DECISION

Dispute Codes MNR, MND, MNSD, FF
MNDC, 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 Tenants' security deposit in partial payment of those amounts. The Tenants applied for compensation for damage or loss under the Act or tenancy agreement, for the return of their security deposit and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Are the Tenants entitled to compensation for damages and if so, how much?
4. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Landlord said the rental property was initially rented out to a tenant named John in 2004 but thereafter a number of tenants moved in at different times. The Tenants claimed that they moved in at various times between September 2006 and December 2008 and that the original tenant moved out in 2007. All of the Tenants moved out on October 31, 2009. Rent was $2,150.00 per month. The Landlord holds a security deposit of $1,000.00. The Landlord did not complete a move in or a move out condition inspection report with the Tenants.

The Parties also agree that the Tenants have rent arrears for July 2009 of $450.00.

The Landlord's Claim:

The Landlord said that her mother acted as her agent throughout the tenancy but that due to a medical condition, she cannot now recall many of the details of this tenancy or the previous tenancy with the original tenant.

The Landlord said that at the end of the tenancy, there were black marks on a hardwood floor which she believed was caused from putting plants or another wet object on the floor. The Landlord also claimed that there was a hole in a door which had to be replaced as a result. The Landlord further claimed that a wall was erected in the downstairs portion of the rental property to create an additional bedroom without her consent. The Tenants claimed that all of these damages existed in the rental unit when

they moved in. The Landlord admitted that she did not know when these damages occurred.

The Landlord said that the Tenants did not clean the carpets or oven at the end of the tenancy which the Tenants did not dispute. The Tenants argued however, that they vacuumed the carpets at the end of the tenancy and were not asked to have them cleaned. The Landlord also said that the Tenants removed a portion of the grass from the front lawn to make a garden area but did not return it to its original condition. The Tenants claim that they were given permission to make a small garden area (approximately 6 feet by 8 feet in area) provided they re-seeded the area at the end of the tenancy which they did.

The Tenants' Claim:

The Tenants said they gave their forwarding address in writing to the Landlord's agent in person on October 31, 2009 when they returned their keys. The Landlord said she had no knowledge of the Tenants giving their forwarding address in writing. The Tenants provided a written statement from a witness to corroborate the Tenants' evidence about this. The Tenants said they told the Landlord she could keep $100.00 for oven cleaning but did not authorize her to keep any other amount from their security deposit.

The Tenants also sought compensation as they claim that they were unable to use much of the rental property in October 2009 due to flooding. The Tenants said that around the end of September 2009 the rental unit flooded due to water from a heavy rainfall that seeped through the basement door. The Tenants said the water soaked the hallway carpet near 3 bedrooms and also partially seeped into one bedroom. The Tenants said they advised the Landlord's agent about it however, she did not do anything about the water so they had to try to mop it up with towels. The Tenants said that a handyman arrived the following day but said there was nothing he could do about it. The Tenants said the damp carpets were removed on October 1, 2009.

The Tenants claim that the downstairs portion of the rental unit smelled mouldy after the flooding and made them feel ill so they started sleeping upstairs or at friend's homes. The Tenants said that a second flood occurred for the same reasons on October 17, 2009 which resulted in approximately one inch of water accumulating in the basement. The Tenants said they contacted the Landlord's agent about it but she did not contact them back until the following day and nothing was done about the moisture which eventually soaked into the walls. The Tenants said the Landlord did nothing about the water damage because she intended to wait until they moved out at the end of the month. The Tenants claimed that they were initially told by the Landlord's handyman that the flooding occurred because leaves were covering a drainage area, however they said they checked the drainage area when the 2nd flood occurred and noticed that water was not being drawn into the drain although the surface area was clear of any debris.

The Landlord claimed that she had no knowledge of the 2nd flood and said that she was at the rental unit on October 18, 2009 but everything was dry. In any event, the Landlord argued that there was nothing wrong with the upper level of the rental property in October 2009 and said she offered the Tenants $800.00 for their loss of use of the bedrooms in the basement.

Analysis

The Landlord's Claim:

As the parties agree that there is unpaid rent in the amount of **$450.00** for July 2009, I find that the Landlord is entitled to recover that amount.

Section 32 of the Act says (in part) that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

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 the 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 she has left a rental unit unclean at the end of the tenancy.

