DECISION

Dispute Codes MNSD, FF
(MNR), (MND), MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit, compensation equivalent to the amount of the security deposit for the Landlord's failure to return all of the deposit within the time limits required under the Act and to recover the filing fee for this proceeding. The Landlord applied to recover unpaid rent, for compensation for repairs and cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?
2. Is the Landlord entitled to compensation for repairs and cleaning expenses and if so, how much?

Background and Evidence

This tenancy started as a fixed term tenancy on October 1, 2008 and expired on September 28, 2009. The tenancy continued on a month to month basis thereafter and ended on December 31, 2009 when the Tenants moved out and returned their keys. Under the terms of the Parties' tenancy agreement, rent was $2,649.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $1,324.50 at the beginning of the tenancy.

The Tenants' Claim:

The Parties agree that the Tenants gave their forwarding address in writing to the Landlord on January 8, 2010 and that they did not give their written authorization for the Landlord to keep any of the security deposit. The Parties also agree that on or about January 10, 2010, the Landlord returned $624.05 of the security deposit to the Tenants and withheld the balance of $785.44.

The Landlord's Claim:

At the beginning of the tenancy, the Landlord gave the Tenants a move in condition inspection report and asked them to complete and return it to him which they did. On

December 31, 2009, the Landlord did a move out condition inspection report with one of the Tenants (J.W.). The Parties agree that the Tenants moved most of their belongings out of the rental unit in mid-December 2009 and that the Landlord went into the rental unit on December 29, 2009 and took pictures and did repairs without their prior knowledge or consent. Consequently, many of the condition issues indicated on the move out report did not exist on the date of the move out inspection (because the Landlord had already re-painted the rental unit by that date). The Tenants agreed, however, that the move out report accurately reflected the condition of the rental unit on December 29, 2009 (prior to the repairs).

The Parties agree that the rental unit was freshly painted at the beginning of the tenancy. The Landlord claimed that at the end of the tenancy, there were some holes and scratches on the walls and doors from the Tenants' dogs that were not reasonable wear and tear. The Tenants argued that one hole by the entrance was there at the beginning of the tenancy but was overlooked. The Tenants also argued that the rental unit had some marks on the walls when they moved in but admitted that none of them were significant. The Tenants further argued that they should have been more thorough when they completed the move in condition inspection report.

The Landlord claimed that the kitchen and laundry room required cleaning. In particular, the Landlord claimed that the refrigerator was not cleaned properly inside or behind it. The Landlord also claimed that the stove top elements had baked on grease and that some kitchen cupboards were dirty. The condition inspection report does not address the laundry room. The Landlord provided a photograph of dog hair and debris on the laundry room floor. The Landlord claimed that the dirt behind the refrigerator and in the laundry room was not discovered until after the Tenants moved out. The Tenants argued that the rental unit was not clean at the beginning of the tenancy but that in any event it was reasonably clean at the end of the tenancy.

The Landlord said that the carpets in the rental unit were cleaned at the beginning of the tenancy but were not cleaned properly at the end of the tenancy and as a result, he had to hire two different carpet cleaners; one to remove pet hair and one to remove stains. The Tenants claimed that they steam cleaned the carpets at the end of the tenancy but admitted that they could not remove one stain. The Tenants said the carpets were very old and that there was nothing in the tenancy agreement that required them to have the carpets professionally cleaned.

The Landlord further claimed that the Tenants left a stain on the sundeck and damaged a door screen. The Tenants argued that the stain was the result of reasonable wear and tear (ie. from a flower pot) but denied that they were responsible for damages to the screen door.

Analysis

The Tenants' Claim:

The Parties agree that the Landlord agreed to compensate the Tenants $80.00 to leave a portable dishwasher and as a result, I find the Tenants are entitled to recover that amount.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he 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 (within the 15 day time limit) 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 the Landlord received the Tenants' forwarding address in writing on January 8, 2010 and as a result, he had until **January 23, 2010** to either return the Tenants' security deposit or to make an application for dispute resolution to make a claim against the deposit. However, I find that the Landlord did not have the Tenants' written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit until **January 28, 2010**. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit ($2,649.00) to the Tenants with accrued interest of $4.99 (on the original amount) less the amount already paid of $624.05 for a balance of $2,029.94. Consequently, I find that the Tenants have made out a total claim for $2,109.94.

