Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied for return of double the deposit paid and to recover the filing fee from the landlord for the cost of this Application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions during the hearing.

Preliminary Matter

The tenants did not serve the landlord with their evidence; therefore their evidence package was set aside and the tenants were at liberty to provide oral testimony. One document; a copy of an August 2009 “Promissory Note” was referenced as both parties indicated they had copies for reference.

The details of the dispute portion of the tenant’s Application set out a claim for damage or loss under the Act; therefore, I have amended the Application in consideration of that claim made.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of $4154.22?

Are the tenants entitled to return of double the deposit paid?

Are the tenants entitled to return of funds as determined by the promissory note?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 31, 2007, rent was $1,800.00 per month, due on the first day of each month. Within the first week of July 2007 the tenants paid pet and security deposits in the sum of $1,400.00. The parties agreed that a second tenancy agreement was signed some time in 2008; neither party submitted a copy of either tenancy agreements.

The home was brand new when the tenants took possession in 2007.

With the permission of the landlord, the tenants had sublet a basement apartment that was in the rental unit home; those occupants moved out at the end of July, 2010.

The landlord submitted a move-in condition inspection was completed; a report was not submitted as evidence. A move-out condition inspection report was not completed; nor was a report completed and submitted as evidence.

The landlord testified that attached to the tenancy agreement as an addendum was a promissory note that set out the conditions for payment made by the tenants in relation to basement renovation the tenants were to complete. The tenants written submission indicated that the landlord told them the promissory note had nothing to do with the rental agreement or Residential Tenancy Act.

The promissory notice required payment of $16,000.00 by the tenants to the landlord, with credit given at the rate of $200.00 per month. The note also referenced a potential plan by the tenants to purchase the property and the amount of refund that would be due to the tenants should they not purchase the property.

The landlord testified that the tenants owed $18,328.76; the landlord refunded $13,446.76 and at the end of the tenancy held back $4,482.00 for damages made to the rental unit.

The tenants have claimed compensation in the sum of $4,882.00 that the landlord has retained from the payment made to the landlord under the promissory note.

The landlord stated that the tenancy ended on July 31, 2010. Rent was paid for the month of July. The tenants submitted that the tenancy ended on July 15, 2010, as beyond that date the landlord did not allow them access to the rental unit, as the locks had been changed. The parties agreed that the tenants left the rental unit on July 15, 2010.

The landlord submitted that the tenants told him that they would not return after July 15, 2010, to complete any cleaning of the unit. The landlord then incurred costs, detailed in a July 30, 2010, invoice:

Drywall repair, painting	2,232.15
House cleaning	400.00
Remove shelves in garage	262.50
Moving fridge and stove	150.00
HST	443.36
TOTAL	4,138.01

The landlord submitted a carpet cleaning receipt dated July 18, 2010, in the sum of $694.00. The landlord stated the basement rugs were treated twice, as they were heavily stained by pets. The carpets could not be cleaned and had to be replaced.

The landlord had claimed compensation in the sum of $4,154.22.

The drywall in the basement was damaged by the pets and had to be repaired.

The landlord provided some photographs of the unit that showed some damage to a carpet that had a tear, dirty carpets, a dirty cupboard, the area behind the washing machine and baseboards that required cleaning.

The tenant stated that the landlord had pressured her to clean the unit immediately after moving out on July 15. The tenant did not feel rushed, as they paid rent to the end of July and had possession of the unit until that time. The tenant did tell the landlord that she would not clean on the 15th and she was told by her tenants in the basement suite that later on the 15th the landlord had workers in the unit completing renovations. The

landlord had listed the home for sale and wanted to quickly complete work so that realtors could access the unit.

On July 23, 2010, the tenants returned to the rental unit to remove some curtains and their keys would not work. The tenants had changed the locks during the tenancy and on July 15th had given the landlord copies of the keys for those locks. After July 15 the landlord changed the locks and the tenant could no longer gain access. Their basement tenants let them into the unit to retain items.

