

DECISION

Dispute Codes MND, MNDC, MNSD, FF
 MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for the return of her security deposit, for compensation equivalent to the amount of the security deposit due to the Landlords' failure to return it within the time limits required under 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. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on January 4, 2009 and ended on July 31, 2009 when the Tenant moved out. Rent was \$625.00 per month for a furnished suite which was shared with other tenants. The Tenant paid a security deposit of \$625.00 at the beginning of the tenancy (which the Landlords said included a \$325.00 furniture deposit).

The Landlords' Claim:

The Landlords claimed that the Tenant took over a one year lease from a previous tenant that was to expire on August 31, 2009. The Landlords admitted that they did not sign a tenancy agreement with the Tenant. The Landlords also admitted that there were other tenants living in the rental property when the Tenant moved in and throughout the tenancy and some of these tenants remained after the Tenant moved out. The Landlords said a move in condition inspection report was completed with a previous tenant (with whom they had the lease) on or about September 1, 2008 and that a copy of this was given to the Tenant. The Landlords also said they did a move out inspection without the Tenant sometime between August 2 and 6, 2009 and made a list of damages. The Landlords claimed that the Tenant verbally agreed that they could deduct these damages from her security deposit.

The Tenant denied that she took over a one year lease from a previous tenant and said that she only signed an application to rent a bedroom (that was occupied by the previous leaseholder) in the rental property and believed it was on a month to month basis. The Tenant said she never signed a tenancy agreement and never received a

copy of the previous tenant's condition inspection report. The Tenant said a move in inspection report was not done when she moved in or when she moved out. The Tenant said she gave the Landlords one month notice in writing that she was ending the tenancy and arranged to meet with the Landlords twice; on the second occasion, the Tenant said she met one of the Landlords at his office and they just discussed whether she should be responsible for damages. The Tenant denied that she verbally agreed that the Landlords could keep all or part of her security deposit.

The Landlords said that the Tenant damaged a bedroom window screen and a patio door screen. The Landlords also said that some pots and pans they supplied were damaged and that some glassware and cutlery were missing. The Landlords further claimed that the Tenant knew that pets were not allowed, however she agreed to look after another tenant's dog in the rental property and the dog urinated inside requiring the rental unit to be cleaned, fumigated and painted.

The Tenant claimed that the bedroom window screen was damaged at the beginning of the tenancy. The Tenant said she had no knowledge of damage to a patio door screen. The Tenant denied damaging pots and pans or being responsible for missing glassware and cutlery. The Tenant admitted that she looked after another tenant's dog while he was away but claimed that it was just left there and denied any knowledge that it had urinated as alleged.

The Tenant's Claim:

The Parties agree that the Tenant gave her forwarding address in writing (by e-mail) to the Landlords on August 14, 2009 and that the Tenant did not give her *written* authorization for the Landlords to keep the security deposit. The Parties also agree that the Landlords have not returned the Tenant's security deposit.

Analysis

The Landlords' Claim:

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

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 she has left a rental

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

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for damages to the rental unit and that they were not the result of reasonable wear and tear. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords claimed that the Tenant was responsible for damages to the rental unit because she verbally agreed to take over a lease from a previous tenant. The Tenant denied that she took over the lease and argued that she only agreed to rent a room as did other tenants in the rental property. In the absence of a written tenancy agreement, I find that there is insufficient evidence that the Tenant agreed to sub-lease the rental property from a previous tenant. Consequently, I find that the Landlords cannot hold the tenant responsible for all of the alleged damages to the rental unit on that ground.

The Landlords admitted that they did not do a move in condition inspection report with the Tenant however they claimed that she would have received a copy of the move in report that was completed with a previous tenant. The Landlords claimed that they tried to set up a time with the Tenant to do a move out inspection but that the Tenant moved back to Ontario before they could do so. The Landlords admitted that they did not give the Tenant a Notice of Final Opportunity to Schedule a Condition Inspection nor did they complete a move out inspection report. Instead, the Landlords said they made an itemized list of damages but they did not provide a copy of it as evidence at the hearing.

The Tenant disputed that she was responsible for the damages claimed by the Landlords and argued that some pre-existed the tenancy while others could have been caused by other occupants of the rental property. In the absence of any corroborating evidence from the Landlords (such as a condition inspection report or photographs), I find that the Landlords have not provided sufficient evidence to show that the Tenant was responsible for the alleged damages. Furthermore, I also find that there is no evidence that the Landlords incurred expenses for replacing damaged items or cleaning as a result of there being an unauthorized dog in the rental property for a brief period of time. In any event, I find that the Tenant is not responsible for any damages done by another tenant's dog. Consequently, I find that there is insufficient evidence to conclude that the Tenant is responsible for the damages alleged by the Landlords and their claim is accordingly dismissed without leave to reapply.

The Tenant's Claim:

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 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.

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, the Landlord may still bring an application for compensation for damages however, he may not offset those damages from the security deposit.

I find that the Landlords received the Tenant's forwarding address in writing on August 14, 2009 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit until March 19, 2010. 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 in or a move out condition inspection report. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit (\$1,250.00) to the Tenant.

As the Tenant has been successful in this matter, I also find that she is entitled to recover the \$50.00 filing fee for this proceeding.

Conclusion

The Landlords' application is dismissed without leave to reapply. A monetary order in the amount of **\$1,300.00** 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 03, 2010.

Dispute Resolution Officer