I find that there was a tenancy agreement between the Landlord and a previous tenant that lasted from 2004 until 2007. Consequently, I find that the Landlord had a responsibility under the Act to complete a condition inspection report at those times to determine the condition of the rental unit and in particular, whether that tenant was responsible for any damages during the term of his tenancy agreement. As the Landlord did not do so, and given the Tenants' evidence that the damages to a door, a hardwood floor and an unauthorized wall existed when they moved in, I find that there is insufficient evidence to conclude that the Tenants caused the damages. Furthermore, I find that there is no evidence of an agreement whereby the Tenants agreed to be responsible for any damages that existed before they moved in. As a result, the Landlord's claim for compensation to repair these items is dismissed.

The Tenants did not dispute that they forgot to clean an oven and as a result, I award the Landlord **$100.00** for that expense. RTB Policy Guideline #1 at page 2 says that a tenant is responsible for steam cleaning or shampooing carpets at the end of a tenancy of approximately one year. Consequently, I find that the Landlord is entitled to recover her carpet cleaning expenses of **$84.00**.

The Landlord sought compensation of $550.00 - $950.00 to return the garden area to its original condition. The Tenants argued that the Landlord's agent told them that all they

had to do was to re-seed the area which they did and that given that it was fall when they vacated, the area would not be filled in with grass until the following spring.

RTB Policy Guideline #1 states at page 7 that "unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate." Section 7(2) of the Act says that when a party claims damages for a breach of the Act or tenancy agreement, they must do whatever is reasonable to minimize their damages.

I find that the amount claimed by the Landlord to re-sod a very small section of the front lawn is excessive. Furthermore, the Landlord did not dispute the Tenants' evidence that they were told by her agent that they could re-seed this section. Based on the photographs of this area provided by the Landlord, it appears that a sparse amount grass is starting to grow in this area. However, I find that the re-seeding done by the Tenants was probably inadequate to restore the grass to its original condition and as a result, I find that the Landlord is entitled to a reasonable amount to repair that section which I assess at **$100.00**.

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**. Consequently, the Landlord has made out a monetary claim for a total of $759.00.

The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenants' forwarding address in writing (whichever is later) to either return the Tenants' security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenants' written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Furthermore, RTB Policy Guideline #17 states at p. 2 that "unless a tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act." Section 24(2) and s. 36(2) of the Act state that a Landlord's right to make a claim against a security deposit for damages to a rental unit is extinguished if the Landlord fails to do a move in or a move out condition inspection report.

I find that the Landlord received the Tenants' forwarding address in writing on October 31, 2009 but did not return their security deposit. I also find that the Landlord only had the Tenants' *written* authorization to deduct $100.00 for oven cleaning from the security deposit. Although the Landlord filed an application for dispute resolution on November 10, 2009 to make a claim against the deposit, I find that she was only entitled to make a

claim against it for unpaid rent and not for damages to the rental unit because that right was extinguished under s. 24 and s. 36(2) of the Act as a result of her not completing a move in or a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return the security deposit of **$1,000.00** to the Tenants plus an amount equivalent to the amount of the security deposit she was not entitled to retain or make a claim against (ie. **$450.00**) with accrued interest of **$22.67** (ie. on the original amount from July 1, 2007 when the previous tenant moved out).

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. Section 28 of the Act says (in part) that a tenant has a right to quiet enjoyment which includes but is not limited to the right to exclusive possession of the rental unit. I find that the Tenants were substantially deprived of the use of the basement portion of the rental unit for the month of October 2009. Although the Landlord argued that the Tenants could still use the upper portion of the property, I find that the upstairs portion of the house was likely inadequate to provide sleeping accommodations for all of the Tenants as well as to provide a living area. Consequently, I accept the Tenants' evidence that it was necessary for at least 2 of them to live elsewhere for much of that month. In the circumstances, I find that the Tenants are entitled to recover 60% of their rent for October 2009 or **$1,290.00**.

As the Tenants have been successful on their application, I find that they are entitled to recover the **$50.00** filing fee for this proceeding. Consequently, the Tenants have made out a total claim of $2,812.67. I order pursuant to s. 72 of the Act that the Parties' respective damage awards be offset and that the Tenants will receive a monetary order for the balance owing as follows:

	Tenants' award:	$2,812.67
Less	Landlord's award:	$759.00
	Balance owing:	$2,053.67

Conclusion

A Monetary Order in the amount of **$2,053.67** has been issued to the Tenants 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 11, 2010.

Dispute Resolution Officer