DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for compensation for damage or loss, return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenants provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on January 7, 2010, to the landlord via registered mail at the address noted on the Application and the tenancy agreement signed between the parties. A copy of the envelope was submitted as evidence, which indicated that the registered mail had been refused by the landlord. The envelope included the tracking number.

These documents are deemed to have been served in accordance with section 89 of the Act*; however* the landlord did not appear at the hearing.

Preliminary Matter

On May 26, 2010, the tenants served the evidence to the landlord by placing the package in the landlord's mail slot.

The tenants stated that the landlord acts as agent for the property owners.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to compensate for damage or loss?

Are the tenants entitled to filing fee costs?

Background and Evidence

This tenancy commenced on November 15, 2007. On October 25, 2007 the tenants paid a deposit in the sum of $750.00; a copy of the receipt confirming payment was

submitted as evidence. Rent was $1,500.00 per month, due on the first day of each month. A copy of the tenancy agreement was submitted as evidence.

The tenancy ended on September 30, 2009; confirmed by email evidence submitted by the tenants.

On September 30, 2009, the female tenant walked through the rental unit with the landlord. No damages were indicated and a condition inspection report was not completed. The landlord asked the tenant for her forwarding address, it was given and the landlord wrote it down, saying the deposit would be mailed.

On October 11, 2009, the tenants sent the landlord a letter by registered mail, requesting return of their deposit, providing their forwarding address and a request for compensation in relation to repairs that were not completed. The tenants have not received their deposit.

The tenants supplied email evidence in relation to the balance of their claim for compensation in the sum of $4,500.00 in compensation for the loss of use of a lower level bedroom and the only bathtub in the rental unit.

On January 11, 2009, the tenant emailed the landlord to report a one-time flood that occurred on the lower level, due to an extreme rainfall. In this email the tenants reported problems with the upstairs bathroom faucet that leaked. The tenants reported that this leak was seeping behind the tiles as it was not grouted. The tenants told the landlord that the faucet was not functional.

Within several days the property owner came to the rental unit. The tenants could not properly communicate with the property owner, as there is a language barrier, but the property owner was aware of the issues and said they would return.

One week later the tenants spoke with the landlord's agent, who told them that the repairs would be made to the bathroom. The tenants submitted that this leak was making its way under the floor and into the ceiling and walls of their son's bedroom below; rendering that room unusable.

From January 2009 onward the tenants were not able to use the bathtub and had to use the shower in their ensuite bathroom. They have a young child, who they wanted to be able to bathe in a bathtub. The leak was not repaired and no further email contact or discussion occurred until September 4, 2009, when the tenants sent an email to the landlord in which they reviewed the lack of repair, the presence of mould that had developed and that they would move out on October 1, 2009. The tenants requested compensation of 20% of rent paid for the past 10 months.

On September 5, 2009, the landlord replied by email that indicated the property owner accepted the notice ending the tenancy and that they would "refund your Sept rent but keep the damage deposit, provided there is no damage on the property."

On October 2, 2009, the landlord emailed the tenants to inform them that the property owner did not believe that the water damage in the bedroom was caused by the leak upstairs, that there was other damage to the rental unit and that they would now return only $530.00 of the deposit and not provide compensation for September rent paid.

The tenants responded on October 5, 2009, rejecting the landlord's offer, requesting compensation in the sum of $4,400.00.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no evidence that the landlord has applied to dispute damages and claim against the deposit.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant. Further, I find that the landlord was given the address at the end of the tenancy. Therefore, I find that the tenants are entitled to return of double the $750.00 deposit paid to the landlord, plus interest in the sum of $13.38.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based on the email evidence and the testimony of the tenants I find that there was a leak in the bathroom and that this leak was brought to the attention of the landlord. I also find, on the evidence before me that the landlord failed to repair this leak.

Section 32 of the Act provides, in part:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The tenants rented a home that had only one bathtub and had a reasonable expectation that the landlord would maintain the home to a standard that allowed them to have continuous use of the bathtub.

The tenants have claimed loss of value of the tenancy in the sum of $4,500.00 from January to September, 2009; $500.00 per month or just over thirty-three percent of rent payable each month.

I find that the tenants have proven that damage occurred to the rental unit and that the landlord failed to adequately respond and provide repairs, in breach of the Act; resulting in this Application.

The tenants have not provided any evidence that they attempted to further address the need for repair and did not take any steps between January and September that would have minimized the claim they are now making. However, based upon the September 5, 2009 email from the landlord, I find that the landlord did acknowledge a loss suffered by the tenants, by way of making an offer of compensation equivalent to one month's rent. The landlord then rescinded this offer and declared, in the absence of written agreement by the tenants or a move-out conditions inspection report, that deductions would be made from the deposit owed to the tenants and compensation would not be provided.

Based on the acknowledgement of the landlord, that the tenants did suffer a loss I find that the tenants are entitled to compensation for loss of the use of the bathtub in the sum of $1,500.00; the amount initially offered by the landlord. As the tenants did not take steps to mitigate the claim they now make, I find that the balance of their claim for compensation is dismissed.

I find that the tenant's application has merit, and I find that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have established a monetary claim, in the amount of $2,313.38**,** which is comprised of double the deposit in the sum of $1,500.00; interest of $13.38; compensation for damage or loss in the sum of $1,500.00 and $50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order of **$2,313.38.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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 09, 2010.

Dispute Resolution Officer