

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This is the Tenants' application for a Monetary Order for compensation for loss or damages and return of the security deposit; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Are the Tenants entitled to a Monetary Order for overpayment of utility bills, and if so, in what amount?
- (2) Are the Tenants entitled to double the security deposit pursuant to the provisions of Section 38(6) of the Act?
- (3) Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The rental unit is an apartment style suite in an older building. The tenancy started on June 1, 1989. At the beginning of the tenancy, utilities were included in the monthly rent of \$475.00. The Tenants paid a security deposit in the amount of \$237.50 on June 1, 1989. In 1999, the rental property was sold to a new landlord, and the utilities remained included in the monthly rent. On September 5, 2005, the rental property was sold again. The new landlord and the Tenants entered into a new tenancy agreement, whereby rent was \$700.00 per month, but utilities were not included. The Tenants started paying \$77.00 per month for utilities. In November, 2007, the rental property was sold to the current Landlord. The tenancy ended on April 30, 2009.

The Tenants gave the following testimony:

The Tenants testified that the hydro meter was shared by their apartment and their neighbours' apartment, and therefore they were paying for their neighbours' utilities as well as their own. The Tenants testified that they had a meeting with the Landlord's agent in December, 2007, to discuss the hydro overpayment. The agent informed them that he would discuss it with the Landlord, but that he didn't feel it was fair that the Tenants should be paying for both suites' hydro.

The Tenants testified that they were having problems with their new neighbours, who moved in during the summer of 2008. For example, they shared a hot water heater with their neighbours, who used all of the hot water, leaving none for the Tenants. Their neighbours also did their laundry late at night, keeping the Tenants awake. The neighbours moved unlicensed vehicles on to the rental property, and were working on them in the back yard. They had a number of cats who used the grounds as a litter box. The neighbours were always fighting. The Tenants called the police and complained to the Landlord's agent. The agent told them that the neighbours would be moving out in March, 2009. The neighbours are still living in the rental property.

The Tenants testified that a new agent took over in March, 2009, and told the Tenants that they would be compensated \$200.00 for April's rent to offset the overpayment of hydro. The Tenants stated that the compensation did not occur. The Tenants testified that the Landlords had also promised to reduce their rent \$50.00 a month starting January 1, 2009, but that never happened either. The Tenants stated that they paid full rent and that they have the receipts to prove it. The Tenants gave their notice on March 25, 2009, for the end of April. There was no move-out inspection done. The Tenants provided the Landlord's agent with their forwarding address on April 30, 2009, and requested return of their security deposit. The Tenants testified that they have still not received their security deposit back from the Landlord.

The Landlord's agent gave the following testimony:

The male agent testified that he first took over as property manager in October, 2008. He stated that the rental property had two meters for three units and that the middle unit (the Tenants' neighbours' unit) had hydro fed from the rental units on both sides. He testified that the Tenants were compensated for the overpayment, by reducing their rent by \$50.00 in January, 2009, and a one-time deduction of \$150.00 in April, 2009 (a total deduction of \$200.00 for April, including the regular \$50.00 deduction).

The male agent testified that he posted a Notice of Final Opportunity for the move-out inspection on the Tenants' door on May 7, 2009, but the Tenants did not participate in a move-out inspection.

Analysis

This is the Tenants' application, and as such, the onus is on the Tenants to prove their claim. The Tenants applied for recovery of all of the hydro payments made, however the Tenants signed a tenancy agreement, a copy of which was provided in evidence, agreeing to pay utilities. With respect to the overpayment of hydro, the Tenants did not provide sufficient evidence to prove that they were paying for all of their neighbours' hydro. For example, the Tenants testified that they had receipts for rent paid, indicating that no deduction was made for the overpayment, but the Tenants did not provide copies of the receipts in evidence.

There was no corroborating evidence from either party with respect to how much of their neighbours' hydro the Tenants were paying (i.e. 100% or 50%), but the Landlord, by agreeing to compensate the Tenants, admitted that the Tenants were paying more than their share. The Landlord's agent disputed that the Tenants were paying 100% of their neighbour's hydro, but testified that the Tenants' neighbours' hydro was provided by the two adjoining suites. .

The Tenants provided an accounting of what they had paid for utilities over the term of the tenancy. I find that 1/3rd of the utility payments were actually for the neighbour's hydro, as follows:

Date payment made	Tenants paid	Overpayment
January 15, 2008	\$77.00	\$25.67
February 13, 2008	\$77.00	\$25.67
March 13, 2008	\$77.00	\$25.67
April 15, 2008	\$77.00	\$25.67
May 14, 2008	\$77.00	\$25.67
June 13, 2008	\$77.00	\$25.67
July 15, 2008	\$77.00	\$25.67
August 14, 2008	\$77.00	\$25.67
September 15, 2008	\$77.00	\$25.67
October 15, 2008	\$77.00	\$25.67
November 14, 2008	\$213.00	\$71.00
December 12, 2008	\$88.60	\$29.53
January 14, 2009	\$286.08	\$95.36
February 12, 2009	\$89.00	\$29.67
March 13, 2009	\$251.03	\$83.68
April 15, 2009	\$78.32	\$26.11
May 13, 2009	\$121.30	\$40.43
TOTAL OVERPAYMENT FOR HYDRO		\$632.48

The Landlord's agent testified that the Tenants were compensated in the total amount of \$350.00 for the overpayment of hydro. Therefore, I find that the Landlord owes the Tenants the difference (\$632.48 - \$350.00) of \$282.48 in compensation for the overpayment of utilities.

The Tenants provided the Landlord's agent with written notice of their forwarding address on April 30, 2009. A copy of the letter was provided in evidence and is signed and dated by the Landlord's agent. Section 38 of the Act provides that the Landlord **must** return the security deposit together with accrued interest to the Tenant, or file an application against the security deposit, within 15 days of receipt of the Tenants' forwarding address. If the Landlord does neither of these things, the Landlord **must** pay the Tenants double the security deposit. The Landlord did not return the security deposit to the Tenants and did not file an application against the security deposit within 15 days of receiving their forwarding address.

Pursuant to the provisions of Section 36 of Act, the Tenants' right to return of the security deposit is extinguished if the Tenants do not participate in a move-out inspection. It is the Landlord's responsibility to arrange a date for the inspection. The Landlord's agent testified that he provided the Tenants with a final notice of inspection, but he testified that he posted it on the Tenants' door days after they had moved out of the rental unit. Therefore, there was no reasonable expectation that the Tenants would have seen the notice and I do not find the Tenants' right to return of the security deposit has been extinguished.

I order that the Landlord pay the Tenants double the security deposit, together with accrued interest, a follows:

Double the security deposit	\$475.00
Accrued interest on \$237.50 from June 1, 1989	<u>\$142.15</u>
Total	\$617.15

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

The Tenants have established a monetary award in the amount of \$949.63, calculated as follows:

Compensation for overpayment of utilities	\$282.48
Double the security deposit and interest	\$617.15
Recovery of the filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$949.63

Conclusion

I hereby provide the Tenants with a monetary order against the Landlord in the amount of \$949.63. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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.

December 31, 2009

Date of Decision
