

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and by two agents for the landlord.

The landlord had not provided any evidence prior to the hearing but in her testimony, the property manager noted the tenant had signed the move out inspection report agreeing to the deduction for carpet cleaning. At my request, and with agreement from the tenant, the landlord agreed to submit this document at the end of the hearing, before the end of business on the hearing date.

I did receive the landlord's documents immediately upon ending the hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for loss of quiet enjoyment during their tenancy; compensation for excessive hydro costs; and for all or part of the security deposit, pursuant to sections 28, 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted the following documents into evidence:

- 29 pages relating to the tenant's employment as landscaper for the landlord;
- A copy of a document entitled "Some things that GVH's tenants ought to know" issued by a previous landlord regarding facilities and acceptable behaviour for all tenants;
- A copy of a notice from the most recent property management company notifying tenants that effective November 1, 2009 they will be taking over the management of this property;
- A copy of a letter dated December 14, 2009 from the property manager to the tenant providing an explanation of deductions from the security deposit, indicating the security deposit was \$375.00 and the amount returned was \$157.96 including interest added and carpet cleaning deducted;
- A copy of a receipt from a carpet cleaning contractor in the amount of \$219.87;
- A copy of a cheque made payable to the tenant in the amount of \$157.96;
- A copy of a tenancy agreement signed by the parties on June 8, 2007 for a month to month tenancy beginning on July 1, 2007 for a monthly rent of \$775.00

due on the last day of the "preceding month" and a security deposit of \$387.50 paid on June 8, 2007;

- A detailed summary of issues arising throughout the tenancy
- A calculation page showing the tenants' calculation for a 10% reduction in rent based on 22 months at \$800.00 per month and 7 months at \$750.00;
- A calculation page showing the tenants' calculation for a 7.5% reduction in hydro charges based on usage during the tenancy; and
- A copy of the tenant's hydro account history report provided by the hydro supplier confirming usage by the tenants for the years 2007, 2008 and 2009 at this address.

The tenant provided testimony regarding issues spanning from the start of the tenancy to the end of the tenancy, however, their primary concern was regarding requesting repairs to the rental unit. The repairs included repairs to the entry doors and windows regarding insulating properties and ability to close the windows.

The agents for the landlord acknowledged that they did not have any records of these complaints or issues related to the tenancy except that they noted there appear to have been no issues or problems with these tenants, nor any complaints on file regarding them.

The tenant testified that a previous landlord had reduced their rent by \$50.00 per month in an effort to keep the tenants in the rental unit for the last several months of the tenancy. The new landlord has no documentation regarding this rent reduction but did honour the rent reduction through to the end of the tenancy.

The tenant asserts that during the move out inspection the property manager agreed that the tenant would not be held responsible for any cleaning to the carpet in what is described on the carpet cleaning invoice as the master bedroom because of a flood in that room in April or May 2009.

The tenants also noted that there had been a tenant above them who had been doing laundry for income and had had washing machines going 20 to 22 times per day. The tenants also noted that they did what they could to keep the rental unit warmer during the winter months like putting blankets/towels at the base of the door to keep out drafts and they had used the kits provided by hydro to weather tighten the windows but that the rental unit remain cold.

The tenants stated that previous to their tenancy the two entry doors had been damaged severely and never repaired or replaced during their tenancy. The landlord stated they were not aware of any damage to the doors in this unit and that they have inspected the weather stripping in this unit since the end of this tenancy and cannot see an inadequacies.

The landlord's agents described the property as 14 years old with double paned windows. The tenant thought the property was 17 years old. The landlord testified the

current tenants have not raised any issues regarding drafts or coldness of the rental unit.

The landlord pointed out during the hearing that the tenant had listed the agent as the person he had met with, particularly for the move out condition inspection but in fact it had been the property manager who had met with the tenant.

Analysis

Section 38 of the Act states a landlord must, within 15 days of the end of the tenancy and the provision of the tenant's forwarding address, in writing, return the tenant's security deposit less any agreed upon deductions or file an Application for Dispute Resolution with the Residential Tenancy Branch to claim against the security deposit.

In the condition inspection report dated December 1, 2009 the landlord has stipulated that the carpets are to be cleaned and the costs deducted from the security deposit and the cost of rekeying for a lost set of keys are also to be deducted from the security deposit. The report has the tenant's signature. There is no indication that any room would be excluded from the cleaning.

As a result, I find the landlord is entitled to retain the amount of carpet cleaning for the entire rental unit from the security deposit. However, as noted in the tenancy agreement I find the amount of the security deposit paid was \$387.50, not the \$375.00 used by the landlord in their calculations.

I also find the date the security deposit was paid was June 8, 2007 not July 2008 as used by the landlord in their interest calculation. I therefore find the tenant is entitled to interest in the amount of \$9.17 not the \$2.83 calculated by the landlord.

I therefore find the tenants were entitled to receive \$176.80 as returned from their security deposit instead of the \$157.96 already returned to the tenant. I find this was an error in calculation only and not an attempt by the landlord to retain additional funds.

In order to be successful in making a claim for compensation for loss of quiet enjoyment an applicant must show:

1. That there is a loss;
2. That the loss results from a violation of the Act;
3. That that loss has a value and what that value is; and
4. That the applicant took reasonable steps to mitigate the loss.

I find the tenant has failed to provide any corroborating or supporting evidence regarding their claim to a loss of quiet enjoyment during the tenancy. In failing to provide any supporting evidence, I can only base any findings on testimonial evidence provided by both parties.

In the case of verbal testimony, I find that where testimony is clear and both the landlord and tenant agree on the content, there is no reason why such testimony should be doubted. However when the parties disagree with what was agreed-upon, the verbal testimony, by its nature, is virtually impossible for a third party to interpret when trying to resolve disputes.

As the landlord has very few records regarding any complaints or requests for repairs from these tenants during this tenancy I must rely on factors such as the age of the property and then by extension the likelihood of the condition of that property based on that age to make certain findings.

As the building is only 14 years old with double paned windows, I find, based on the balance of probabilities and in the absence of any records of complaints or repairs the windows are not likely to be causing any drafts in the rental unit.

In relation to the tenants' claim to compensation for excessively high hydro payments, the tenant has failed to provide any comparisons of like units and the costs of their hydro charges over the same period or been able to provide confirmation that any action that may have been taken by the landlord would have had any impact on hydro costs.

I therefore dismiss the tenants' application for compensation for excessive hydro rates.

Despite the tenant's claim that they had requested many repairs over the course of the tenancy and that they had complained about a tenant above them for excessive use of laundry facilities thus impacting these tenants quiet enjoyment, the tenants again have failed to provide any corroborating evidence.

In addition, the tenant has indicated a previous landlord had reduced the rent in order to encourage the tenants to stay in the rental unit. In the absence of any testimony from the previous landlord and without any written agreement indicating the reasons for the reduction in rent, I am not able to determine if the tenants have already been compensated for any of the issues related to the tenants' application.

I therefore dismiss the tenants' application for compensation for loss of quiet enjoyment.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and therefore I grant a monetary order in the amount of **\$18.84** comprised of the difference between what the landlord returned from the tenants' security deposit and the actual amount owed.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: June 1, 2010.

Dispute Resolution Officer