Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, (MNSD)

Introduction

This matter dealt with an application by the Tenants for a monetary order for compensation for damage or loss under the Act or tenancy agreement. The Tenant's amended their application on June 8, 2009 to include a claim for the return of their security deposit and pet damage deposit.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for damages and if so, how much?
2. Are the Tenants entitled to the return of their security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on November 29, 2008 and was to expire in 18 months however it ended on March 30, 2009 when the Tenants moved out. Rent was $950.00 per month plus heat and electricity. The Tenants paid a security deposit of $475.00 and a pet damage deposit of $475.00 at the beginning of the tenancy.

The Tenants claim that when they entered the tenancy agreement they believed the rental unit was a house. The Tenants provided copies of advertisements and e-mails with the Landlords which referred to the rental unit as a "house" or "home." The Tenants said they discovered on December 8, 2008 from their insurance agent that the rental unit was a mobile home and as a result, their Tenant's insurance increased from $220.00 per year to $767.00 per year. The Tenants claim that if they'd known it was a mobile home they would not have entered into the tenancy agreement but because they had already signed the tenancy agreement they decided to stay.

The Tenants said their insurance agent also asked them to get confirmation that a wood stove in the rental unit was certified and up to code. The Tenants said they asked the Landlords to have the wood stove cleaned and inspected which they arranged for December 15, 2008. As a result of the inspection a number of deficiencies were discovered but remedied by December 24, 2008. The Tenants argued that they were

without the woodstove for 26 days and as a result paid more for heating costs for December, 2008 than they should have.

The Tenants said they had a number of other concerns about the rental unit and on March 20, 2009 sent the Landlords an e-mail advising them they were ending the tenancy effective March 30, 2009 and gave them their forwarding address. The Tenants also said that they asked the Landlords to schedule a time for a condition inspection before they moved out. The Tenants claim that the Landlords did not contact them so on March 27, 2009 they sent a further e-mail to the Landlords advising them that if they did not contact the Tenants prior to March 30, 2009, the Tenants would return the keys to the Landlords by courier.

The Tenants said they had no contact from the Landlords until they received the Landlords' evidence package in this matter on June 12, 2009. The Tenants claim they had not previously received a copy of the Landlords' Notice of Final Opportunity to Schedule a Condition Inspection. The Tenants also claim they did not give the Landlords written authorization to keep their security deposit or pet damage deposit.

The Landlords said that they sent photographs of the rental unit to the Tenants and had an agent inspect the rental unit for them prior to entering into the tenancy agreement. The Landlords claim that the Tenants' agent said he knew it was a mobile home which the Tenants dispute. The Landlords also claim that during the move in condition inspection the Tenants may have claimed that they knew the rental unit was a mobile home but could not be certain of that. The Landlords said that in the Tenants' original estimates for their house insurance was $460.00 and their mobile home insurance was $680.00.

The Landlords claim that they had no reason to believe that the wood stove was not up to code as it had been installed approximately 25 years prior by a certified installer. In any event, the Landlords said that they acted right away to get the wood stove repaired once they learned there were issues with it. The Landlords argued that the Tenants consumed significantly more heat than previous tenants based on historic consumption rates.

The Landlords admitted that they received the Tenants' written notice they were ending the tenancy on March 20, 2009. The Landlords claimed however, that they understood the Tenants' e-mail of March 27, 2009 to mean that they did not intend to participate in a move out inspection and would be returning the keys. The Landlords said on March 30, 2008 they sent a letter to the Tenants by regular mail to their forwarding address asking them to attend a move out condition inspection on April 7, 2009. The Landlords said the Tenants did not respond to that letter and did not attend the inspection. The Landlords completed the report that day in the Tenants' absence.

