Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit and to recover the filing fee from the Landlord for the cost of filing this application. It is readily apparent from information on the Application for Dispute Resolution that the Tenants are seeking to recover rent they paid for the rental unit and the Application for Dispute Resolution has, therefore, been amended to include a claim for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the return of the security deposit paid in relation to this tenancy; for compensation for living with fleas in the rental unit; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a written tenancy agreement that began on July 01, 2010; that the tenancy agreement required the Tenant to pay monthly rent of $1,150.00 on the first day of each month; that the Tenant paid rent for July of 2010; and that the Tenant paid a security deposit of $575.00.

The Landlord stated that he completed two copies of the written tenancy agreement; that the Tenant signed both copies; and that he provided one of the copies to the Tenant on July 01, 2010.

The female Tenant stated that they did not sign two copies of the tenancy agreement and that she has never been given a copy of the tenancy agreement that she did sign.

The witness for the Tenant stated that she was present when the Landlord and the Tenant signed the tenancy agreement and she did not see the parties' complete two tenancy agreements.

The female Tenant stated that she noticed there were fleas in the rental unit after they began moving their belongings into the rental unit on July 01, 2010; that she advised the Landlord of the problem and he arranged to have a pest control company treat the rental unit for fleas on July 01, 2010; that they were advised that they should wait for twenty-four hours before moving into the suite because they had a young child; that they moved their personal property into the rental unit on July 02, 2010; that on July 03, 2010 or July 04, 2010 she noticed that her son had been bitten by fleas again; that on, or about July 04, 2010, she reported the problem to the Landlord; that the Landlord advised her that he believed the problem should be resolved and that they should move into the rental unit; that she continued to find fleas in the rental unit; that she made several attempts to contact the Landlord again during the first two weeks of July but he would not answer his telephone; that she elected not to live in the rental unit as a result of the fleas, although she had property in the rental unit; that on July 14, 2010 or July 15, 2010 the Landlord agreed to have the rental unit re-treated; that the pest control company was scheduled to treat the rental unit on July 20, 2010; that the female Tenant was unable to meet the pest control company on July 20, 2010 for health reasons; that the male Tenant was unable to meet the pest control company on July 20, 2010 as he was caring for their child; that they made several telephone calls to the Landlord to arrange for an alternate treatment date but the Landlord did not answer his telephone after July 20, 2010 and he does not have an answering service on his telephone; that they went to the Landlord's residential address in an unsuccessful attempt to locate him; and that they moved their personal property out of the rental unit on July 31, 2010.

The Landlord stated that the Tenants had his cell phone number; that he always answers his cell phone; that he does not have an answering service attached to his cell phone; that the Tenants did not report a continuing problem with fleas until July 08, 2010; that on July 08, 2010 he told them they should move into the rental unit as there must be activity in the rental unit before the flea treatment will be effective; that on July 08, 2010 he told them that he would arrange to have the rental unit treated again if the problem still existed twenty-one days after the first treatment; that on July 14, 2010 the female Tenant verbally advised him that she wants her money refunded and that she is not moving into the rental unit; that on July 17, 2010 he contacted the pest control company and arranged to have the rental unit re-treated on July 20, 2010; that he was advised by the pest control company that the Tenant had cancelled the treatment on July 20, 2010; that he was unable to contact the Tenant after July 20, 2010 so he did not know whether they were planning to move into the suite; and that he made arrangements to have the rental unit re-treated on July 30, 2010.

The female Tenant stated that they mailed a letter to the Landlord at the service address noted on the Application for Dispute Resolution on July 19, 2010, at which time she advised the Landlord she could not reside in the rental unit and she asked for the

return of her security deposit and rent from July. She stated that she provided the Landlord with her forwarding address in this letter. The Landlord denied receiving this letter.

The Landlord acknowledged that he did not return any portion of the security deposit and that he did not file an Application for Dispute Resolution claiming against the security deposit.

Analysis

I find that the Landlord and the Tenant entered into a written tenancy agreement on July 01, 2010 which required the Tenant to pay monthly rent of $1,150.00, which was paid for July.

I favour the testimony of the female Tenant, who stated that she only signed one tenancy agreement and that she was never provided with a copy of that agreement over the testimony of the Landlord, who stated that the Tenant signed two tenancy agreements and were provided with the second agreement.