The Landlord's Claim:

The Parties agree that the Tenants underpaid rent by a total amount of $44.00 and as a result, I find that the Landlord is entitled to recover that amount.

Section 23(1) of the Act says that a Landlord and Tenant must do a move in condition inspection ***together***. If a Landlord fails to participate in a move in inspection, his right to make a claim against a security deposit for damages to a rental unit is extinguished under s. 24(2) of the Act.

Section 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Act is evidence of the state of repair and condition of the rental unit on the date of inspection unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 37 of the Act says that a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear.

Notwithstanding the Landlord's failure to participate in the move in condition inspection or to put the correct date on the move out report that corresponded with the condition of the rental unit, the Tenants did not dispute the accuracy of either of those reports. Based on the photographs submitted by the Landlord, however, I cannot conclude that

the Tenants are responsible for all of the damages to the walls. In particular, I find that some of the scratches appear to be made only to the paint and are slight (ie. not deep gouges) and therefore can be categorized as reasonable wear and tear. Consequently, I find that the Landlord is entitled to recover one-half of his expense for re-painting or $185.50.

The Landlord argued that he was entitled to do repairs and cleaning on December 29, 2009 as the tenancy agreement ended on December 28, 2009. In particular, the Landlord claimed that when the tenancy continued on a month to month basis following the expiry of the fixed term, he "understood" the tenancy would end on the 28th day of the last month. However, there is nothing in the tenancy agreement that says this. The tenancy agreement instead states under the clause, "Notice of Termination," that when the tenants give their notice ending the tenancy, it must be given in writing no later than the last day of a ***calendar month*** and takes effect on the ***last day of the ensuing calendar month***. Consequently, I conclude that the Tenants were entitled to possession of the rental unit until December 31, 2009 and that the Landlord was not entitled to enter to take pictures or make repairs without the consent of the Tenants.

The Landlord claimed that some of the pictures (such as behind the refrigerator) and in the laundry room were taken after the tenancy ended and that these issues were only discovered at this time. Given that these matters are not noted on the condition inspection report and that the photographs of them were disputed by the Tenants, I do not give much weight to the photographs. Furthermore, there is some evidence that there were cleanliness issues with the rental unit when the Tenants took possession of the rental unit and therefore I cannot conclude that the condition of the cupboards and the stove top at the end of the tenancy can be solely attributed to the Tenants. As a result, I find that there is insufficient evidence to support the Landlord's claim for cleaning expenses and it is dismissed.

RTB Policy Guideline #1 at page 2 says that a Tenant is responsible for steam cleaning carpets after a tenancy of about a year. The move out Condition Inspection Report only notes a stain in the living room carpet and says nothing about any other condition issues. Consequently, I find that the Landlord is entitled to recover $50.00 for the stain removal. I also find that the stain on the balcony is not the result of reasonable wear and tear but rather due to the neglect of the Tenants and as a result, I find that the Landlord is entitled to $25.00 to remove it.

Given that no damage was noted to the door screen on the move in condition inspection report, I conclude that this damage was done during the tenancy. I also find that this damage is not the result of reasonable wear and tear and as a result, the Landlord is entitled to recover $60.00 to replace it. Consequently, I find that the Landlord has made out a total claim for $364.50.

I order pursuant to s. 72 of the Act that the Parties respective awards be offset and that the Tenants will receive a monetary order for the balance owing of $1,745.44. Given

that the Parties' respective claims to recover the filing fee for their applications would also be offsetting, I make no award of those amounts.

Conclusion

A monetary order in the amount of **$1,745.44** 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: April 13, 2010.

Dispute Resolution Officer