The parties did not agree on the fact surrounding access to the unit and cleaning. The landlord submitted the tenants both told him they would not complete any further cleaning or repair; the tenants denied this and submitted that the landlord denied them access to the unit, had his own workers complete the repairs and cleaning and that he did not want to give them until the end of July to complete the necessary work in the unit.

The tenants felt that after July 15 they should not enter the unit as the landlord had people working in the home and that they should be entitled to return of one half of the July rent paid. The landlord countered that the tenants had told him they would not complete any further work in the unit; but submitted that the tenancy ended on July 31, 2010.

The landlord's agent saw the male tenant and offered him a set of keys to the unit and this offer was rejected.

When the female tenant met the landlord on July 31, 2010, the landlord served her with notice of this hearing. The tenant gave the landlord the remaining keys she had to the locks the tenant's had originally installed and an inspection of the unit was not completed.

Analysis

I find that the promissory note referenced by each party is a separate agreement between the parties for renovation which is tied to the possible purchase of the property by the tenants. This document may have been signed at the same time as a tenancy agreement and referenced in the tenancy agreement as an addendum, but the note made no reference to a tenancy. The promissory note provided payment to the landlord as a loan for basement construction. Therefore, I find that any matters related to the promissory note are not within the jurisdiction of the *Residential Tenancy Act*.

The funds that the landlord has held back from the tenants, in repayment of the amount paid to him under the promissory note, appears to duplicate the cost of damages to the rental unit that the landlord has claimed as part of this application.

Even if the amounts are duplicates, I find that the landlord's claim in relation to the tenancy agreement for damages is dismissed.

A landlord has a right under section 29 of the Act to provide 24 hours written notice to enter a unit for repairs that the landlord wishes to complete; however, the landlord has been premature in completing work he now claims against the tenants as the tenancy had yet to end.

Even if the landlord had provided a preponderance of evidence that the tenants had caused damage, I would find that the landlord was premature in commencing work in the unit. The tenancy had not ended, even though the tenants had vacated. The landlord took possession of the rental unit on July 15, 2010, and immediately changed the locks and began renovation work and cleaning, which denied the tenant's the opportunity to enter the unit and make attempts to clean and repair.

The tenants denied that the landlord later offered them copies of the keys, so they could enter the rental unit and, even if the tenants had accepted keys on July 22, the work in the unit had been well under way, as indicated by the carpets cleaning receipts submitted as evidence and the testimony that work began in the unit on July 15, 2010.

The tenants felt that once the landlord had changed the locks and had workers in the unit, they were not welcome and that the home was no longer theirs to enter; even though they had paid rent to the end of the month.

The landlord confirmed that the tenancy ended on July 31, 2010; therefore, I find; despite anything the tenant's may have told the landlord, the tenants had legal possession of the rental unit until July 31, 2010; at which time a condition inspection report should have been completed as required by section 35 of the Act.

Once a condition inspection was completed the landlord would have been at liberty to submit a claim for any damages he determined had been made to the unit by the tenants. The landlord claimed damages before the tenancy legally ended which, I find, denied the tenants the opportunity to leave the home in a reasonable state, less normal wear and tear.

I find that the tenants are entitled to return of the deposit paid. The landlord has made a claim against the deposit on July 30, 2010; therefore, I find that the tenants are entitled to return of the deposits paid in the sum of $1,400.00.

As I have found that the tenancy ended on July 31, 2010; the tenant's claim for return of one half of July, 2010, rent paid is dismissed.

As the tenant's claim has merit I find they are entitled to filing fee costs. As the landlord's claim does not have merit, I decline filing fee costs to the landlord.

Conclusion

I find that the tenants have established a monetary claim, in the amount of $1,450.00, which is comprised of the deposits paid and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of $1,450.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord's claim is dismissed.

The tenant's claim for double the deposit and return of one half of July rent paid is dismissed.

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 29, 2010.

Residential Tenancy Branch