Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MND

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit.

The landlord applied claiming damages to the rental unit and to retain the deposit in satisfaction of the claim.

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided with the exception of the landlord's photographs which were not served to the tenant.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the landlord entitled to compensation for damage to the rental unit in the sum of $1,000.00?

May the landlord retain the deposit?

Background and Evidence

The tenancy commenced on February 22, 2010; there was no written tenancy agreement. Rent was $1,600.00 per month due on the first day of each month. A

deposit in the sum of $1,000.00 was paid on February 22, 2010. The tenancy ended on June 30, 2010.

No condition inspection report was completed at the start or end of the tenancy.

On July 20, 2010, the landlord received the tenant's forwarding address in writing. A copy of the letter sent to the landlord requesting the return of the deposit was supplied as evidence by the landlord. The landlord responded to this letter by sending the tenant a list of damages and costs to be deducted from the deposit.

The landlord did not return the deposit and on October 25, 2010, submitted an application claiming against the deposit. The tenant submitted an application requesting return of the deposit on August 3, 2008; 14 days after the landlord received the written forwarding address.

The landlord stated that the tenant caused damage to the sump pump which is submerged in the basement and serves the 2 units in the basement of the home. The landlord confirmed that during some of the time the tenant lived in the unit there was another occupant in the neighbouring unit.

The landlord submitted a copy of a plumbing bill dated May 11 and 15, 2010, for a number of repairs to the lower units; items such as leaks, fan repair and sump pump repair. The sump repairs totaled $250.00 plus $20.00 for a cleaning tool and labour charges totaling $245.00 that were not itemized on the invoice.

The landlord testified that the tenant had placed items in the sump such as dental floss an avocado seed and paper towels that caused the sump to malfunction. On May 12 the tenant emailed the landlord and admitted to having placed paper towels in the garborator, which is drained to the sewage system via the sump pump; in the May 12 email the tenant denied pacing any other items in the garborator.

The landlord is claiming the cost of sump repairs as a result of the negligence of the tenant. The invoice indicated that the sump pump had paper towels, balls of dental floss, and string wrapped around the pump.

The 4 year old washing machine required a new tub pulley and belt as the result of the tenant placing heavy items in the machine. The landlord heard 2 large bangs and believed the tenant had overloaded the machine. On April 12, 2010, the repair person charged $332.85 for repairs.

The landlord had the tenant call the repair person and the tenant had agreed to pay one half of the costs. The tenant stated she did call the repairperson and had agreed to pay

one half, as the landlord refused to make the repair without this agreement. The tenant later spoke to the owner of the company who completed the repair and he confirmed that the repair had been necessary due to ordinary wear and tear. The tenant stated she had not placed any heavy items in the machine.

The landlord claimed $150.00 paid to a repair person, who did not supply an invoice for baseboard repair and painting as the result of moisture caused due to flooding when the sump pump malfunctioned. The tenant denied causing any damage to the baseboards.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute related to damages.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. The landlord has withheld the deposit in the belief that she was entitled to some costs as a result of the actions of the tenant. The landlord received the tenant's written forwarding address on July 20, 2010, and applied to retain the deposit on October 25, 2010.

The tenant applied for return of her deposit 14 days after providing the landlord with her forwarding address; August 3, 2010. As the tenant did not wait 15 days for the landlord to return the deposit, I find that her application was premature and that the provision of section 38(6) of the Act, providing return of double the deposit, does not apply.

The landlord eventually applied to retain the deposit, for damages made to the rental unit. Therefore, I am able to consider the landlord's claim and any balance that may be owed to the tenant.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There is evidence, by the tenants own admission, that she did place paper towels into the garborator, which then resulted in the sump becoming wrapped in towels. The sump pump was also affected by other items placed into the system; which the tenant did not agree were placed there due to her actions.

There is evidence that one other person lived in a separate unit which also used the sump pump. Section 32 of the Act provides, in part:

> *3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

I find that the actions of the tenant, by placing paper towel down the garborator could be expected to have had a negative impact on the sump pump system. Even if there was no sump pump in use, I find it is reasonable to expect that paper towel could have had at least a negative impact on the garborator.

I have considered the other items that were present in the sump pump, the fact that another occupant also used the system and have assigned a cost to the tenant in the sum of $75.00 as a reasonable reflection of the impact the placing of paper towel in the garborator had on the sump pump. The balance of the landlord's claim for this item is dismissed.

There is no evidence before me that the tenant placed heavy items in the washing machine. The invoice supplied as evidence made no reference to any misuse of the machine. Therefore, I find, on the balance of probabilities, that the tenant was not responsible for the malfunction of the washing machine and that the repair was due to normal wear and tear. Therefore, the landlord's claim for repair is dismissed.

There is no evidence before me of any damage to the baseboards that was caused by the neglect of the tenant. If there was a flood that caused damages there is no evidence before me that this was the result of actions by the tenant.

As provided by section 72(2) of the Act, I find that the landlord may retain $75.00 from the deposit paid by the tenant.

I find that the tenant is entitled to return of the balance of the deposit in the sum of $925.00 and have issued an Order to that effect.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $75.00**,** which is comprised of damage to the sump pump. The landlord will retain this amount from the deposit held in trust.

Based on these determinations I grant the tenant a monetary Order for $925.00 for the balance of the deposit paid**.** 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.

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 30, 2010.

Residential Tenancy Branch