Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit plus compensation equal 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. The Landlords applied for a monetary order for unpaid utilities, 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.

Issues(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2009 and ended on March 31, 2010 when the Tenant moved out. Rent was $1,300.00 per month for a partially furnished suite plus a portion of the utilities for the rental property. The Tenant says she was responsible for 30% while the Landlords say she was responsible for 50% of the utilities. The Landlords also say the Tenant paid a security deposit of $500.00 plus a non-refundable $200.00 deposit for the use of their television. The Tenant says the $200.00 deposit was to be refunded to her at the end of the tenancy if the television was in good working order.

The Landlords' Claim:

The Landlords said they wanted the Tenant to move out at the end of March 2010 but she initially would not do so, so they agreed that she would not have to pay her last month's rent as an incentive. The Landlords said they did not agree to waive the utilities for the last month of the tenancy and provided invoices showing that the Tenant had not paid gas of $47.80, municipal utilities of $92.86 and Hydro of $31.83 for a total of $172.49. The Landlords said the Tenant always paid 50% of the utility bills because

there were only 2 suites in the rental property. The Tenant claimed that the Landlords verbally agreed to waive the payment of utilities for the last month of the tenancy but that in any event, she only paid 30% of the utilities throughout the tenancy because the Landlord also used utilities when he worked in his shop on the property.

The Landlords did not complete a condition inspection report at the beginning or at the end of the tenancy. In support of their claim, however, the Landlords provided photographs taken on April 4, 2010 and written statements of a cleaner and carpet cleaner. The Landlords claim that the Tenant was given the use of pots and pans and that one of the pots was missing at the end of the tenancy. The Landlords said the Tenant offered them an inferior replacement which was not of the same quality or condition. The Tenant denied that the pot in question existed at the beginning of the tenancy.

The Landlords also claimed that there was carpeting in 2 bedrooms of the rental unit and at the beginning of the tenancy that were new (approximately 2-3 years old), clean and in good condition. At the end of the tenancy, the Landlords said the carpets had black stains that could not be removed with additional cleaning and which rendered the carpets unsalvageable. The Landlords said they pointed this out to the Tenant as early as January 2010 and she said she would take care of it but changed her position at the end of the tenancy when the stains would not come out. Consequently, the Landlords sought to recover the cost of installing similar, new carpets in the two bedrooms. In support of their claim, the Landlords relied on the written statement of a professional cleaner who claimed to have cleaned the carpets at the beginning of the tenancy and therefore could attest to their condition at that time. The Tenant denied that the carpet was new and claimed that the stains in question existed at the beginning of the tenancy and that any damage during the tenancy was the result of reasonable wear and tear.

The Landlords further claimed that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and that as a result, of them and another professional cleaner spent a total of 24 hours cleaning. The Landlords said they told the Tenant during the move out inspection that it was not clean enough but she just told them to take it off of her security deposit. The Tenant claimed that the rental unit was reasonably clean at the end of the tenancy and said that one of the Landlords told her during their move out inspection that the suite was “fine and in better condition than she thought it would be.” The Tenant provided a corroborating statement from a witness who attended the move out inspection with her as well as some photographs of the rental unit she said she took on March 31, 2010. The Tenant said one of the Landlords told her that there was dust on some baseboards which she cleaned before leaving. The Tenant said she did not have an opportunity to remove some cardboard boxes and an old Christmas tree because one of the Landlords threatened her when she asked for her security deposit back which the Landlords denied.

The Tenant's Claim:

The Tenant said she sent her forwarding address in writing to the Landlords by registered mail on April 15, 2010 which she confirmed that they received. The Tenant said she did not give the Landlords written authorization to keep her security deposit.

Analysis

The Landlords' Claim:

In the absence of a written agreement waiving the payment of utilities for the month of March 2010, I find that there is insufficient evidence that there was such an agreement as the Tenant claimed. Consequently, I find that there are unpaid utilities for March 2010. I also find on a balance of probabilities that the Parties' agreement was that the Tenant would pay 50% of the utilities for the rental property. Given that there were only 2 suites with living accommodations, I find it unreasonable to suggest that the utilities would be equally split 3 ways due to the Landlords' intermittent use of a shop. Consequently, I find that the Landlords have made out a claim for unpaid utilities in the amount of **$172.49**.

