Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The monetary order amount indicated on the landlord's Application differs from the amount included in the details of the dispute portion of the Application. The claim was reviewed with the landlord at the start of the hearing and it was determined that the monetary order sought is contained in the details of the dispute section of the Application; $1,500.00. It appears the claimed amount differs by the sum deducted for use of appliances.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $1,500.10 for damages to the rental unit?

Is the landlord entitled to retain the deposit paid in satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 15, 2007 and was fixed term ending on October 1, 2009. A deposit in the sum of $1,500.00 was paid on August 15, 2007. On October 15, 2009 the tenants sent the landlord their forwarding address via email and requested return of the deposit paid. On November 19, 2009 the landlord submitted this Application, claiming against the deposit. There is evidence before me, contained in the landlord's evidence, that email was a commonly used for of communication between the parties.

A move-in condition inspection was completed on August 15, 2007, a move-out condition inspection took place at the end of the tenancy, however the tenants did not sign the report as there was a dispute in relation to the upstairs kitchen sink and downstairs fridge and dishwasher.

The landlord has made the following claim for compensation:

Kitchen sink repair	480.00
Replacement cost dishwasher and fridge	988.23
Less reduced appliance value due to use	-223.23
Dishwasher installation fee	194.25
	1,500.10

The landlord submitted an appliance inspection report dated September 29, 2009, as evidence. This report indicates that the fridge and dishwasher are each over twenty years old and not worth repairing. The landlord submitted that she did not know how old the appliances were but that they had been working at the start of the tenancy, as evidenced by the move-in condition inspection report. The landlord initially stated that the refrigerator was purchased used in 2002, later in the hearing the landlord stated she had had the appliances reconditioned at the time of purchase.

The tenants used the downstairs unit as a photography studio and attempted to use the dishwasher early in the tenancy. The dishwasher did not work properly but it was not reported to the landlord as the tenants did not require use of the dishwasher. The downstairs refrigerator was used occasionally and by August 2009 the tenants noticed it was starting to fail, that the freezer was not functioning well. This was not reported to the landlord.

The upstairs kitchen sink was reported to be in good condition at the start of the tenancy. The landlord is claiming repair costs as the sink was missing grout and had dislodged from the counter, causing leaking. The landlord submitted a receipt for 8 hours of work in the sum of $480.00 to repair the sink and for grout and drilling costs. The landlord became aware of the problem 2 days prior to having new tenants move in and viewed this as an emergency situation that resulted in overtime costs.

The tenants agree the sink was in good repair at the start of the tenancy. The landlord submitted evidence that on August 21, 2008 the tenants sent her a list of items requiring attention, one of which included: "the caulking around the kitchen sink – a small leak has started underneath." The landlord stated that this would have been repaired; the tenants disputed this testimony and say that the caulking was not repaired and that they did not make any further reports to the landlord in relation to the state of the sink.

The landlord acknowledged that the repairs were in dispute at the end of the tenancy and that she did not return the deposit to the tenants within fifteen days of having received their forwarding address as she thought they were going to settle the matter.

Analysis

I find, based upon the evidence submitted by the landlord, that replacement of appliances that are over twenty years old is not the responsibility of the tenants and that this portion of the landlords claim is dismissed. I base this decision on Residential Tenancy Branch policy which places a useful life of fifteen years on refrigerators and dishwashers, which I find is a reasonable expectation. There is no evidence before me that the appliances were reconditioned at the start of the tenancy and I have relied upon the inspection report which recommended against repair, due to the age of the appliances.

Further, section 32 of the Act does not require a tenant to make repairs that are not caused by neglect or damage caused by the actions of the tenant. There was no evidence before me that the failure of these appliances was anything but wear and tear and a result of the age of the appliances.

In relation to the repair claimed for the sink, I find, in the absence of evidence of a response to the tenants August 2008 report to the landlord that the sink was leaking and required repair, that the tenants cannot, fourteen months later, be held responsible for repair to the sink. There is no evidence before me that the landlord responded to the August 2008 email and, based upon the disputed testimony in relation to the repair and on the balance of probabilities; I dismiss this portion of the landlord's claim.

During the hearing I established that the tenancy ended on October 1, 2009 and that on October 15, 2009 the landlord received the tenant's written forwarding address and request for return of the deposit.

Residential Tenancy Branch policy suggests that a dispute resolution officer will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, when a landlord has applied to retain all or part of the deposit. Section 38(1) of the Act provides that within fifteen days of receiving the tenants forwarding address in writing and the end of the tenancy the landlord must either make an application against the deposit or repay the deposit to the tenants. If the landlord fails to comply with section 38(1); section 38(6) prohibits a landlord from claiming against the deposit and determines that the landlord **must** return double the deposit to the tenants.

As the landlord applied for dispute resolution more than fifteen days after the end of the tenancy and receiving the forwarding address, I find, pursuant to section 38(6) of the Act, that the landlord must return double the deposit paid to the tenants in the sum of $3,000.00.

As the landlord's Application does not have merit I decline return of the filing fee to the landlord.

I find that the landlord is retaining a $1,500.00 deposit plus interest in the sum of $31.19.

Conclusion

I find that the landlord's claim in the sum of $1,500.10 for damages to the rental unit is dismissed.

I find that the landlord must return double the deposit paid in the sum of $3,000.00 plus interest in the sum of $31.19.

Based on these determinations I grant the tenants a monetary Order in the sum of $3,031.19. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 25, 2010.

Dispute Resolution Officer