

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for the cost of emergency repairs, for return of the security deposit, and to recover the filing fee from the landlord for the cost of this application. The hearing began on February 24, 2010, and was adjourned by the consent of the parties to April 16, 2010.

Both parties appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to return of all or double the security deposit?

Is the tenant entitled to be reimbursed for the cost of emergency repairs?

Background and Evidence

This fixed term tenancy began on August 1, 2008 with an expiry date of July 31, 2009. The landlord sold the house, and at the end of the fixed term, the tenancy ended. Rent in the amount of \$2,950.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the tenant paid a security deposit, which included a pet deposit, in the amount of \$2,500.00.

The tenant testified that upon moving into the unit, he found a completed inspection report on the table along with a written tenancy agreement.

The parties also testified that the furnace did not work correctly when the tenant moved in, but the landlord stated that she showed the tenant how to get it to work by flipping a switch, and the tenant seemed okay with that. The tenant testified that he attempted to

have dialogue with the landlord and with the landlord's agent throughout the tenancy about the furnace, but they were unresponsive. The move-in condition inspection report, a copy of which was provided in advance of the hearing, shows that the furnace needed repair at the beginning of the tenancy. The tenant is claiming \$260.00 for an emergency repair to the furnace. The landlord disputes that it was an emergency repair.

The tenant also testified that when his family moved in, he did a move-in walk around the house, but the landlord was in the process of moving out of the house, and there were boxes and furniture still in the basement and the garage, and therefore, they couldn't see the whole carpet.

The tenant testified that with the landlord's consent, he painted the inside of the house and sanded the hardwood floor and re-stained it. The carpet was very soiled, and there was a large stain on the stairway, which the landlord had told the tenant was soya sauce, and further told the tenants they could rip up that carpet, which they did. The landlord also paid the tenant \$200.00 to clean the carpets when they moved in.

The landlord, however, testified that she only consented to one of the bedrooms being painted, and by painting several rooms different colors, she was required to re-paint to make the house more appealing to perspective buyers. The tenant and his family moved out on July 23, 2009, and met with the landlord on July 31 at which time both parties walked around the premises. They discussed the damage to the laminate on top of the portable dishwasher. The tenant stated that he had kept it in the garage because they had no use for it, but agreed that the damage was caused by the tenants. He told the landlord that if it cost more than \$100.00, he'd have his staff fix it. The landlord said that she would let him know the cost, but she never did. They also discussed the blinds that were missing from the dining room, but the tenant pointed out that his wife had moved them to a different room. He further testified that the house was very clean, which was agreed by the landlord when they did this walk-through. The condition inspection report was not signed.

On July 31, 2009, the tenant gave the landlord his forwarding address in writing, and on August 24, he received a letter from the landlord along with a copy of the move-out inspection report and a cheque for \$633.68. That letter included a spreadsheet containing a list of items, cost to replace or repair items, and the amount to be deducted from the security deposit. In the letter, the landlord agreed to reimburse the tenant for the cost of the furnace repair. The letter further stated that the painting was not done professionally, holes were left in the stairs which were not sanded, and replacing the carpet in the area would result in a charge against the tenant. That charge appears to be \$300.00 per room for 4 rooms and \$125.00 for painting a closet door. Yard waste removal was also described in the letter, and had a \$109.00 charge in the spreadsheet against the security deposit. Also included in the spreadsheet is a charge against the security deposit for the \$200.00 given to the tenant for cleaning the carpet when he moved into the house.

The landlord testified that she thought she had mailed it on August 15, but a copy of the envelope was provided as evidence in advance of the hearing, and shows a post-marked date of August 17, 2009.

The landlord testified that communication was difficult throughout the tenancy because the tenant worked out of town. She also testified that she had seen the dishwasher on the deck, exposed to the weather, and the entire top needed to be replaced. The spreadsheet shows a charge against the security deposit for \$626.00 to replace the dishwasher, plus \$59.00 delivery charges and \$50.00 to dispose of the old one. The tenant testified, however, that he had spoken to the new owners who kept the old dishwasher and sold it themselves.

Analysis

Having heard the evidence of both parties, I am satisfied that the landlord did not apply for dispute resolution or return the security deposit within the 15 days provided for in the *Act*. The *Residential Tenancy Act* states as follows:

- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

It is clear to me that the landlord did not comply with Section 35, in that the inspection report was completed by the landlord alone, which did not provide ample opportunity for the tenant to agree or disagree with any items that the landlord is claiming. Because subsection (2) was not complied with, under subsection (5), the landlord was not permitted under the *Act* to complete and sign the report without the tenant.

Consequences for tenant and landlord if report requirements not met

- 36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the right of the tenant to return of the security deposit is not extinguished because the landlord did not offer the tenant 2 opportunities to complete and sign the inspection report. However, under subsection (2) the landlord's right to claim against the security deposit is extinguished because the landlord did not comply with section 35(2) and did not complete the inspection report and give the tenant a copy of it.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the

tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

Having found that the landlord's right to claim against the security deposit is extinguished under section 36(2), and having found that the landlord did not apply for dispute resolution or repay the deposit within the 15 days allowed under section 38(1), I have no discretion under the *Act* and must award double the amount of the security deposit, pet damage deposit, or both to the tenant.

With respect to the tenant's claim for reimbursement of the cost of repairs to the furnace, the tenant has failed to prove that the repairs were an emergency. Repairs are an emergency only if the health or safety of the tenant is in danger or if the building or property is at risk. I accept the evidence of the parties that the furnace was in need of repair, but I also accept the evidence that the landlord showed the tenant how to make it work. No evidence was introduced to satisfy me that health or safety were issues, and I am not satisfied that the tenant made sufficient attempts to have the landlord fix the problem.

Conclusion

Having heard the evidence of the applicant and the respondent, I hereby order the landlord to pay to the tenant double the amount of the security deposit that was not

already repaid to the tenant. The tenant is also entitled to recover the filing fee in the amount of \$50.00. I grant the tenant a monetary order in the amount of \$3,782.64. This order may be filed in the Provincial Court of British Columbia and enforced as an order of that Court.

The tenant's application for reimbursement for the cost of emergency repairs is hereby dismissed without leave to reapply.

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: April 19, 2010.

Dispute Resolution Officer