Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, (MNSD), FF, SS, O
MNSD

Introduction

This matter dealt with an application by the Landlords for compensation for damages to the rental unit, for an Order for substituted service and to recover the filing fee for this proceeding. The Landlords abandoned their claim for a loss of rental income. I find that an Order for substituted service is unnecessary and as a result, that part of the Landlords' application is dismissed without leave to reapply. During the hearing, the Landlords sought to amend their application to include a claim to keep the Tenants' security deposit and as a result, their application is amended (as of today's date) to include that claim.

The Tenants applied for the return of a security deposit plus compensation equal to the amount of the security deposit due to the Landlords' alleged failure to return it within the time limits required under the Act.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Tenants entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on May 15, 2008 and ended on July 15, 2010 when the Tenants moved out. Rent was $1,100.00 per month. The Tenants paid a security deposit of $550.00 at the beginning of the tenancy. The Landlords completed a move in condition inspection report at the beginning of the tenancy. A move out condition inspection report was also completed at the end of the tenancy agreement but it was not signed by either of the Parties.

The Landlords admit that at the beginning of the tenancy, there were 11 marks on the hardwood flooring in the rental unit that they pointed out to the Tenants. The Landlords said the floors were screened and refinished at the beginning of the tenancy. At the end of the tenancy, there were stains on the hardwood flooring; 2 spots in close proximity in the bedroom and one in the living room by a heating vent. The Landlords said that one of the stains was so dark that it could not just be sanded and refinished. Instead, the

Landlords claim that the entire floor had to be sanded and stained a darker colour to try to conceal the stain(s). The Landlords admitted that they initially quoted the Tenants an amount of $1,142.40 to repair the floors but said that estimate was based on one of the Landlords, G.M., doing the work. The Landlords claim that G.M. injured his hand and had to have surgery and therefore they had to get another contractor to do the work at a cost to them of $2,408.00.

The Landlords also admitted that they initially verbally agreed to the Tenants' proposal to pay a proportion of the cost of the repairs based on the approximate size of the damaged areas. The Landlords said, however, that the Tenants wanted more time to think about it and said they would advise the Landlords within 24 hours. The Landlords said that one of the Tenants (K.L.) left a message for them the following day saying that he agreed to the proposal but then called back 2 hours later and left a message that he felt he should only have to pay for the *actual* size of the damaged areas in proportion to the *actual* size of the total floor area. The Landlords said they felt it was useless to proceed with the proposal at that point and advised the Tenants of that decision on September 6, 2010.

The Landlords also claimed that the Tenants were given 2 keys at the beginning of the tenancy and returned 2 keys on July 15, 2010. The Landlords said they discovered on or about July 19, 2010 that the Tenants had a further copy of the key which they used to gain entry to the rental unit to do some remedial cleaning that day. The Landlords said they found a further key hidden on the rental property shortly thereafter and as they could not be sure if there were any further keys outstanding, they changed the locks to the rental unit. The Landlords did not provide an invoice for the cost of the new locks they said they installed but claimed it cost them approximately $200.00.

The Tenants agreed that they were responsible for the stains on the hard wood floors but claimed that they had an agreement with the Landlords whereby they would only be responsible for a proportion of the cost of the initial repair estimate (ie. the size of the damaged area of approximately 10 square feet / the total floor area of approximately 700 square feet). The Tenants claim that they contacted the Landlords within 24 hours to accept the proposal but the Landlords did not return their call and they did not speak to the Landlords again until September 6, 2010. The Tenants claim that the only alteration they proposed was that they should be credited with interest on their security deposit.

The Tenants argued that it would be unfair for them to have to pay to have the whole floor refinished as then the Landlords would benefit by having the whole floor "upgraded" at their expense. The Tenants also argued that there was no evidence that the Landlord (G.M.) was unable to repair the floors due to an alleged injury.

