Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for cleaning and repair expenses and to recover the filing fee for this proceeding. This matter was originally scheduled for hearing on October 28, 2010 with an application filed by the Tenant however the hearing(s) of the 2 applications were severed (for the reasons set out in a Decision of that date) and the Landlord's application was adjourned to today's date.

At the beginning of the hearing, the Landlord said she amended her application on November 16, 2010 to include an additional claim for $5,000.00 for aggravated damages, loss of employment income, travel expenses and for the amount awarded to the Tenant in the proceedings held on October 28, 2010. The Landlord said she served her amended application on the Tenant at the address indicated on her previous application. However, in the previous proceedings between these parties, the Tenant stated that she no longer resided at that address and would provide a new address. The Landlord claimed that the Tenant did not provide her with a new address so she served the Tenant at the old address. The Tenant claimed that she had provided the Landlord with her new address. In the circumstances I find that the Tenant was not served with the Landlord's amended application as required by s. 89 of the Act and it is dismissed with leave to reapply.

I note however, that the Landlord's claim to recover the amount awarded against her in the proceedings held on October 28, 2010 cannot be cancelled by making an application for dispute resolution but rather she must apply for either a Review of the that Decision through the Residential Tenancy Branch or for a Judicial Review in the Supreme Court of British Columbia.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?

Background and Evidence

This fixed term tenancy started on August 1, 2010 and was to expire on July 31, 2011 however it ended on or about August 28, 2010 when the Landlord locked the Tenant out

of the rental unit. Rent was $1,200.00 per month payable in advance on the 1st day of each month. The Tenant did not pay a security deposit or her first month's rent for August, 2010.

The Landlord completed a move in condition inspection report but did not complete a move out condition inspection report. Instead the Landlord's agent did an informal inspection of the rental unit with the Tenant's former mother in law at the end of the tenancy. The Tenant said the Landlord told her mother in law that everything looked fine.

The Landlord said that the Tenant removed a satellite dish from the exterior of the rental unit without her consent and therefore she sought $190.00 to replace it. The Tenant denied that she removed the satellite dish and suggested that the satellite provider had probably removed it. The Tenant claimed that the satellite dish would not have been the property of the Landlord but rather that of the owner of the receiver box from which it could only operate. Consequently, the Tenant argued that the satellite dish probably belonged to the previous tenants and that the satellite provider had probably transferred it to their new residence.

The Landlord also said that she had to pay to have the carpets professionally cleaned at the end of the tenancy because they were dirty. The Tenant said she was going to steam clean the carpets but when she arrived at the rental property on the morning of August 31, 2010 to do general cleaning, the carpet cleaner had already started to clean the carpets.

The Landlord's agent said that he spent 4 hours cleaning crayon off of the exterior of the rental unit and sidewalk and as a result claimed $100.00 for his time. The Tenant said the crayon used was washable. The Tenant also denied that the Landlord's agent spent 4 hours cleaning the crayon but claimed instead that he was waiting outside for her to finish cleaning during that time. The Tenant also argued that had the Landlord's agent advised her that she would be charged for this, she would have done it herself.

The Landlord's agent said that he also spent 4 hours repairing a dishwasher because the upper spray arm had broken off. Consequently, he claimed $100.00 for labour and $8.90 for a replacement part. The Landlord's agent admitted that he had not looked in the dishwasher when he inspected the rental unit on August 31, 2010 but claimed that no one else was in the rental unit from that time until he discovered it was broken. The Tenant denied that the dishwasher was broken at the end of the tenancy.

Analysis

As the parties agree that rent is unpaid for the month of August, 2010, I find that the Landlord is entitled to recover $1,200.00.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. It also states that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant is responsible for the damages alleged and that they are not the result of reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is insufficient evidence that the Tenant removed a satellite dish from the rental property. I also find that there is insufficient evidence that the satellite dish belonged to the Landlord. Furthermore, the Landlord did not provide any evidence that she incurred a cost of $190.00 to replace the satellite dish. For all of these reasons, this part of the Landlord's claim is dismissed without leave to reapply.

Although the Tenant argued that she was denied the ability to steam clean the carpets at the end of the tenancy, I find that it was a term of the Parties' tenancy agreement that the carpets would be professionally cleaned. Furthermore, the Landlord claimed that although the Tenant had only resided in the rental unit for a month, the carpets were dirty which the Tenant did not dispute. Consequently, I find that the Landlord is entitled to recover carpet cleaning expenses of $140.00.

The Landlord also claimed $100.00 for cleaning washable crayon off of the rental unit on August 31, 2010. The Tenant argued that she would have done this herself had she known the Landlord was going to charge her for it and denied that it took 4 hours. In the circumstances, I agree. The Landlord gave the Tenant access to the rental property on August 31, 2010 for the purpose of doing cleaning. Consequently, the Landlord should have advised the Tenant to clean the crayon off or that she would charge her for having to do so. As the Landlord did not do either of these things, I find that she cannot now make a claim for cleaning the crayon and that part of her claim is dismissed without leave to reapply.

The Landlord further claimed $108.90 for repairing a dishwasher which she claimed was broken by the Tenant and which the Tenant denied. In the absence of a move out

condition inspection report, there is no evidence that the dishwasher was damaged during the tenancy. However, the Landlord's agent argued that as no one else had the use of the dishwasher, it is reasonable to assume that the Tenant did damage it. On this point I agree with the Landlord, however I find that the amount claimed for labour is unreasonable. In particular, I find that $100.00 for labour to install an $8.90 part is unreasonable and instead I award the Landlord $50.00. However, as the Landlord has provided no receipt for the part in question, I do not award that amount.

As the Landlord has been largely successful in this matter, I find that she is also entitled to recover from the Tenant the $50.00 filing fee for this proceeding plus registered mail service expenses of $11.14. Consequently, I find that the Landlord has established a total claim for $1,451.14.

Conclusion

A Monetary Order in the amount of **$1,451.14** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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 24, 2010.

Dispute Resolution Officer