Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF
MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Tenant applied for the return of a security deposit and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on or about November 17, 2010. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence. The Tenant admitted that he received the Landlord's hearing package.

Issue(s) to be Decided

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

Background and Evidence

This fixed term tenancy started on January 1, 2010 and was to expire on December 31, 2010 however it ended on September 30, 2010 when the Tenant moved out. Rent was $875.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $437.50 at the beginning of the tenancy. The Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy. The Tenant gave the Landlord notice he was ending the tenancy on July 8, 2010 and a new tenant took possession of the rental unit on October 1, 2010.

Landlord's Claim:

In his written submissions, the Landlord claims that the Tenant damaged a washing machine and was responsible for water damage to some kitchen cabinets. In support of his position, the Landlord provided a photographs of the obstruction he said he removed

from the washing machine drain as well as a witness statement from his new tenant dated October 5, 2010 in which she claims the washing machine would not drain and left fibres on her clothes the first time she tried to use it. The Landlord also provided photographs of some kitchen cabinets and an estimate dated January 25, 2011 (by e-mail) which appears to be based on the Landlord's description of the damages rather than based on an on-site inspection. That e-mail also refers to cabinet damages near a dishwasher as well as near the refrigerator.

The Tenant said he advised the Landlord in a telephone conversation on July 12, 2010 (with his girlfriend present) that the refrigerator was leaking and the Landlord said he would deal with it immediately but never did. The Tenant said he did his best to clean up any leaking water from the refrigerator and he also discussed the minor damage it caused to the cabinet with the Landlord during an outgoing inspection on September 30, 2010. The Tenant said that at that time the Landlord advised him that there were no damages for which he would be held responsible but that the Landlord wanted to keep his security deposit to compensate him for having to locate a new tenant. The Tenant said it wasn't until October 30, 2010 that the Landlord advised him in writing that he was holding the Tenant responsible for the water damage to the kitchen cabinet and a washing machine repair. The Tenant said he was not aware of any damages to the cabinet by the dishwasher.

The Tenant denied that he was responsible for any damages to the washing machine and claimed that in was in good operating condition at the end of the tenancy. The Tenant also claimed that he advised the Landlord on July 12, 2010 about the refrigerator leaking but the Landlord took no steps to repair it. The Tenant said the water damage to the kitchen cabinet was minor in nature.

Tenant's Claim:

The Tenant said he moved out on September 30, 2010 and the Landlord also advised him at that time that he would be keeping $337.50 of the security deposit to pay for his costs of having to re-lease the rental unit. The Tenant said he did not agree with this and on October 2, 2010 sent the Landlord his forwarding address in writing by registered mail requesting the balance of the security deposit. The Tenant said the Landlord has not returned the balance of his security deposit and he did not give the Landlord written authorization to keep it.

Analysis

Landlord's Claim:

Section 32 of the Act says that a Landlord is responsible for maintaining and repairing a rental property and a Tenant is responsible for damages caused by his act or neglect

but is not responsible 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 argued that due to an act or the neglect of the Tenant water leaked from the refrigerator and caused damages to a kitchen cabinet. The Landlord also argued that due to an act or neglect of the Tenant, repairs to the washing machine were required to remove debris blocking the drain. The Tenant denied that he did anything to damage the washing machine and argued that any damage to the kitchen cabinet was the result of the Landlord's failure to repair the refrigerator which he brought to the Landlord's attention in mid-July 2010.

The documentary evidence provided by the Landlord in support of his application is hearsay evidence and unreliable. The Landlord did not attend the hearing to give any corroborating oral evidence. The Tenant gave contradictory evidence that the washing machine was not damaged at the end of the tenancy and that the only damage to the kitchen cabinets at the end of the tenancy was due to a leak from the refrigerator which the Landlord failed to repair. Given the contradictory evidence of the Parties and in the absence of any reliable, corroborating evidence from the Landlord (who bears the onus of proof on his application), I find that there is insufficient evidence to support the Landlord's claim and it is dismissed without leave to reapply.

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 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.

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 deduct those damages from the security deposit.

Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Consequently, I find that the Landlord received the Tenant's forwarding address 5 days after it was mailed or on October 7, 2010. As a result, the Landlord had until October 22, 2010 to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit. I find that the Landlord did not return the Tenant's security deposit of $437.50,

did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. I further find that the Landlord's right to make a claim against the deposit was extinguished under s. 24(2) and s. 36(2) of the Act because he did not complete a move in or a move out condition inspection report. 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 ($875.00) to the Tenant [less the $100.00 that has already been returned.]

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit, he stated at the hearing that it was not his intention to waive reliance on s. 38(6) of the Act.

As the Tenant has been successful on his application, I also find pursuant to s. 72 of the Act that he is entitled to recover the $50.00 filing fee for this proceeding from the Landlord. Consequently, I find that the Tenant has made out a total monetary claim for $825.00.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **$825.00** 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 22, 2011.

Residential Tenancy Branch