Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF
MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit and pet damage deposit, for compensation equal to the amount of those deposits due to the Landlord's alleged failure to return the deposits as required by the Act and to recover the filing fee for this proceeding.

This matter was originally scheduled for hearing on February 9, 2011, however on that day the Landlord said she had not received a copy of the Tenant's evidence package. The Tenant objected to adjourning the hearing so that the Landlord could obtain the evidence package which she said she sent to the Landlord on January 22, 2011 by registered mail and which according to the Canada Post tracking system, the Landlord received a notification card of on January 25, 2011. The Landlord denied receiving a notification card and claimed that from time to time, her mail has been put in an incorrect mail box. I find that there would be more prejudice to the Landlord in proceeding with the hearing without her having a reasonable opportunity to respond to the Tenant's evidence than there would be to the Tenant in adjourning the hearing for a two week period. Consequently, the hearing was adjourned to today's date so that the Landlord could obtain the Tenant's evidence package.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental property and if so, how much?
2. Is the Tenant entitled to the return of a security deposit and pet damage deposit and if so, how much?

Background and Evidence

This tenancy started on April 1, 2008. Rent was $1,850.00 per month. The Tenant paid a security deposit of $925.00 and a pet damage deposit of $925.00 on March 30, 2008. In previous proceedings held on September 3, 2010, the Landlord was granted an

Order of Possession to take effect on September 15, 2010. The Tenant applied for a Review of that Decision however her application was dismissed on October 8, 2010.

The Landlord's Claim:

The Landlord said the Tenant agreed to be responsible for yard maintenance. The Landlord claimed the front and back yards had full, lush lawns and the bushes were also healthy and in good condition at the beginning of the tenancy. The Landlord admitted, however, that her ex-spouse handled all of the tenancy matters (including the move in inspection with the Tenant) until March 2010 when she became the new Landlord. The Landlord said she first noticed that the yard was in poor shape in May 2010 when she attended the rental unit to do some repairs requested by the Tenant. The Landlord said there were dead cedar trees and bushes and the lawns were unkept and the grass dead. The Landlord said hoped that the plants might come back with adequate watering. By the end of the tenancy, the Landlord said that all of the shrubs and the lawn in the front and back yards were dead from apparently never having been watered and from the Tenant allowing her dogs to urinate on them. The Landlord also claimed that everything else was overgrown. The Landlord further claimed that the Tenant admitted to her that she was unable to maintain the property because her job required her to travel out of town for approximately a week at a time. The Landlord provided an invoice/estimate in the amount of $1,527.40 for work she said she had to have done to the yards at the end of the tenancy to remove dead vegetation and do routine yard work.

The Tenant claimed that at the beginning of the tenancy, the grass was already in poor shape and the cedar trees along the fence in the back yard were dead. The Tenant said the Landlord's ex-spouse told her that he would replace the dead cedars but never did. The Tenant claimed that she watered and mowed the lawns during the tenancy as well as re-seeded them. The Tenant said she made arrangements for her children, friends and neighbours to look after the yards when she was away on business (which was never more than 4 – 5 days at a time). The Tenant claims that the lawns were in poor condition due to a lack of top soil. The Tenant also claimed that she brought this issue to the Landlord's attention in a letter dated May 1, 2010. In that letter, the Tenant provided a list of items that she claimed needed repairs and noted that the back yard had virtually no grass and needed re-seeding and that there were also several dead evergreens. The Tenant said the Landlord told her that she would hire a company to deal with these problems but did not do so until after the tenancy ended. The Tenant said the invoice provided by the Landlord shows that trees that were not dead were removed and grass that apparently did not exist was mowed. Consequently, the Tenant argued that the invoice provided by the Landlord was unreliable.

The Landlord also claimed that a carpet in the lower level recreation room in the rental unit was only a few years old and in good condition at the beginning of the tenancy but at the end of the tenancy had it stains and smelled strongly of dog urine and therefore had to be cleaned. The Landlord said that when she visited the rental property in May 2010 she noticed that the Tenant had what she believed were 2 dogs locked in that

room. The Landlord argued that it was the Tenant's practice to leave her dog in this room when she was not home. The Landlord's witness (L.W.) gave evidence that he went to the rental property with the Landlord on or about September 18, 2010 and could smell a strong odour of urine in the recreation room carpet. Consequently, the Landlord sought to recover $78.35 for carpet cleaning expenses.

The Tenant denied that there were any carpet stains or urine odours at the end of the tenancy and provided photographs she said she took of the rental unit on September 15, 2010 in support of that assertion. The Tenant denied leaving her dog in the recreation room when she was gone and said it was always her practice to leave the dog in its kennel in the laundry room. The Tenant's witness also gave evidence that he did not see any stains or smell any odours in the carpet when he attended the rental unit on September 15, 2010.

The Tenant's Claim:

The Tenant says she vacated the rental unit on September 15, 2010 as ordered but the Landlord never contacted her to participate in a move out inspection. Consequently, the Tenant said on September 16, 2010, she posted a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the Landlord's residence which set out a date and time for an inspection as well as the Tenant's telephone number and forwarding address. The Tenant said she waited at the rental property on September 15, 2010 and on September 17, 2010 (the proposed date and time on the Notice) but the Landlord never showed up.

