accept the Tenants' submissions that the Landlord had walked through the entire suite, leaving doors open that they had previously closed.

Based on the foregoing, I give no evidentiary weight to the Landlord's photographs of the rental unit, as they could have easily been taken during the Landlord's illegal entry. That entry occurred prior to the Tenants finishing their cleaning and prior to the Landlord regaining legal possession of the rental unit.

The Residential Tenancy Policy Guideline # 1 provides that a tenant is responsible for replacing light bulbs in his or her premises during the tenancy.

It was undisputed that the Tenants did not replace a few light bulbs in the kitchen during their tenancy. The Landlord listed a claim of $14.71 for primer and lightbulbs on the Monetary Order Worksheet; however, the Landlord did not provide an invoice in her evidence to support that claim. Accordingly, I find the Landlord has not submitted sufficient evidence to prove the actual costs of the lightbulbs being claimed, and the claim is dismissed, without leave to reapply.

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.

Based on the Landlord's submissions she had a building inspection completed on the property a few months prior to completing the purchase of the house. That building inspection report would be evidence of the condition of the rental property on the date it was completed. Such inspections are utilized in negotiating the purchase price of a property and assist in determining the current market value. That being said, the Landlord did not submit a copy of that the inspection report into evidence. Furthermore, the Landlord did not conduct an inspection of the rental suite at the time she took possession of the property. Therefore, I find there to be insufficient evidence to prove the damages, being claimed here by the Landlord, occurred after that previous building inspection, or that those damages were caused by these Tenants.

Based on the above, I find the Landlord has submitted insufficient evidence to prove the Tenants breached the Act, regulation, or tenancy agreement, and I dismiss the Landlord's claim in its entirety.

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

As the Landlord has not been successful with their application, the Landlord has no legal entitlement to retain the Tenants' security deposit and interest. Accordingly, I order the Landlord to return the Tenants' $300.00 security deposit plus $0.00 in interest, forthwith.

Conclusion

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

The Landlord has been ordered to return the Tenants' security deposit forthwith. If the Landlord fails to comply with this Order, the Tenants may serve the Landlord the enclosed Monetary Order issued for **$300.00**. If the Landlord still does not comply with the Monetary 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: March 02, 2015

Residential Tenancy Branch