Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in payment of those amounts.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on or about March 4, 2006 and ended on October 31, 2009 when the Tenant moved out. The Tenant and another tenant, D.B., signed a tenancy agreement which indicated that the rent was then $1,180.00 per month payable in advance on the 1st day of each month. The tenancy agreement also states that the Tenant and the other tenant, D.B., paid a security deposit and a pet damage deposit of $525.00. At the end of the tenancy rent for the rental unit was $1,180.00 per month.

In mid-September 2008, the other tenant of the rental property (D.B.) passed away. The Landlord said that each month she received a payment from social services for rent on behalf of D.B. in the amount of $659.42 and the balance of the rent was paid to her by the Tenant. The Landlord said she did not receive a payment from social services for October 2009 and therefore argued that the Tenant was in arrears of rent for that amount because he was a joint tenant.

The Tenant argued that he wasn't a joint tenant and that he shouldn't be responsible for the other tenant's share of the rent for October 2009. The Tenant claimed that there was never any intention to share the rental property or its expenses with the other tenant. The Tenant (who is 84 years old) said he occupied the main floor of the rental unit, the other tenant, D.B., (who was 43 years old) and her children occupied the upper level, they shared a kitchen and living room and shared laundry facilities with the basement tenant. The Tenant also claimed that early in the tenancy, he and the other tenant and the Landlord signed an agreement that was witnessed by a lawyer that set

out this state of affairs. The Tenant provided a hand written note dated April 10, 2006 signed by him and the other tenant but their signatures are not witnessed and that document is not signed by the Landlord. The Tenant also provided copies of two handwritten notes signed by the Landlord. The first note is dated February 17, 2006 and states that the Tenant agrees to pay 50% of utilities over $250.00 per month. The second note is dated March 3, 2006 and states that the Tenant and D.B. agree to pay 50% of the utilities over $250.00 per month. The Tenant argued that the Landlord prepared this second note without his knowledge.

The Landlord also claimed that at the end of the tenancy, she believed the Tenant would not sign a condition inspection report because he knew there was unpaid rent and therefore a move out condition inspection report was not completed by her property manager. The Tenant claimed that the property manager had been to the rental unit a number of times in October 2009 and did not ask him to complete a condition inspection report and therefore he believed she was satisfied with the condition of the rental unit.

The Landlord said that after the tenancy ended, she discovered that pet urine had soaked through the carpet of a back bedroom and that there was also a strong smell of it in the living room carpet. The Landlord said she had the carpets cleaned 3 times but ended up having to replace the carpet and underlay in the back bedroom. The Landlord admitted that the carpet had some wear and tear but claimed it was only 4 – 5 years old at the beginning of the tenancy. The Landlord also claimed that she had to replace a broken window and that the Tenant never mentioned anything about it during the tenancy.

The Tenant admitted that his dog “piddled” a few drops now and then but said that he would clean it up immediately. The Tenant claimed that the carpets were cleaned and deodorized at the end of the tenancy and denied that there was a smell. The Tenant argued that the carpets were badly worn and in support relied on the evidence of a witness who saw and cleaned the carpets at the end of the tenancy. The Tenant claimed that the window was broken by an unknown child.

Analysis

RTB Policy Guideline #13 (Rights and Responsibilities of co-Tenants) says that when 2 or more tenants sign a tenancy agreement to rent residential premises, they are co-tenants and are jointly responsible for meeting the terms of the tenancy agreement. The same Guideline also states at p. 2 that in the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

In this case, there is a tenancy agreement signed by the Tenant and D.B. to rent the upper part of the rental property. However, it is also clear that throughout the tenancy,

the Landlord received rent payments separately from (or on behalf of) each of the Tenants. Although the Tenant argued that there was a separate agreement which set out the nature of his and D.B.'s living arrangements and in particular their intention that they were not living in a common law relationship, I find that that is all it was. The document relied on by the Tenant is not a tenancy agreement and it is not signed by the Landlord. The fact that the Tenant and D.B. were not living in a common law relationship does not mean they were tenants in common rather than co-tenants. In the absence of any other evidence to support a finding of a tenancy in common, I find that it was a joint tenancy, that the Tenant is jointly liable for the full amount of the rent and that as a result, the Landlord is entitled to recover unpaid rent for October 2009 in the amount of $659.42.

The Tenant argued that any rent arrears should be offset by overpayments made on behalf of his co-tenant. In particular, the Tenant claimed that D.B. paid for the full month of March 2006 but did not get possession of the rental unit for approximately one week. The Tenant also argued that his co-tenant paid for the full month of September 2009 but passed away on or about September 15, 2009 so she did not have the use of the premises for one-half of that month. I cannot get into the merits of these arguments or order any set off to the amount found owing to the Landlord for rent for October 2009 because there was no application filed by the Tenant to recover an overpayment of rent.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to a Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he or she has left a rental unit unclean at the end of the tenancy. The Landlord completed a move in condition inspection report but did not complete a move out condition inspection report. Even if the Tenant refused to sign a condition inspection report as the Landlord alleged, (and I do not make that finding) the Landlord still had a responsibility under the Act to complete the report and provide a copy to the Tenant.

The Landlord claimed that a bedroom carpet had to be replaced because it was damaged beyond repair with pet urine. The Landlord has the onus of proof on this point and must show on a balance of probabilities that the damage to the carpet was caused by an act or neglect of the Tenant rather than due to reasonable wear and tear. The Tenant denied that the carpet was damaged by pet urine and argued that the carpet was in poor condition due to wear and tear. Given the contradictory evidence of the Parties and in the absence of any corroborating evidence to support the Landlord (such as a condition inspection report), I find that there is insufficient evidence to conclude that the carpet was damaged by an act or neglect of the Tenant rather than due to

reasonable wear and tear. Consequently, the Landlord's claim for expenses to replace the carpet is dismissed.

I also find that there is insufficient evidence to conclude that a window in the rental unit was damaged due to an act or neglect of the Tenant as opposed to an act of vandalism of a stranger as the Tenant claimed. While it is suspicious that the Tenant did not report this damage to the Landlord during the tenancy, I find that this is not sufficient on its own to find the Tenant responsible for this damage. Consequently, the Landlord's claim for expenses to replace a broken window is dismissed.

As the Landlord has only been partially successful in her claim, I find that she is entitled to recover one-half of the filing fee for this proceeding or $25.00. RTB Policy Guideline #13 also states at p. 1 that regardless of who paid a security deposit or pet damage deposit, either joint tenant who is a party to the tenancy agreement may apply for the return of the security deposit. In other words, just as a joint tenant has an obligation to pay all of the rent, so does he or she have a right to the return of the pet damage deposit or security deposit paid for the tenancy regardless of who paid it. Consequently, I order the Landlord pursuant to s. 38(4) of the Act to keep **$684.42** from the Tenant's security deposit and pet damage deposit and to return the balance of it with accrued interest to the Tenant immediately as follows:

	Security deposit:	$525.00
	Accrued interest:	$18.12
	Pet deposit:	$525.00
	Accrued interest:	$18.12
	Subtotal:	$1,076.24
Less:	Unpaid rent:	$659.42
	Filing fee:	$25.00
	Balance Owing:	$391.82

Conclusion

A monetary order in the amount of **$391.82** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: March 17, 2010.

Dispute Resolution Officer