The Landlord claimed that she posted a hand written Notice on the rental unit door on September 17, 2010 advising the Tenant to contact her to arrange an inspection for one of two proposed dates. The Landlord said she also sent the Tenant a text message the same day to let her know the Notice had been posted. The Landlord said she did not discover the copy of the Tenant's Notice posted on her door until September 21, 2010 because she does not use her front door very often.

Both Parties agree that the Tenant gave her forwarding address to the Landlord on September 16, 2010, that the Tenant did not give the Landlord written authorization to keep the security deposit or pet damage deposit and that the Landlord has not returned either of those deposits.

Analysis

The Landlord's Claim:

Section 37 of the Act says that at the end of a 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.”

The Landlord did not complete a move out condition inspection report. The Landlord relied on the corroborating witness statement of her father who claimed that he could also see stains in the carpet and smell the odour of urine at the end of the tenancy. The Tenant and her witness claimed however that the carpet had no stains or odours on September 15, 2010. Although the Tenant argued that her photographs show the carpet to be stain free, I find that this is not the case. Instead, the photographs show some discoloured spots (or stains) on the carpet. Consequently, I find on a balance of probabilities that there probably were urine stains and odours on the carpet in the lower living area and as a result, I find that the Landlord is entitled to recover carpet cleaning expenses of $78.35.

The Landlord claimed that the lawns, bushes and trees in the front and back yards of the rental property were healthy and well maintained at the beginning of the tenancy which the Tenant denied. Where the evidence of the parties differs on this point, I prefer the evidence of the Tenant because there was little to no evidence that the Landlord or her witness saw the yards of the rental property until May of 2010. Consequently, I find that there is insufficient evidence to conclude that the Tenant was responsible for some dead cedar trees and bushes in the back yard as well as the sparse or dead grass. Furthermore, I find that photographs taken on September 15, 2010 show some trees that the Landlord said were dead to be alive. However, having regard to some of the other photographs provided by the Tenant, I find that the yard shows other signs of neglect. For example, a photograph of the front yard shows the grass and weeds to be overgrown and encroaching on the walk way (by almost 6 inches in spots) while in some areas of the back yard (such as between stones forming a walk way) are also overgrown with grass and weeds. Consequently, I find that the Tenant is responsible for a portion on the Landlord’s expenses for yard maintenance to address those issues only which I assess at $100.00.

As the Landlord has been largely unsuccessful on her application, I find that she is not entitled to recover the $50.00 filing fee and it is dismissed without leave to reapply. Consequently, I find that the Landlord has made out a total monetary claim for $178.35.

The Tenant’s Claim:

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 and pet damage deposit or to make an application for dispute resolution to make a claim against them. 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 or pet damage deposit then pursuant to s.

38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not use the security deposit or pet damage deposit to pay for those damages.

I find that the Landlord did not complete a move out inspection report in accordance with the Act and Regulations. Even if I accept that the Landlord's evidence that she reasonably believed that the Tenant was still residing in the rental unit on September 17, 2010, I find that she still did not comply with the procedure set out under the Act for arranging a move out inspection and completing the report. In particular, s. 17(1) of the Regulations to the Act requires a Landlord to offer a tenant a *first opportunity* to schedule a condition inspection by proposing one or more dates or times. I find that the Landlord did this in her handwritten "Notice" that she posted on the rental unit door on September 17, 2010. However, s. 17(2) of the Regulations also requires a Landlord to give a Tenant a *second opportunity,* by proposing a different date and time on a form called a "Final Opportunity to Schedule a Condition Inspection." I find that the Landlord did not give the Tenant this second opportunity to schedule a move out inspection and did not complete a move out inspection report as required by s. 35(5)(a) of the Act. Consequently, I find that the Landlord's right to make a claim against the Tenant's deposits was extinguished under s. 36(2) of the Act.

I find that the Tenant gave the Landlord her forwarding address on September 16, 2010 when she posted it on the front door of the Landlord's residence. Section 90 of the Act says that a document delivered in this way is deemed to be received 3 days later. Consequently, I find that the Landlord received the Tenant's forwarding address in writing on September 19, 2010 but did not return her security deposit and pet damage deposit. I also find that the Landlord did not have the Tenant's written authorization to keep the Tenant's security deposit of $950.00 or pet damage deposit of $950.00. Furthermore, I find that the Landlord did not file her application for dispute resolution to make a claim against the deposits within the 15 day time limit required under s. 38(1) of the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit ($1,850.00) and pet damage deposit ($1,850.00) to the Tenant with accrued interest of $21.00 (on the original amount). As the Tenant has been successful on her application, I also find that she is entitled to recover from the Landlord, the $50.00 filing fee she paid for this hearing. Consequently, I find that the Tenant has made out a total claim for **$3,771.00**.

Although s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the

rights and obligations of the parties. Consequently, I order the Landlord to keep $178.35 from the Tenants' security deposit, pet damage deposit and accrued interest to compensate her for her monetary award. The Tenant will receive a Monetary Order for the balance owing of $3,592.65.

Conclusion

A Monetary Order in the amount of **$3,592.65** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: February 24, 2011.

Residential Tenancy Branch