In determining that the female Tenant was the more credible witness in this regard, I was influenced, in part, by the evidence of the Witness for the Tenant who stated that she was present when the tenancy agreement was signed and she did not see the parties create and sign a duplicate agreement.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the female Tenant to be more probable, as I find it highly unlikely that a landlord would take the time to manually duplicate a tenancy agreement given that it can easily be electronically reproduced.

It is commonly understood that a landlord has an obligation to ensure that a rental unit is reasonably clean at the beginning of a tenancy which, in my view, includes being without fleas.

I find that the Landlord acted reasonably and responsibly on July 01, 2010 when he had

the rental unit treated for fleas shortly after being notified of the problem. I find that the Tenant acted reasonably when they did not occupy the rental unit on July 01, 2010 as they had been advised not to move their son into the rental unit for 24 hours. As the Tenants were prevented from occupying the rental unit for one day, through no fault of their own, I find that there are entitled to a rent refund at the per diem rate of $37.09.

I favour the testimony of the female Tenant, who stated that they advised the Landlord there were still fleas in the rental unit on, or about, July 04, 2010 over the testimony of the Landlord, who stated that he was not advised of the continuing problem until July 08, 2010. I favoured the Tenant's testimony in this regard, in part, because I have previously found her to be a more credible witness. More importantly, I find her evidence more credible because I find it highly unlikely that a tenant would wait eight days before advising a landlord of an issue that was significant enough to prevent her from moving in the rental unit.

I find that the Landlord acted reasonably between July 02, 2010 and July 04, 2010; as he could not reasonably be expected to take action until he had been advised that there was a continuing problem with fleas. I therefore find that the Tenants are not entitled to a rent rebate for any portion of this period.

I find that the Landlord should have made arrangements to have the rental unit re-treated by July 05, 2010. As the Landlord did not make arrangements to have the rental unit re-treated until July 20, 2010, I find that the Tenants acted reasonably when they did not occupy the rental unit between July 05, 2010 and July 20, 2010 and that they are, therefore, entitled to a rent refund in the amount of $593.44, based on the per diem rate of $37.09.

I find that the Tenants failed to mitigate their losses, as is required by section 7(2) of the *Act*, when they cancelled the appointment to have the rental unit treated on July 20, 2010. Although I recognize the female Tenant was prevented from attending the appointment due to health reasons, the male Tenant could have attended, in spite of his child rearing responsibilities, or they could have arranged to have someone attend the appointment on their behalf. I find that it is highly likely that the problem would have been remedied on July 20, 2010 and that the rental unit would have been made suitable for occupation on July 21, 2010 if the Tenants had facilitated that treatment. On this basis, I find that the Tenants are not entitled to a rent refund for any period after July 21, 2010.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. The Tenants filed their Application for Dispute Resolution on July 27, 2010. As this tenancy did not end until July 31, 2010 when the Tenants vacated the rental unit, I find that the Landlord had until at least August 15, 2010 to comply with section 38(1) of the

Act, assuming that the forwarding address had been properly provided by July 31, 2010.

I find that the Tenants' application for the return of their filing fee was premature, as they filed the Application for Dispute Resolution before the Landlord was obligated to return the deposit. On this basis, I dismiss their application for the return of their security deposit, with leave to reapply.

There is no dispute that the Landlord received the Tenants' forwarding address in writing when he was served with the Tenants' Application for Dispute Resolution. I find that this service represented notice that there would be a hearing into this matter and did not constitute service of a forwarding address for the purposes of section 38(1). In these circumstances I find that it was reasonable for the Landlord to wait until the dispute resolution proceeding was completed before returning the security deposit.

For the purposes of section 38(1) of the *Act*, I find that the Landlord will be deemed served with the Tenant's forwarding address on December 22, 2010, which is five days after this decision is mailed. If the Landlord fails to comply with section 38(1) of the *Act* within fifteen days of December 22, 2010, the Tenants have the right to file another Application for Dispute Resolution claiming for the return of double that deposit, pursuant to section 38(6) of the *Act.*

Conclusion

I find that the Tenant has established a monetary claim of $680.53, which is comprised of a rent rebate of $630.53 and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: December 17, 2010.

Dispute Resolution Officer