The Tenants said shortly after discovering an additional key, they returned it to the Landlords. The Tenants said they had no knowledge of another key that the Landlords said they found on the rental property.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she 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 Tenants paid a security deposit of $550.00 at the beginning of the tenancy, that they did not give the Landlords written authorization to keep the deposit and that to date the deposit has not been returned to them. I also find that the Tenants gave their forwarding address in writing to the Landlords on September 6, 2010 by putting it in their mail box. Pursuant to s. 90 of the Act, the Landlords were deemed to receive that document 3 days later or on September 9, 2010. Consequently, the Landlords had 15 days from that date (or until September 24, 2010) to either return the Tenants' security deposit or to apply for dispute resolution to make a claim against the security deposit. I find that the Landlords applied for dispute resolution on September 24, 2010, however they did not make a claim to keep the Tenants' security deposit until the hearing of this matter on January 10, 2010. Consequently, I find that the Landlords must return double the amount of the Tenants' security deposit or $1,100.00 together with accrued interest of $5.45 (on the original amount) for a total of **$1,105.45**.

Section 37 of the Act says that at the end of the tenancy a Tenant must leave a 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."

I find that the 3 stains on the hardwood floor caused by the Tenants are not the result of reasonable wear and tear and as a result, I find that the Tenants were responsible for either repairing that damage or compensating the Landlords to have it repaired. The Tenants argued that they had an agreement with the Landlords where they would only be responsible for a portion of the cost. While I find that there was a "proposal" to this effect, I also find that there is insufficient evidence that there was an agreement. In particular, I find that there was not the certainty of terms to support the existence of the

agreement that the Tenants allege. In other words, I find on a balance of probabilities that the Tenants wanted to alter the terms of the proposal by amending it so that the proportion for which they were responsible was based on ***exact*** measurements rather than the approximate ones that had been proposed.

The Tenants also argued that they should only be responsible for repairing the actual areas of damage, however I find that there is no basis for this argument. In particular, the Landlords provided a letter from the contractor who made the repairs who claimed that in order to repair or conceal at least one of the stains, the entire floor area had to be stained a darker colour. The Tenants did not dispute this evidence and admitted that but for the stains they caused, the Landlords would not have had to repair the floor. Consequently, I find that the Tenants are responsible for the whole cost of the repairs.

The Tenants further argued that the Landlords provided no evidence to corroborate the claim that they were unable to do the repairs at the initial cost they quoted. Section 7(2) of the Act states that if a Party is entitled to compensation for damages, they must take reasonable steps to mitigate or minimize their losses.

I agree that there is no evidence to corroborate the Landlords' claim that they were unable to make the repairs to the hardwood flooring because one of them was injured as they alleged. The Landlords provided a photograph of G.M. changing the locks to the rental unit (with no apparent injury) however there is no evidence as to when the locks were changed. Furthermore, the Landlords admitted that they tried to re-rent the rental unit before the repairs were done and that the floors were repaired approximately 3 months after the tenancy ended. In other words, there is no explanation as to why the Landlords hired another contractor when there was no apparent rush to complete the work before a new tenant moved in. For these reasons, I find that there is insufficient evidence to conclude that the Landlords took reasonable steps to mitigate their damages and I further find that had they mitigated their damages, the cost of the repairs would have been $1,142.40 as indicated in their initial estimate. Consequently, I find that the Landlords are only entitled to be compensated $1,142.40 for repairs to the hardwood floors.

In the absence of any evidence (such as a receipt), I find that there is insufficient evidence to support the Landlords' claim to replace the locks. Furthermore, I find on a balance of probabilities that the Tenants did return all of the keys in their possession to the Landlords within a reasonable period of time following the end of the tenancy. Although the Landlords said they had concerns that the Tenants may have made more keys, those concerns were based on speculation. Consequently, this part of the Landlords' application is dismissed without leave to reapply.

I order pursuant to s. 62(3) and s. 72 of the Act that the Tenants' monetary award of **$1,105.45** be offset from the Landlords' monetary award of **$1,142.40**. Consequently, the Landlords will receive a monetary order for $36.95. As the Parties' would each be entitled to recover their filing fees for their respective applications, I find that they would be offsetting and as a result, I make no award to either party to reimburse their filing fee.

Conclusion

A Monetary Order in the amount of **$36.95** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: January 11, 2011.

Residential Tenancy Branch