Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, OLC
MND, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of part of a security deposit plus compensation equal to the amount of the security deposit due to the Landlords' failure to return it within the time limits required under the Act. The Landlords applied for compensation for cleaning and repair expenses, for a loss of rental income and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of part of his security deposit?
2. Is the Tenant entitled to compensation and if so, how much?
3. Are the Landlords entitled to compensation and if so, how much?

Background and Evidence

This month-to-month tenancy started on July 1, 2009 and ended on June 15, 2010 pursuant to a Mutual Agreement to End Tenancy. Rent was $1,300.00 per month. The Tenant paid a security deposit of $650.00 at the beginning of the tenancy.

The Landlords did not do a condition inspection report at the beginning of the tenancy. The Landlords said there is a term in the tenancy agreement which states that the Tenant is responsible for inspecting the rental unit and advising the Landlord within 3 days of taking occupancy if there are any damages. The Landlords said the Tenant did not advise them of any damages at the beginning of the tenancy.

The Landlords said that they did not have time to do a condition inspection report at the end of the tenancy so they advised the Tenant that they would inspect the suite later and advise him if there were any problems. The Landlords said they inspected the rental unit 2 days after the Tenant moved out and sent him a letter advising him that they were withholding his security deposit because additional cleaning was required and asked him to contact the Landlords. The Landlords said they received a letter from the Tenant dated June 24, 2010 advising them to return his security deposit to a forwarding address that was set out in that letter. The Landlords then sent the Tenant a letter dated July 4, 2010 with a cheque for $560.00 and advised him that they would be keeping $90.00 for cleaning expenses but that the Tenant could get that amount back if he returned to do the cleaning by July 20, 2010.

The Landlords said they had a prospective tenant view the rental unit on July 27, 2010 but they could not rent the unit to him until August 15, 2010 because of the cleaning that needed to be done. The Landlords said they started cleaning the rental unit on or about August 6, 2010 and took photographs of the condition of the unit on that day. The Landlords said the floors, kitchen and bathroom countertops, bathtub and shower door and range hood were left dirty by the Tenant. The Landlords also provided witness statements of other tenants of the rental property who claimed that they viewed the rental unit after the Tenant moved out. The Landlords argued that due to the Tenant's failure to return to do this cleaning, they lost rental income for one month.

The Landlords also claimed that they found that repairs were needed to fix a hole in the bathroom wall where a towel rack had pulled away. Consequently, the Landlords sought $100.00 to repair this damage. The Tenant argued that he left the rental unit reasonably clean and undamaged at the end of the tenancy. The Tenant said that the Landlords' photographs did not represent the condition of the rental unit on June 15, 2010 and noted that they were taken approximately 2 months after the tenancy ended. The Tenant also argued that the Landlords' witness statements were unreliable because he had had problems with these people during the tenancy and were the reason he terminated the tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenant caused damages that were not the result of reasonable wear and tear and that he did not leave the rental unit reasonably clean. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will need to provide additional, corroborating evidence to satisfy the burden of proof.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant. A condition inspection report is intended to serve as conclusive evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may

be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlords argued that there were no damages to the rental unit because the Tenant did not report any at the beginning of the tenancy. However, I find that the term of the Parties' tenancy agreement that requires the Tenant to report damages at the beginning of the tenancy does not satisfy s. 23 of the Act which places a duty on the Landlords to complete a move in condition inspection report with the Tenant. Consequently, I find that there is no evidence as to the condition of the rental unit at the beginning of the tenancy.

I also find that the Landlords did not comply with s. 35 of the Act by completing a move out condition inspection report with the Tenant. The Landlords argued that they tried to arrange one with the Tenant after they moved out but I find that there is little evidence of this. In particular, I note that the Landlords' letter dated June 17, 2010 states nothing about doing a condition inspection report but simply advised the Tenant that the cleaning was not "performed to normal standard." Similarly, the Landlords' letter dated July 4, 2010 says nothing about doing a condition inspection report but simply advised the Tenant that he had until July 20, 2010 to do the cleaning if he wanted the balance of his security deposit returned. Consequently, the only evidence relied upon by the Landlords is their photographs taken on or about August 6, 2010 and witness statements.

I find that the Landlords' photographs are unreliable. In particular, the photographs were taken 2 months after the tenancy ended and the Tenant claimed that they did not accurately represent the condition of the rental unit on June 15, 2010. Consequently, I give the Landlords' photographs little weight. I also find that the witness statements provided by the Landlords are of little assistance. In particular, one deponent claimed he did not view the rental unit until July 27, 2010, or 6 weeks after the tenancy ended while the other deponent does not indicate on her statement when she viewed the rental unit. Neither of these witnesses attended the hearing to give evidence. Consequently, I give the Landlords' witness statements little weight.

Given the contradictory evidence of the Parties as to the alleged damages and need for further cleaning and given that the Landlords have provided no reliable corroborating evidence to satisfy the burden of proof, I find that there is insufficient evidence that the Tenant left the rental unit in need of cleaning and repairs and that part of the Landlords' application is dismissed without leave to reapply.

The Landlords also sought to recover a loss of rental income for one month as they claimed that their new tenant could not move in until August 15, 2010 due to the cleaning that had to be done. However, I find that there is no merit to this claim. In

particular, in their letter dated July 4, 2010, the Landlords advised the Tenant that he could have until July 20, 2010 to return to do cleaning. The Landlords admitted that it was not until July 27, 2010 that the prospective tenant viewed the rental unit and that it was not until August 6, 2010 that they started cleaning it. Consequently, I find that there is no evidence to suggest that the Tenant's failure to return to do cleaning caused the Landlords to lose one month's rental income. Furthermore, in the absence that any evidence that additional cleaning was necessary, this part of the Landlords' claim is also dismissed without leave to reapply.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlords received the Tenant's forwarding address in writing on June 30, 2010 but only returned $560.00 of the $650.00 security deposit on or about July 4, 2010. I also find that the Landlords did not have the Tenant's written authorization to keep $90.00 of the security deposit and that the Landlords did not make an application to keep this amount until October 14, 2010. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return $90.00 of the Tennant's original security deposit together with compensation equal to the amount of the security deposit ($650.00). The Tenant also sought to recover his service expenses of $30.00 however he did not provide any evidence to support that claim (such as a receipt), and as a result it is dismissed without leave to reapply.

Conclusion

The Landlords' application is dismissed without leave to reapply. A Monetary Order in the amount of **$740.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: December 06, 2010.

Dispute Resolution Officer