Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the security deposit or pet damage deposit; a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

One of the landlords and both tenants attended the hearing, and the landlord also represented the other landlord. The landlord who attended and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other.

During the course of the hearing the tenant advised that some photographs in the landlords' evidentiary material had not been received by the tenants. The landlord did not dispute that, and all evidence other than those photographs has been reviewed and is considered in this Decision. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for recovery of a "holding fee," moving expenses, recovery of rent paid, storage fees and ferry costs?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 1, 2015 and the tenants moved out of the rental unit on May 19, 2015, and paid rent to the end of May,

2015. Rent in the amount of $1,100.00 per month was payable on the 1st day of each month. Prior to the tenancy the landlords collected a "holding fee" from the tenants in the amount of $250.00 as well as a security deposit in the amount of $550.00 and a pet damage deposit in the amount of $500.00. The landlords returned $500.00 to the tenants on June 11, 2015. The tenants have not provided the landlords with a forwarding address.

The tenant further testified that the rental unit is a basement suite with another rental unit above, and the landlords did not reside on the property.

The tenants have provided a Monetary Order Worksheet setting out the following claims:

- $550.00 for return of the security deposit;
- $750.00 as a "pet holding fee;"
- $1,100.00 for recovery of rent for April, 2015;
- $1,100.00 for recovery of rent for May, 2015;
- $2,100.00 to recover moving expenses when the tenants moved into the rental unit;
- $279.00 for storage fees; and
- $88.50 for ferry costs to move back to the Island.

The tenants' total claim is $5,967.50, however the tenant testified that the $550.00 claim for return of the security deposit is withdrawn, in that the landlords returned $500.00 and the tenants had agreed to a fee for cleaning up after the tenants' dog.

The tenant also testified that had she known the abuse the tenants would suffer, she would not have moved into the rental unit. The landlords are husband and wife, and the husband put the tenant through a lot of grief, telling the tenant and her daughter to get the "F" off the property and saying he can treat tenants the way he wanted to. Copies of notices given by the landlords to the tenants have been provided for this hearing. The tenant testified that they were not justified and specified that they were not the first notices given even if they were. The tenant's husband got into an altercation with the occupant in the upper level, and on May 5, 2015 the landlords provided the tenants with Rules and Regulations, some of which were inconsistent with the notices. One letter from the landlords threatened eviction if the tenants asked for heat. Copies of letters, notices, emails and text messages have been provided as evidence for this hearing, as well as photographs of the thermometer showing the temperature of the rental unit from time to time. Another letter talks about a cat, but the landlords accepted a pet damage deposit.

The tenants have also provided an Inspection Report from a Safety Authority, marked "Unpermitted Work," dated May 19, 2015; and the tenant testified that it's a good thing the tenants didn't use the baseboard heaters because they failed inspection.

After the tenants moved out, the tenant stayed in a bunkhouse with a group of loggers and put all the tenants' belongings into storage. The tenant's husband's boss allowed it while the tenants searched for another place to live.

Due to the landlords' failure to abide by tenancy rules and non-stop harassment, the tenants claim recovery of rent paid, return of the pet damage deposit and holding deposit; storage fees; moving and ferry costs.

The landlord testified that the tenants gave written notice on May 12, 2015 to vacate the rental unit effective June 30, 2015, but didn't pay rent for June and moved out earlier, so the landlord disputes paying moving expenses or storage costs to the tenants.

The inspection of the Safety Authority showed that the rental unit failed on a few things which the landlords had to update, such as adding some electrical outlets in the living room, one in the bathroom and to add a cover on the baseboard heaters. There were 2 baseboard heaters in the bedrooms and the landlords gave the tenants a space heater.

Although there is no written tenancy agreement, the tenant had a dog which is why the pet damage deposit was collected. However, due to allergies, the landlord would never have allowed a cat.

No move-in or move-out condition inspection reports were completed, and the landlords returned $510.00 of the security deposit back to the tenants with written consent to apply $40.00 for clean-up after the tenants' dog.

The tenants had a personality conflict with the other tenants (occupants) in the rental home. The occupants complained a lot about the tenants, but the tenants never complained to the landlords about the occupants. The tenant's daughter and grandkids also reside in the rental unit.

Analysis

Firstly, I find that the tenancy ended on May 31, 2015, the tenants having paid rent for that month. The tenants filed the application for dispute resolution on May 31, 2017, which is within the time specified in the *Act* to bring such an application.

With respect to the pet damage deposit, the *Residential Tenancy Act* specifies that a tenant must provide a landlord with a forwarding address within a year after the tenancy

ends, and the tenants have not yet done so. If the tenant fails to do so, the tenant may not make a claim for it. In this case, the tenants provided the landlords with a forwarding address in writing on the Tenant's Application for Dispute Resolution, which was filed on May 31, 2017 and the tenant testified that the tenancy ended on May 19, 2015. That is well beyond a year, and therefore I dismiss the tenants' application for recovery of the pet damage deposit.

With respect to the "holding deposit," a landlord may not accept such a deposit unless applying it toward a security deposit or pet damage deposit, which must not be more than half a month's rent each. The tenants have provided proof of payment of the "holding deposit," and I find that the tenants are entitled to recover $250.00 from the landlords.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the tenants claim damages for breach of the tenants' right to enjoyment of the rental unit, free from interference. The threshold for such a claim is high, and would include moving expenses. I refer to Residential Tenancy Policy Guideline #6 – Right to Quiet Enjoyment, and #16 – Compensation for Damage or Loss, which state, in part:

> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.
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> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:
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> · entering the rental premises frequently, or without notice or permission;
> · unreasonable and ongoing noise;
> · persecution and intimidation;

- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or
  allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward.

I have reviewed all of the evidentiary material of the parties and I accept the undisputed testimony of the tenant that the landlords gave notices warning of things stating that the tenant had been previously warned when the tenant had not. The tenancy lasted less than 2 months. Well after the first month the landlord provided the tenants with Rules, Regulations, and Management Policy, which had not been provided at the beginning of the tenancy, and has not been signed by either party. The letters, notes, emails and text messages appear to be the result of an on-going dispute between the tenants and the other occupants. The landlords have an obligation to ensure everyone's right to quiet enjoyment.

The question before me is whether or not the landlords breached the covenant of quiet enjoyment resulting in the tenants suffering damages that the tenants took steps to mitigate. The tenants claim the costs of moving to the rental unit from another community and the tenant testified that had the tenant known the discomfort, the tenant would never have moved in. The landlords do not deny the allegations made by the tenant, and the evidentiary material substantiates the claims to an extent. I find that the tenants have established a claim for the costs of moving out of the rental unit. Moving expenses are generally deemed to be the equivalent of one month's rent under the tenancy agreement, and I find that to be reasonable in the circumstances.

In summary, I find that the tenants have established a claim of $250.00 for a “holding fee” and $1,100.00. Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, the tenants’ application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,450.00.

This order is final and binding and may be enforced.

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: November 16, 2017

Residential Tenancy Branch