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 equivalent to the amount of the security deposit due to the Landlord's failure to return the full deposit as required under the Act. The Tenant also sought compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with her Application and Notice of Hearing (the "hearing package") by registered mail on February 24, 2010. The Tenant said she sent the package to the last address she received from the Landlord, which she believes is the Landlord's residence and which is set out on her application. The Tenant said the Landlord did not pick up the hearing package and it was returned to her. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to pick it up. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

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 and if so, how much?

Background and Evidence

This tenancy started on October 1, 2007 and ended on October 14, 2009 when the Tenant moved out. Rent was $975.00 per month. The Tenant paid a security deposit of $487.50 at the beginning of the tenancy.

The Tenant said she gave the Landlord's property manager her forwarding address in writing on September 30, 2009 when she gave notice that she was ending the tenancy. The Tenant said she received a letter from the Landlord dated October 24, 2009 advising her that the Landlord had deducted $330.68 from the security deposit for various expenses. The Tenant said she did not give the Landlord authorization to deduct any amounts from her security deposit. The Tenant also said that a move in and a move out condition inspection report was not completed by the Landlord.

The Tenant also claimed that on January 18, 2009, the ceiling in her daughter's bedroom started to leak. The Tenant said she advised the Landlord about the leak but

the Landlord told her it was a Strata issue and to deal with the building's property manager. The Tenant said she contacted the building manager who told her that the ceiling in the bedroom could not be repaired until the roof was fixed. The Tenant said the repairs on the ceiling began on February 18, 2009 and were completed in mid-April 2009. During this time, the Tenant said he daughter had to stay elsewhere at a cost to her of $1,920.00 (which included breakfast).

The Tenant said that on September 19, 2009, the ceiling in her daughter's bed room started leaking again. The Tenant said she contacted the building's property manager who made arrangements to make further repairs to the roof. The Tenant said that during this process, a worker put a hole through the roof and into the ceiling of her daughter's bedroom. The Tenant also claimed that on October 5, 2009, the Landlord or her agent gave her written notice that work would be commencing the following day and advised her to pack up her daughter's room or the Landlord would do it. The Tenant said that due to the short notice her spouse had to take 6 hours off of work as a contractor and lost employment income of $320.00. The Tenant also claimed that during this period her daughter had to stay elsewhere at a cost to her of $615.00.

The Tenant said that the 2nd ceiling leak occurred over her daughter's bed and soaked the mattress. The Tenant said that out of concern that the mattress might have mold, the mattress was replaced at a cost to her of $600.00. The Tenant also sought compensation of $2,000.00 for the stress and inconvenience of having to find alternate accommodations for her daughter, deal with dust from construction and wait for the repairs which she argued were not made in a reasonable amount of time.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she 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.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or 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 she may not offset those damages from the security deposit.

I find that the Landlord (or her agent) received the Tenant's forwarding address in writing on September 30, 2009 and that the tenancy ended on October 14, 2009. I also find that the Landlord returned only $156.82 of the security deposit to the Tenant although she did not have the Tenant's written authorization to keep any of the security deposit. I further find that the Landlord did not make an application for dispute

resolution to make a claim against the deposit and that her right to do so was extinguished under the Act because she 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 Landlord must return double the amount of the security deposit ($975.00) to the Tenant with accrued interest of $9.18 (on the original amount) less the amount that has already been paid ($156.82).

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. Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including, but not limited to exclusive use of the rental unit and the right to freedom from unreasonable disturbance.

The Tenant argued that she is entitled to compensation for the loss of use of part of the rental unit and because the Landlord failed to make repairs to the rental unit within a reasonable amount of time. The Tenant said the Landlord repeatedly told her that it was not her problem because issues with the roof had to be dealt with by the Strata for the rental property. While a landlord's duty to make repairs may be constrained by having to wait for a 3rd party (such as the Strata) to act and weather conditions, I find that these factors are irrelevant to the issue of the Tenant's loss of use of the rental unit for which she still must pay rent to the Landlord.

I find that the Tenant did lose the use of one of the bedrooms in the rental unit for the period January 19, 2009 to approximately April 15, 2009 (or for 3 months) and again from September 19, 2009 to October 14, 2009 (or for 1 month). Consequently, the Tenant claimed compensation of $1,920.00 and $615.00 for her daughter to stay elsewhere. The Tenant admitted that these amounts included one meal. However, I find that this amount is unreasonable and may also includes child care expenses. I find that a more reasonable approach is to compensate the Tenant for the loss of 1/3 of the rental unit and to give her an equivalent rent rebate of $325.00 per month for 4 months, for a total of $1,300.00.

The Tenant sought to recover a loss of employment income for her spouse. In support of her claim, the Tenant provided a letter from the property manager dated October 5, 2009 asking her to pack the belongings from her daughter's bedroom so that repairs could start the following day. However, in that letter the property manager also indicates that she had left a number of telephone messages for the Tenant over the preceding 3 days but that the Tenant had failed to return her calls. In the circumstances, I find that the Tenant had reasonable notice (since October 2, 2009) that the construction would start on October 6, 2009 and for that reason, I find that she is not entitled to recover lost wages. In any event, I find that there is no evidence to support the amount claimed and this part of the Tenant's claim is dismissed without leave to reapply.

The Tenant also sought to recover expenses for replacing a mattress that she said got wet when the bedroom ceiling leaked. The Tenant said she was concerned that the mattress might have mould and that her daughter was allergic to mould. However, I find that there is insufficient evidence to draw the conclusion that the mattress had mould. Furthermore, the Tenant provided no evidence to support her claim that she purchased a new bed at this amount and accordingly this part of her claims is dismissed without leave to reapply.

The Tenant further sought to recover compensation for inconvenience, stress and hardship due to the repairs to the roof. RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

In the circumstances, I have no doubt that the Tenant and her family were inconvenienced by the repairs and that they caused her and her family some distress. However, I also find that there is insufficient evidence that the Landlord acted willfully, recklessly or with indifference to the Tenant. Although the Tenant argued that the Landlord ignored her requests for compensation, I find that this is not sufficient to make out a claim for aggravated damages and this part of the Tenant's claim is also dismissed without leave to reapply.

As the Tenant has only been partially successful on her application, I find that she is entitled to recover one-half of the filing fee for this proceeding or $50.00. In summary, I find that the Tenant has made out a claim for the following:

Double security deposit:	$975.00
Accrued interest:	$9.18
Less Payment made:	($156.82)
Loss of use of suite:	$1,300.00
Filing fee:	$50.00
Total Owing:	$2,177.36

Conclusion

A monetary order in the amount of **$2,177.36** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: June 02, 2010.

Dispute Resolution Officer