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 (even if the Tenant refuses to participate). 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 the absence of a condition inspection report or any other, reliable corroborating evidence showing that a pot existed at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the Tenant is responsible for replacing it and that part of the Landlords' claim is dismissed without leave to reapply.

Although there is little reliable evidence of the condition of the carpets at the beginning of the tenancy, I find that the written statement of the Landlords' witness, R.E., is of some assistance. I also accept the Landlords' evidence that it was as a result of their inspection on January 2, 2010 they became aware of the stains and discussed with the Tenant what steps she would take to have them removed. If the Tenant was not responsible for the stains as she claimed, it would make no sense for her to incur expenses for a professional carpet cleaner to try to have them removed. Having regard

to the Landlords' photographs, I agree that the stains likely are not the result of reasonable wear and tear because they are quite dark for only having been used by the Tenant for a period of one year however I cannot conclude that the carpets have no further use as a result of those stains. Consequently, I award the Landlords instead **$300.00** representing the diminished value of the carpets.

I find that there is insufficient evidence to support the Landlords' claim for 24 hours of cleaning. In particular, the Landlords' own photographs show only a few areas of concern rather than the whole rental unit as they claimed. Furthermore, given the corroborating evidence of the Tenant's witness, S.L., that the Landlords had no issue with the cleanliness of the rental unit, I find that the Landlords did accept the rental unit (with the exception of the carpet) as being reasonably clean and they cannot now complain that there were deficiencies. However, given the contradictory evidence of the parties regarding the boxes and tree left behind by the Tenant, I find that there is insufficient evidence to conclude that the Landlords prevented the Tenant from taking those items and I find that they are entitled to **$50.00** for having to remove them. Consequently, I find that the Landlords have made out a total claim for **$522.49**.

The Tenant's Claim:

Section 7(1)(g) of the Regulations to the Act says that a Landlord may charge a non-refundable fee for services or facilities requested by the Tenant, if those services or facilities are not required to be provided under the tenancy agreement. I find that the parties had an agreement that the Tenant would pay a non-refundable fee of $200.00 for the use of the Landlords' television set during the tenancy because hers was in storage. Consequently, I find that this amount does not form part of the security deposit and is not required to be returned to the Tenant.

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 in accordance with the Regulations, the Landlords' right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, if a Landlord fails to do a move in or a move out condition inspection report, the Landlord may keep part of the security deposit for such things as unpaid rent or utilities but *may not* keep the security deposit to pay for damages to the rental unit and must return it to the Tenant. The Landlord still retains the right, however to make a claim against the Tenant for compensation for damages to the rental unit.

In any event, section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or 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 a Landlord is not entitled

to keep a security deposit, does not have the Tenant's written authorization to keep it and does not return it to the Tenant or apply for dispute resolution within 15 days then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

Pursuant to s. 90 of the Act, the Landlords were deemed to receive the Tenant's forwarding address in writing 5 days after it was mailed or on April 20, 2010. I find that the Landlords did not return the Tenant's security deposit and did not have the Tenant's written authorization to keep it. The Landlords made an application for dispute resolution to make a claim against the deposit on June 25, 2010 which is outside of the time limits required under s. 38(1) of the Act. However, I also find that the Landlords' right to make a claim against the security deposit for damages to the rental unit was extinguished under 24(2) and s. 36(2) of the Act because they did not complete a move in or a out condition inspection report in accordance with the Regulations to the Act. 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 or **$1,000.00**.

As the Parties' respective claims to recover their filing fees from each other would be offsetting, I make no order for the return of them and that part of their claims are dismissed without leave to reapply.

Notwithstanding s. 24(2) and s. 36(2) of the Act which extinguishes the Landlords' right to offset damages from the security deposit, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently**, I order the Landlords to keep $522.49 from the Tenant's security deposit in full satisfaction of their claim and I further order the Landlords to return the balance of the security deposit in the amount of $477.51 to the Tenant immediately**.

Conclusion

A monetary order in the amount of $477.51 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: September 14, 2010.

Dispute Resolution Officer