

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This was a cross-Application hearing.

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

The tenant's Applied requesting compensation for damage or loss, return of the deposit paid and to recover the filing fee from the landlord for the cost of their Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit and compensation of damage or loss?

May the landlord retain the deposit paid or must the deposit be returned to the tenants?

Are the tenants entitled to compensation for damage or loss under the Act?

Is either party entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced on February 1, 2009 and terminated on January 31, 2010. Rent was \$1,600.00 per month and a deposit in the sum of \$800.00 was paid on January 14, 2009.

The landlord has claimed compensation in the sum of \$543.38 for water damage to the rental unit and \$200.00 for a strata bylaw contravention.

The landlord submitted an invoice for repair of water damage to the ceiling of the rental unit below that of the tenant's. The invoice, dated December 11, 2009 indicated that on October 27, 2009 repair was made to a ceiling and wall but that the source of the leak could not be determined. The invoice indicated that the leak came from the upstairs bathroom but it was not clear if it was from the toilet "or something else."

The landlord and tenant submitted copies of the strata bylaws. The landlord is claiming compensation for a fine levied against the landlord as the tenants moved out of the rental unit on a weekend, in contravention of the bylaws. The landlord testified that the fine was actually the result of a breach of strata rules; that are attached to the bylaws and that were given to the tenants.

The tenant testified that the landlord had attended at the rental unit when repairs were made to the ceiling below and that no sign of water or a leak were found or discussed with the tenants. The tenants were first made aware of the landlord's claim after they had moved out of the rental unit.

The tenant stated that they found out 2 days prior to moving out that the strata had a rule prohibiting moves on weekends. The tenants did receive a copy of the bylaws, but did not receive a copy of Rules. The tenants had booked their move and did not have time to reschedule. The tenants moved out on January 30, 2010 and completed a move-out condition inspection with the landlord on January 31, 2010.

The tenants have claimed compensation equivalent to one month's rent as they were very flexible with the landlord once a decision had been made that the landlord was going to sell the unit. The tenants came to a verbal agreement with the landlord that compensation would be paid, but did not obtain this agreement in writing.

The landlord was not aware of any agreement made to compensate the tenants in the sum equivalent to one month's rent.

The tenants are claiming return of the deposit paid. The landlord confirmed receipt of the forwarding address on January 31, 2009, written on the move-out condition inspection report signed by the parties on that date.

The landlord applied for dispute resolution and the parties were informed that the date the Application was received would be confirmed after the hearing. The landlord believed that they may have applied on February 16, 2010.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There is no evidence before me that the damage caused to the ceiling below the tenant's unit was caused by any neglect of the tenants. The landlord could not provide a date upon which the leak occurred, details of any investigation that took place to establish the cause or any evidence that the tenants caused damage to the ceiling below. Therefore, in the absence of evidence supporting the claim and, on the balance of probabilities, I find that the claim for damage to the ceiling is dismissed.

In relation to the landlord's claim for breach of the strata rules, there is no evidence before me that the tenants received a copy of the Rules. The tenant disputed that they had been made aware of this rule until 2 days prior to their scheduled move. Further, the landlord has claimed for breach of bylaws, which do not include a term prohibiting moves on the weekends. Therefore, based on the absence of a clause referencing move-out terms in the bylaws and on the disputed testimony in relation to the serving of a copy of the Rules to the tenants, I dismiss the portion of the claim requesting compensation for the bylaw infraction.

As the parties dispute the tenant's claim that compensation was to be paid to the tenants and, in the absence of any written agreement as part of the tenancy, I find that the claim equivalent to one month's rent is dismissed.

In relation to the deposit, I have determined that the landlord submitted an on-line Application on February 15, 2010 at 4:18 p.m. I find that the landlord has claimed against the deposit within fifteen days of having received the tenant's forwarding address in writing. As the landlord's claim against the deposit has failed, I find, pursuant to section 67 of the Act, that the tenants are entitled to return of the deposit paid in the sum of \$800.00.

As the landlord's claim does not have merit I decline filing fee costs to the landlord.

As the tenant's claim has merit I find that the tenants are entitled to filing fee costs in the sum of \$50.00.

Conclusion

The landlord's claim for compensation and filing fees is dismissed.

I find that the tenants have established a monetary claim, in the amount of \$850.00, which is comprised of \$800.00 for return of the deposit paid and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of \$850.00. 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 22, 2010.

Dispute Resolution Officer