Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, MND, MNR, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of his claim. Both parties participated in the conference call hearing and had opportunity to be heard.

The landlord stressed that the tenants had not mailed his copy of the tenants' application for dispute resolution and notice of hearing to his address for service as provided on the tenancy agreement, but to the address of his accountant. As the landlord received the documents on February 13, more than 7 weeks before the hearing, I find that the landlord was in no way prejudiced by the documents having been sent to the wrong address and that this incorrect service should in no way affect the outcome of this decision.

Issue(s) to be Decided

Are the tenants entitled to the return of double their security deposit?
Is the landlord entitled to a monetary order as requested?

Background, Evidence and Analysis

The parties agreed that the tenancy began in April 2007 and ended on December 15, 2009. The parties had entered into a fixed term tenancy agreement which was set to expire on March 31, 2009. Rent was set at $1,400.00 per month and at the outset of the tenancy the landlord collected security and pet deposits, each in the amount of $700.00. On December 1, 2008 the tenants gave the landlord written notice that they intended to vacate the rental unit on December 15, 2008. The parties agreed that the tenants vacated the unit on December 15, 2008 and the landlord acknowledged having received the tenants' forwarding address in writing on January 14. The tenants seek

the recovery of their security and pet deposits and a penalty equivalent to each of those deposits pursuant to section 38(6)(b). I address the landlord's claims and my findings around each below.

Water charges. The parties agreed that the tenants still owe $418.24 in outstanding water charges. I award the landlord $418.24.

Window. The landlord claims $49.31 as the cost of replacing a broken window in the shed. The landlord testified that on the condition inspection report completed at the beginning of the tenancy, there is no notation that anything was wrong with the window in the shed. However, at the end of the tenancy, the window was broken. The tenants testified that the window was cracked from the outset of the tenancy and that the window broke during a windstorm in November. In order to establish a claim for the cost of the window, the landlord must prove on a balance of probabilities that the window was broken due to the actions or negligence of the tenants. I find that the landlord has failed to prove that the tenants were responsible for the broken window and accordingly I deny the landlord's claim.

Repairs. The landlord claims $810.06 as the cost of materials and labour for repairing the rental unit and preparing it for new tenants. The landlord testified that at the end of the tenancy, kitchen cabinet doors were loose with the hinge screws missing on two doors, a chandelier had been removed, a toilet seat had been changed, light bulbs had been removed or had burned out, a dryer vent required repair as the outer flap had broken off and several bags of garbage had to be disposed of. The tenants argued that the kitchen cabinet doors were loose as a result of normal wear and tear, acknowledged that they had removed the chandelier and denied having changed the toilet seat. The tenants further testified that any damage to the dryer vent was not their responsibility, that they had changed all of the light bulbs with the possible exception of one and that their garbage had been left in the carport and a neighbour asked to bring the garbage to the curb on garbage collection day. The landlord further testified that the oven which had originally been in the rental unit had been left in the carport and had to be moved to the shed. The tenants testified that they had to replace the oven with one they purchased themselves and that they left the replacement oven in the rental unit at the end of the tenancy. The tenants argued that the oven had not been exposed to the

