

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit plus compensation for the Landlords' alleged failure to make repairs during the tenancy and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?
2. Is the Tenant entitled to compensation due to the Landlords' alleged failure to make repairs and if so, how much?

Background and Evidence

This tenancy started on April 1, 2009 and ended on October 1, 2009 when the Tenant moved out. Rent was \$700.00 per month which included heat, electricity and laundry facilities. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The Parties agree that the Tenant gave the Landlords her forwarding address in writing by registered mail on November 29, 2009. The Parties also agree that the Tenant did not give the Landlords written authorization to keep her security deposit and that the Landlords have not returned her security deposit. The Parties further agree that the Landlords did not do a move out condition inspection report at the end of the tenancy.

The Tenant claimed that when she moved in the refrigerator and stove did not work properly. The Tenant said she asked the Landlords to repair the refrigerator and stove a couple of times during the first week of the tenancy and then gave them a written request on April 15, 2009. The Tenant said the Landlords replaced the refrigerator after approximately 6 weeks but did not repair the stove which had 2 top elements that did not work and an oven thermostat did not work. The Landlords admitted that they replaced the refrigerator but claimed that they looked at the stove and that it worked properly.

The Tenant also claimed that the washer and dryer did not work properly and left rust stains and tears in her clothing. The Tenant initially said that she did not bring this matter to the Landlords' attention but later said that she did and the Landlords told her not to use the washer and dryer. The Tenant also said that she could not use the washing machine for the last month of the tenancy because it leaked. The Landlords denied that there were problems with the washer and dryer and said that they shared

those facilities with the Tenant. The Landlords argued that the Tenant used the laundry facilities more than she was supposed to under the terms of their tenancy agreement.

The Tenant further claimed that there were problems with the water pressure, a bedroom dimmer switch and a front entrance light but she could not recall if she had brought these matters to the Landlords' attention during the tenancy. The Landlords claimed that there were no problems with these items and that in any event, the Tenant had not said anything about them during the tenancy.

The Tenant further claimed that during the tenancy she paid for cable but that the Landlords drilled a hole through a floor and illegally diverted it. Consequently, the Tenant argued that she was entitled to compensation for the Landlords' use of her cable subscription.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive 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 Landlords do not do either one of these things and do not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit.

Section 36(2) of the Act says that if a Landlord does not complete 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, a Landlord may still bring an application for compensation for damages however, they may not offset those damages from the security deposit.

Pursuant to s. 90 of the Act, the Landlords are deemed to have received the Tenant's letter containing her forwarding address 5 days after she mailed it. Consequently, I find that the Landlords received the Tenant's forwarding address in writing on December 4, 2009 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlords did not have the Tenant's written authorization to keep the security deposit and that their right to make a claim against it for compensation for alleged damages to the rental unit was extinguished under s. 36(2) of the Act because they did not complete a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, that the Landlords must return double the amount of the security deposit (\$700.00) to the Tenant.

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant

did not indicate on her application if she was applying for double the amount of the security deposit, I find that she did not specifically waive reliance on s. 38(6) of the Act.

Section 27(2) of the Act says (in part) that if a landlord terminates or restricts a service or facility, the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction.

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and that makes it suitable for occupation by a tenant.

The Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlords failed to provide working appliances that were included in her rent and that they failed to make other repairs. This means that if the Tenant's evidence is contradicted by the Landlords, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is insufficient evidence that repairs were needed to fix water pressure, a dimmer switch and a front entrance light in the rental unit. I make this finding given that the Tenant advised the Landlords repeatedly about other needed repairs to the refrigerator and stove and given her evidence that she did not advise the Landlords about these alleged issues. Consequently, this part of the Tenant's application is dismissed without leave to reapply.

I also find that there is insufficient evidence that repairs were needed to fix a washer and dryer. The Tenant's own evidence was contradictory as to whether she mentioned this to the Landlords or not. The Tenant also claimed that she had photographs of damaged clothing however she did not provide those photographs as evidence at the hearing. The Landlords denied that there were any problems with the washer and dryer. Given the contradictory evidence of the Landlords and in the absence of any corroborating evidence from the Tenant, I find that this part of the Tenant's claim must also be dismissed without leave to reapply.

I find that there is some evidence that early in the tenancy the Tenant brought to the Landlords' attention the need to make repairs to a stove. The Landlords claimed that they inspected the stove and that it worked properly. There is no evidence that the Tenant took any further steps to have repairs made to the stove. Given the contradictory evidence of the Landlords and in the absence of any corroborating evidence from the Tenant, I find that this part of the Tenant's claim must also be dismissed without leave to reapply.

Both parties agreed that the refrigerator in the rental unit did not work properly at the beginning of the tenancy and had to be replaced. I find that the refrigerator was

included in the Tenant's rent and as a result, I also find that she is entitled to compensation for the loss of that appliance which I assess at \$50.00 per month or \$75.00 for a month and a half.

I find that there are no grounds for granting the Tenant compensation for the Landlords' alleged illegal diversion of her cable subscription. Firstly, there is insufficient evidence that the Landlords were diverting the Tenant's cable subscription as she claimed. Secondly, even if the Landlords were diverting the Tenant's cable, there was no evidence as to whether the Tenant would have paid any more or less as a result. Consequently, I find that this part of the Tenant's application must be dismissed without leave to reapply and conclude that this would be a matter for the Tenant instead to take up with her Cable provider.

As the Tenant has been successful in this matter, I find pursuant to s. 72 of the Act that she is entitled to recover from the Landlords the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$825.00** has been issued to the Tenant 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: May 26, 2010.

Dispute Resolution Officer