

DECISION

Dispute Codes MND, MNDC, MNSD, FF
DRI, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlords for a monetary order 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 a monetary order for compensation for overpayments of rent, for the return of their security deposit plus compensation equivalent to the amount of the security deposit for the Landlords' alleged failure to return it within the time limits required by the Act and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for damages and if so, how much?
2. Are the Tenants entitled to compensation for overpayments of rent and if so, how much?
3. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This tenancy started approximately 3 years ago and ended on September 30, 2009 when the Tenants moved out. The Tenants paid a security deposit of \$360.00 at the beginning of the tenancy.

The Tenants' Claim:

The Tenants claim that prior to January of 2009, their rent was \$700.00 per month and that on January 1, 2009, rent was increased to \$720.00 per month. The Tenants also claim that the Landlords raised the rent to \$750.00 on September 1, 2009. The Tenants said the Landlords just told them that the rent would be increased and did not give them a written Notice of Rent Increase.

The Landlords claim that prior to January 2009, the rent was \$720.00 per month which included hydro. The Landlords also claimed that the rent was increased to \$750.00 per month in January 2009 to account for increased hydro costs and that the mother of one of the Tenants verbally agreed to the increase.

The Tenants claim that the Landlords gave a cheque for \$330.00 to the mother of one of them in payment of the security deposit but later put a stop payment on that cheque. The Tenants said they gave their forwarding address in writing to the Landlords but

could not recall when. The Tenants also said they did not give the Landlords written authorization to keep their security deposit and that it has not been returned to them.

The Landlords said that on September 30, 2009, they met with the mother of one of the Tenants and gave her a post-dated cheque for \$330.00 in payment of the security deposit and she gave them the keys to the rental unit. The Landlords claim that they then started to do a move out inspection with the Tenant's mother and discovered condition issues with the rental unit so they put a stop payment on their cheque. The Landlords also claimed that the Tenant's mother refused to complete the move out inspection. The Landlords admit that they did not do a move in or a move out condition inspection report.

The Landlords' Claim:

The Landlords claim that at the end of the tenancy, there was a broken toilet, a broken closet door, a damaged laminate floor and missing oil filters from the hood fan on the stove.

The Landlords initially said the broken closet door was in the living room but later said that it was in a bedroom. In support of these claims, the Landlord provided invoices and quotes for the repairs and photocopies of photographs of a toilet bowl and a tear in some flooring.

Analysis

The Tenants' Claim:

Section 42 of the Act says that a Landlord may only increase rent up to the amount allowed under the Regulations to the Act unless the Landlord has the written agreement of the Tenant to pay a greater amount. Section 42 of the Act also says that a Landlord must give a Tenant a Notice of Rent Increase in the approved form at least 3 months prior to the date when the proposed increase is to take effect.

The Landlords argued that they did not increase the rent but rather just charged the Tenants more for hydro. I find however, that it was a rent increase because hydro was simply a service or facility that was included in the rent. Consequently, I find that the Landlords were not permitted to increase the rent more than 3.7% (as set out in the Regulations for 2009). Furthermore, I find that the Tenants did not give their written consent to pay a rent increase and therefore the Landlords were required to give them a written Notice of Rent Increase in the approved form with the Landlords did not do. As a result, I find that the rent increase from January 1, 2009 to September 1, 2009 was invalid.

Although the Tenants claimed that rent was \$700.00 prior to January 2009, I find that it was more likely \$720.00 given that the security deposit was \$360.00. Consequently, I

find pursuant to s. 43(5) of the Act that the Tenants are entitled to recover overpayments of rent of \$30.00 per month for 9 months for a total of **\$270.00**.

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 Tenant's forwarding address in writing (whichever is later) to either return the Tenant's 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 Tenant's 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. I find that there is insufficient evidence to conclude that the Tenants gave the Landlords their forwarding address in writing. Consequently, I find that s. 38(6) of the Act does not apply.

However, sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages but may not offset those damages from the security deposit. As the Landlords did not complete a move in or a move out condition inspection report, I find that their right to make a claim against the security deposit for damages to the rental unit is extinguished and as a result, I find that the Tenants are entitled to the return of their security deposit of **\$360.00** plus accrued interest of **\$11.83**. As the Tenants have been successful on their application, I find that they are also entitled to recover the **\$50.00** filing fee for this proceeding.

The Landlords' Claim:

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 he has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be used but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenants caused the alleged damages and that they were not the result of reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Tenants claimed that the toilet and closet doors were undamaged at the end of the tenancy and provided a witness who viewed the rental unit on September 30, 2009 to corroborate their evidence. The Tenants also claimed that the linoleum flooring was damaged at the

beginning of the tenancy. The Tenants disputed the reliability of the Landlords' photograph of the toilet and their claim in general.

Given the contradictory evidence of the Tenants and in the absence of any corroborating evidence from the Landlords (such as a condition inspection report), I find that the Landlords have not provided sufficient evidence to show that the Tenants caused the damages alleged and as a result, their claim for compensation is dismissed without leave to reapply. As the Landlords have not been successful on their claim, they are not entitled to recover their filing fee for this proceeding.

Conclusion

The Landlords' application is dismissed without leave to reapply. A monetary order in the amount of **\$691.83** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: April 20, 2010.

Dispute Resolution Officer