elements. I find that the landlord has not proven that the loose cabinets in the kitchen or any damage to the dryer vent were due to anything other than reasonable wear and tear and I further find that the landlord has not proven that the toilet seat was changed. I find that the tenants must bear the cost of installing a new light in the place of the chandelier, the cost of replacing one light bulb. I find that the landlord must bear any cost associated with moving the oven from the carport to the shed as I find that the landlord ultimately benefited from the tenants' oven having been left in the rental unit and as the cost of moving the oven is minimal in any event. I find that the tenants must bear the cost of removing garbage. Although the tenants may have arranged for a neighbour to remove the garbage, the fact that the landlord did so more than a month after the tenancy ended shows that the neighbour failed to do as requested. The landlord further testified that one of the bedroom closets had an active mould growth on the walls which had to be cleaned and repainted. The tenants acknowledged that the walls were mouldy, but testified that the mould was there from the start of the tenancy. I find that the cost of cleaning the closet walls must be attributed to the tenants. There is no evidence that the tenants complained to the landlord about mould growth during or at the beginning of the tenancy if it was indeed present at that time and the tenants bore the responsibility of cleaning the rental unit which, particularly in the Pacific Northwest, includes battling mould. The landlord provided an invoice from Aaron Activity on which the labour for the aforementioned tasks is charged for a total of $226.94. The Aaron Activity invoice also charges supplies at a cost of $147.93 but does not itemize what was purchased at what price. The landlord further provided receipts from Rona for items such as dryer vent parts, toilet seat and light bulbs. The landlord was unable to identify some of the items on the Rona receipts. The landlord is obligated to prove both the liability and quantum of his claim. I find that the tenants are responsible for two thirds, or $151.29, of the labour charge invoiced by Aaron Activity as it seems reasonable that much of the labour would have involved cleaning and painting the bedroom closet. As I am unable to determine the cost of the chandelier or paint, I deny the claim for recovery of those costs. One Rona receipt shows that a package of light bulbs was purchased for $3.00, which includes tax. I assume that the light bulbs were sold in packages of two and I find that the landlord is entitled to recover the cost of the light bulbs which I find to be $1.50. I award the landlord a total of $152.79 for repairs.

January rent. The landlord claims $1,400.00 in loss of income for January. The landlord sought to rely on the terms of the fixed term tenancy agreement, by which the tenants were obliged to continue their tenancy until the end of April. The landlord testified that on December 5 he began advertising the rental unit in the Victoria Times Colonist and online at a rate of $1,600.00 per month. The landlord continued to advertise throughout the month of January, eventually dropping the advertised price to $1,400.00, at which point he was able to secure new tenants. The landlord further testified that although the tenants vacated the rental unit on December 15, they continued to come back to the rental unit to clean or make other improvements as late as January 25. As a general principle, the landlord is entitled to rely on the terms of the lease. I am satisfied that when the landlord learned of the tenants' intention to break the lease, he immediately informed the tenants that he intended to claim rent for the balance of the term of the lease. However, the landlord bore a legal obligation to mitigate his losses by making reasonable attempts to re-rent the unit. I am troubled that the landlord advertised the rental unit at a rate higher than what the tenants had paid. I find that until the landlord reduced the asking price to $1,400.00 per month in early January, he failed to act reasonably to mitigate his losses. However, after reducing the asking price, the landlord was able to mitigate his losses and secure new tenants. I find it reasonable in the circumstances to award the landlord one half of one month's rent in compensation and I award the landlord $700.00.

NSF charges. The landlord claims $20.00 in NSF charges. The landlord provided evidence that a stop payment was put on the tenants' rent cheque for January and testified that a stop payment is treated the same as an NSF cheque and a $20.00 charge is levied against the tenants in such situations. The Regulation provides that a landlord may recover a service fee charged by a financial institution for the return of a tenant's cheque. However, the landlord is required to provide proof that a charge was levied against him and the amount of that charge. I find the landlord has failed to prove that he was charged a service charge for the stop payment and accordingly I deny the landlord's claim.

Filing fee. The landlord claims the $50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord $50.00.

In summary, the landlord has been successful in the following claims:

Water charges	$ 418.24
Repairs	$ 152.79
January rent	$ 700.00
Filing fee	$ 50.00
Total:	**$1,321.03**

As for the tenants' claim for the return of double their security deposit, Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenants double the amount of the security and deposits.

The landlord currently holds security and pet deposits totaling $1,400.00 and is obligated under section 38 to return this amount together with the $37.06 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit for a total award of $2,887.06 which includes the double security deposit, interest and the $50.00 filing fee paid to bring this application.

Conclusion

Having made an award in favour of both parties, it is appropriate that one award be set off as against the other. The landlord has been awarded a total of $1,321.03, while the tenants have been awarded $2,887.06. I therefore issue a monetary order in favour of the tenants in the sum of $1,566.03. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 09, 2009.