The Landlords claim that the following day, they sent the Tenants by regular mail to their forwarding address a Notice of Final Opportunity to Schedule a Condition Inspection for April 15, 2009 but that the Tenants did not attend on that day either. The Landlords admitted that they did not send the Tenants a copy of the move out condition inspection report until recently when it was sent as a part of the Landlords' evidence package in this matter. The Landlords also admitted that they did not return the Tenants' security deposit or pet damage deposit because they believed the Tenants had forfeited them (under s. 36) by not attending a move out condition inspection.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date he receives the Tenants' forwarding address in writing to either return the security deposit to the Tenants or to apply for dispute resolution to make a claim against it. If a Landlord does not do either of these things and does not have the Tenants' written consent to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit or pet damage deposit (or both if applicable).

I find that the Tenants gave their forwarding address in writing to the Landlords on March 20, 2009 and that the tenancy ended on March 30, 2009. As a result, the Landlords had until April 14, 2009 to either return the security deposit or to apply for dispute resolution to make a claim against it. I find that the Landlords did not return the security deposit or pet damage deposit and have not filed an application to make a claim against them. Consequently, under s. 38(6) of the Act, the Landlords must return double the amount of the security deposit and pet damage deposit to the Tenants.

Section 36(1) of the Act says that a Tenant's right to the return of a security deposit or pet damage deposit (or both) is extinguished if the Landlord gives the Tenant 2 opportunities for a move out inspection and the Tenant has not participated on either occasion. I find that there is no merit in the Landlords' argument that the Tenants forfeited their right to claim the security deposit and pet damage deposit. The Landlords claimed that they sent a letter on March 30, 2009 and a Notice on April 8, 2009 to the Tenants by regular mail. The Tenants deny receiving those documents. In the absence of any corroborating evidence from the Landlords, I find there is insufficient evidence that the Landlords gave the Tenants 2 opportunities to participate in a move out condition inspection.

Furthermore, I find that the Tenants offered to participate in a move out condition inspection with the Landlords any time between March 20, 2009 and March 30, 2009,

however, the Landlords failed or refused to respond to that offer. Contrary to the Landlords' assertion, the Tenants do not state in their e-mail of March 27, 2009 that they will not participate in a move out inspection. Rather the Tenants stated in that e-mail that as they had not been contacted by the Landlords to do a move out condition inspection by March 30, 2009, they would return the rental unit keys to the Landlords by courier.

Section 18(1)(b) of the Regulations to the Act states that a Landlord must give a Tenant a copy of the signed move out condition inspection report within 15 days of the later of the date the condition inspection is completed and the date the Landlord receives the tenant's forwarding address in writing. The Landlords admitted that they did not give a copy of the condition inspection report which was completed on April 7, 2009 to the Tenants until approximately June 12, 2009. Consequently, I find that the Landlords did not comply with s. 36(2) of the Act and as a result, their right to claim against the security deposit and pet damage deposit are extinguished.

I find that there is no merit to the Tenants' application for compensation for increased insurance premiums. While the Landlords did represent the rental unit as a "house", I find that they did not do so to induce the Tenants into entering the tenancy agreement. The Tenants had a reasonable opportunity to inspect the rental unit prior to entering into the tenancy agreement. I find that once the Tenants discovered that the rental unit was a mobile home, they elected to affirm the tenancy agreement. I also note that the Tenants did not advise the Landlords at this time that they would be holding the Landlords responsible for their increased insurance premiums by electing to stay and I find that they are not entitled to do so now. Consequently, this part of the Tenants' claim is dismissed.

I also find that there is no merit to the Tenants' application to recover increased heating expenses for December 2008 due to a loss of use of the wood stove for 26 days. In particular, I find that the Landlords acted within a reasonable period of time to repair the deficiencies. Furthermore, I find that there is insufficient evidence to determine what the increased heating expenses would be. The Tenants simply divided their hydro bill in half (less hook up fees) but did not take into account the fact that it they would have had expenses for fire wood, for example. Consequently, this part of the Tenants' claim is also dismissed. In summary, the Tenants are entitled to a monetary order as follows:

Double security deposit:	$950.00
Double pet deposit:	$950.00
Accrued interest:	$1.21
TOTAL:	$1,901.21

Conclusion

A monetary order in the amount of **$1,901.21** has been issued to the Tenants and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 16, 2009.

Dispute Resolution Officer