Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the rental property and to keep the Tenants' security deposit in partial payment.

The Landlord filed his application on July 14, 2010 and served the Tenants with a copy of it on November 12, 2010. Section 59(3) of the Act says that an Application for Dispute Resolution must be served on a Respondent no later than 3 days after filing it. The Landlord said he served the hearing packages late because the Tenants gave him the wrong address and he only recently discovered the correct address (which is a few houses away) from his new tenant (who is a close friend of the Tenants). The Tenants waived reliance on s. 59(3) of the Act and agreed to proceed with the hearing.

At the beginning of the hearing, the Landlord claimed that the Tenants had not served him with their evidence package. The Tenant (J.T.) said she sent the evidence package by registered mail on November 23, 2010 to the address for service indicated on the Landlord's application. Section 90 of the Act says that a document delivered in this way is deemed to be received 5 days later. Consequently, I find that the Tenants have not served the Landlord with their evidence package. The Tenant said she was also going to deliver the evidence package in person due to the shortness of time but discovered that it was not the Landlord's residence but a fire hall. The Tenant said the Landlord has never given her his correct address. I find that the majority of the documents contained in the Tenants' evidence package are not relevant to the issues in dispute in this hearing, and as a result, it is excluded pursuant to s. 11.5(b) of the Act. The Tenant was however permitted to refer to those documents that were relevant it in her oral evidence.

Part way through the hearing and at the end of the Landlord's evidence, he became verbally abusive to the Tenants, said he wanted nothing further to do with them and left the conference call.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental property and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenants' security deposit?

Background and Evidence

This tenancy started on April 1, 2004 and ended at the end of June 2010. The Tenants paid a security deposit of $700.00 at the beginning of the tenancy. The Landlord did not complete a move in or a move out condition inspection report.

The Landlord claimed that during the tenancy, the Tenants removed a section of a chain link fence so that they could park a boat however they failed to restore the fence to its original condition at the end of the tenancy. The Landlord admitted that someone had within the last month or so, restored the fence to its original condition. The Landlord provided a photograph of the fence before it was fixed. The Tenants admitted that they removed a bracket from the fence but claimed that they did properly restore the fence to its original condition.

The Landlord also claimed that the Tenants removed plants from the property, killed a tree and damaged sections of grass by storing heavy building materials and pallets in the yard. The Tenants denied removing any plants or damaging a tree. The Tenants said the tree was fine at the end of the tenancy and claimed that during the tenancy, the Landlord asked them repeatedly to cut it down. The Tenants argued that the grass in the yard was in good condition at the end of the tenancy and claimed that the sections referred to by the Landlord were probably damaged by the current tenant by not watering it or by his dog from digging and so forth.

The Landlord further claimed that the Tenants did not remove a number of large pieces of building materials until recently. The Tenant (J.T.) claimed that she removed most of the items at the beginning of July, and that she removed the balance of the items at the beginning of August. The Tenant claimed that some of the items complained of by the Landlord (such as workhorses) belong to the current tenant.

Analysis

Section 23 of the Act says that a Landlord must complete a move in condition inspection report with the Tenants at the beginning of a tenancy. Section 100(1) of the Act says that this requirement applies to new tenancies that started after January 1, 2004. Section 35 of the Act says that a Landlord must also complete a move out condition inspection report at the end of the tenancy.

Sections 24 and 36 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 keep a security deposit for damages to a rental unit is extinguished. This means that a Landlord may still make a

claim for compensation for damages, however he may not keep the security deposit to pay for the damages but must instead return it to the Tenants.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit (and property) reasonably clean and undamaged except for reasonable wear and tear.

I find that the Tenants did not properly secure a section of chain link fence and did not remove building materials from the rental property at the end of the tenancy. However, I also find that there is no evidence that the Landlord suffered damages as a result of the Tenants' breach of the Act. In particular, the fence was restored and the building materials were removed at a later date at no cost to the Landlord. I further find that there is no evidence that the Tenants removed plants or damaged a tree. While the Landlord provided photographs of the yard that show the grass is dried in many areas, the Tenants claim that this does not accurately represent its condition at the end of the tenancy but rather after the new tenant took possession. In the absence of any evidence as to what the condition of the yard was in at the beginning of the tenancy, there is no way to determine if the Tenants were responsible for making the condition of the grass worse. Furthermore, even if the Tenants did cause this damage (and I make no finding in that regard) there is no evidence that the Landlord incurred any expenses as a result.

In summary, I find that there is insufficient evidence that the Tenants removed plants or damaged a tree or grass on the rental property. I also find that there is no evidence that the Landlord incurred any expenses as a result of the Tenants' failure to properly secure a section of fence or remove building materials at the end of the tenancy. Consequently, the Landlord's application is dismissed without leave to reapply. I order the Landlord pursuant to s. 38 and 72 of the Act to return the Tenants' security deposit immediately with accrued interest of $24.78.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **$724.78** has been issued to the Tenants 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: November 29, 2010.

Dispute Resolution Officer