DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and return of the security deposit. Both parties appeared at the hearing and confirmed service of documents. Both parties were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Are the tenants entitled to return of the security deposit?

Background and Evidence

I heard undisputed evidence as follows. The month to month tenancy commenced July 1, 2009 and the tenants paid a $350.00 security deposit. The tenants were required to pay rent of $700.00 on the 1st day of every month. The tenants gave verbal notice to end tenancy on October 21, 2009 and on October 22, 2009 the landlord informed the tenants via email that 30 days written notice was required to end the tenancy. The tenants vacated the rental unit October 31, 2009. The landlord cashed the rent cheque for November 2009.

Documentary evidence indicates that the tenant provided a forwarding address to the landlord via an email dated November 9, 2009. The landlord sent the tenants a cheque for the security deposit on November 25, 2009; however, the letter was returned to sender as the address used was "unknown". Upon receiving the returned mail, the landlord did a search of the postal code and determined the address was incorrectly

identified by both the tenant and the landlord. The landlord resent the security deposit on December 15, 2009 and it was cashed by the tenant on December 18, 2009.

At the time of making this application the tenants had not yet received the security deposit and requested its return in their claim for compensation. In addition, the tenants claimed that they should not be required to pay for November 2009 rent since they moved out due to damage in the rental unit. Since the landlord cashed the rent cheque for November 2009 the tenants are seeking compensation equivalent to one month's rent.

The tenants were asked to describe the condition of the rental unit during their tenancy. The tenants testified that the roof leaked three times, the stove did not work property, the unit had fleas and the rental unit was dirty when they moved in. The tenants explained that they notified a person who resided in the building and identified himself as the caretaker about the leak and that person inspected the leak and advised the tenants not to worry about it. The tenants testified they had called the landlord's office about issues in the rental unit and the receptionist was rude to the tenant.

The landlord responded by saying he was not notified of items that required repairs or a leaking roof and referred to the move-in inspection report which noted only a window and screen that needed repair. The landlord explained the person the tenants identified by the tenants as the caretaker was not a caretaker or an agent for the landlord and the tenants should have contacted the landlord about repair issues. The landlord submitted that issues arose with the tenants when the landlord required a pet deposit when it was discovered the tenants had a cat. The landlord also submitted that any fleas could have come from the tenants' cat.

The issue of the pet deposit appeared to be an issue between the parties as the tenants claimed they were advised that they could have a pet when they viewed the unit with an agent for the landlord and that there was no mention of a pet deposit. The tenants claim the landlord entered the unit without notice in July 2009 and after that visit the

landlord required a pet deposit. The tenant acknowledged being angry about the landlord's request to pay a pet deposit. The tenants did not pay a pet deposit.

The landlord denied entering the rental unit without permission of the tenants and acknowledged inspecting the unit in August 2009. The landlord referred to the tenancy agreement and letters sent to the tenants in September and October 2009 with respect to requiring a pet deposit. The landlord was of the position that the tenants had not told the agent showing the rental unit that they did have a pet when they viewed it.

At the end of the tenancy the parties did not participate in a move-out inspection together. The tenants acknowledge they did not otherwise notify the landlord of their departure and did not return the keys to the landlord. Rather, the tenants left the keys in the unit and emailed the landlord on November 9, 2009. Although the tenants acknowledged that they had been given a copy of their tenancy agreement, the tenant claimed to not know where to return the keys.

Provided as evidence for the hearing was a copy of the tenancy agreement, correspondence from the landlord to the tenants regarding the pet deposit, the move-in inspection report, the October 22, 2009 email from the landlord and the November 9, 2009 email from the tenant.

Analysis

Where a tenant wishes to end a month to month tenancy, section 45 of the Act requires the tenant to provide at least 30 days of written notice for a date to end on the day before rent is due. The tenancy agreement provided as evidence by the landlord also provides for the standard term that must appear in all tenancy agreements with respect to ending a tenancy. Even if the rental unit required repairs, the tenant's remedy would be to request repairs of the landlord and if repairs were not made the tenant would be entitled to make an application for dispute resolution to request repair orders and possibly compensation. If the tenants did not agree with having to pay a pet deposit,

the tenants remedy would be to seek dispute resolution by making an application. In the case at hand, providing short notice to end the tenancy was not a remedy available to the tenants. Therefore, I find no basis to conclude the tenants were entitled to provide the landlord with less than 30 days of written notice as required by the Act and I find that the tenants were obligated to pay rent for the month of November 2009.

Upon review of the tenancy agreement, I find the landlord did provide the tenants with an address for service of the landlord for written communication, a daytime telephone number and a fax number. I find the tenants had sufficient information provided to them as to how to end the tenancy and how to contact the landlord. I do not accept the tenants' position that they did not know where to return the keys and I find the tenants simply vacated without consideration to the notice to end tenancy required of them.

In this case the tenants have requested compensation from the landlord equivalent to one month's rent. A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon review of the move-in inspection report I note that the landlord recorded stains and marks on the flooring; however, the unit is not reflected as dirty or as having fleas. Section 21 of the Residential Tenancy Regulation provides that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection unless their party has a preponderance of evidence to the contrary. I do not find the tenants provided sufficient evidence to demonstrate the rental unit was dirty or had fleas at the commencement of the tenancy. While I find evidence that the flooring was stained, I am satisfied that the stains where there when the tenants viewed the rental unit and that they decided it was acceptable for their family at that time. If the tenants later determined the flooring was unacceptable, I do not find evidence that they requested flooring replacement of the landlord.

With respect to the alleged roof leaks, I do not find the tenants sufficiently established that there was a leaking roof, that the leaking resulted in a loss of use of part of the rental unit or significantly impacted their enjoyment of the rental unit, or that the tenants did whatever was reasonable to minimize any damage or loss. I find it reasonable to expect that the tenants would notify the landlord of a roof leak and not a neighbour and that without an adequate response from the landlord the tenants would put their concerns in writing to the landlord.

I did not find the disputed verbal testimony to be sufficient to establish the landlord entered the rental unit without notice or consent. In light of the above findings, I do not find the tenants established an entitlement to compensation from the landlord for the condition of the rental unit or loss of quiet enjoyment of the rental unit.

With respect to the return of the security deposit, I have reviewed the email sent by the tenant with the new address and the envelope originally sent by the landlord. I note that the address eventually used by the landlord and successfully received by the tenant is not the same format used by the tenant in her email. That is, the tenant wrote the street number – unit number in her email but the correct format for addressing the envelope is unit number – street number. I am not satisfied that the tenant had provided a valid

forwarding address in writing on November 9, 2009. Therefore, I do not find the landlord violated section 38(1) of the Act with respect to returning the security deposit by mail on December 15, 2009. As the tenants have already received a full refund of their security deposit and I do not find the tenants entitled to double the security deposit, I make no further award to the tenants with respect to the security deposit.

As I have found the tenants failed to establish a right to end the tenancy with short notice, or entitlement to compensation from the landlord, and the tenants have since received their security deposit, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application has been 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 28, 2010.

Dispute Resolution Officer