Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF
MNDC, MNSD, O

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit and pet damage deposit as well as reimbursement for a rent overpayment and a repair expense.

This matter was originally scheduled for an oral hearing by teleconference on January 18, 2011 however the Landlords filed a substantial amount of evidence and did not serve it on the Tenants within the time limits required under the RTB Rules of Procedure. Consequently, this matter was reconvened to today's date with instructions to the Landlords to re-serve the Tenants with the same photographs and written descriptions on each that had been submitted as evidence to the Residential Tenancy Branch. The Tenants were also given an opportunity to respond to the Landlords' late filed evidence. Both Parties were advised during the hearing on January 18, 2011 of the new date and time of the reconvened oral hearing by teleconference and this information was confirmed in writing by sending both Parties Notices of the Reconvened Hearing in the mail which set out the new date, time and dial in code for the conference call. The Landlords submitted additional, new evidence (although instructed not to do so) in advance of the reconvened hearing and also indicated in their written submissions that they wanted to add a further claim for a loss of rental income which would bring their claim over the $5,000.00 initially sought. The Landlords did not amend their application and did not attend the Reconvened Hearing.

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 pet damage deposit?
3. Are the Tenants entitled to recover an overpayment of rent?

Background and Evidence

This tenancy started on June 1, 2008 and ended on December 4, 2010 when the Tenants moved out. Rent was $1,400.00 per month. The Tenants paid a security deposit of $700.00 on April 30, 2008 and a pet deposit of $700.00 sometime thereafter. The Parties completed a move in condition inspection report on May 28, 2008 however it is not signed by the Landlords. The Parties also completed a move out condition inspection report on December 11, 2010.

The Tenants said they gave their forwarding address in writing to the Landlord, Y.W., on December 4, 2010 by e-mail. The Tenants said that Y.W. was away at the time so an agent of hers responded to their e-mail on December 5, 2010 asking to arrange a time for a move out inspection (with the Tenant's e-mail of December 4, 2010 attached). The Tenants said the Landlords have not returned their security deposit or pet damage deposit and they did not give the Landlords written authorization to keep those deposits.

The Tenants also said that the Landlords cashed their post-dated cheque for December 2010 when they were not entitled to it. The Tenants provided a letter from the Landlord, Y.W., as evidence that they gave her verbal notice on November 21, 2010 that they were ending the tenancy effective November 30, 2010. The Tenants said the Landlord advised them that they would be responsible for December 2010 rent unless they could find another tenant for that month. The Tenants said they found a new tenant who was willing to take possession of the rental unit on December 11, 2010 and who agreed to pay the full amount of rent for that month. The Tenants said they obtained the consent of Y.W. to the new tenant and for them to move out on December 4, 2010 and gave her written Notice on November 29, 2010 that they were ending the tenancy on December 4, 2010. Consequently, the Tenants argued that there was no evidence that the Landlords suffered a loss of rental income for December 2010 and they were not entitled to keep the Tenants' rent payment for that month.

The Tenants also sought to be reimbursed $112.00 representing the cost of a repair to a dishwasher. The Tenants said that 2 days after they noticed the dishwasher was not draining, they contacted Y.W. and asked her to have it repaired. The Tenants said the Landlord later told them that the problem was that food had clogged the drain and that in the circumstances they were responsible for the cost of the repair. The Tenants argued that they used the dishwasher in a normal fashion and that any repair costs should be borne by the Landlords because they are responsible for maintaining the appliances.

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 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.

As a general rule, electronic messaging (such as e-mail and text messaging) does not satisfy the requirement of writing as required by s. 38(1) of the Act because it can be difficult to determine if the intended recipient received it. However in this case, the Tenants claimed that the Landlords' agent acknowledged receiving their forwarding address by attaching it to his responding e-mail dated December 5, 2010. Based on the evidence of the Tenants, I find that the Landlords received the Tenants' forwarding address in writing on December 4, 2010.

I also find that the tenancy ended on December 4, 2010. The Landlords filed their application for dispute resolution to make a claim against the security deposit and pet damage deposit on December 23, 2010 which exceeded the 15 days granted under s. 38(1) of the Act. Furthermore, I find that the Landlords' right to make a claim against the deposits was extinguished under s. 24 of the Act. In particular, s. 23(5) of the Act says that both Parties must sign the move in condition inspection report. Section 18(1) of the Regulations to the Act also says that a Landlord must give a tenant a copy of a *signed* condition inspection report. I find that the Landlords did not sign the move in condition inspection report and therefore did not comply with s. 23 of the Act or the Regulations. As a result, I find that the Landlords' right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished.

Consequently, I find that the Landlords did not return the Tenants' security deposit or pet damage deposit , did not have the Tenants' written authorization to keep the security deposit of $700.00 and pet damage deposit of $700.00 and that their right to make a claim against the deposits was extinguished under s. 24 of the Act. As a result, I find pursuant to s. 38(6) of the Act, that the Landlords must return double the amount of the Tenants' security deposit ($1,400.00) and pet damage deposit ($1,400.00) with accrued interest of $15.78 (on the original amounts).

I also find based on the evidence of the Tenants and in the absence of any contradictory evidence from the Landlords that the Tenants are entitled to recover an overpayment of rent for December 2010 in the amount of $1,400.00 and for a dishwasher repair in the amount of $112.00. As the Tenants have been successful in this matter, I also find that they are entitled to recover from the Landlords the $50.00 filing fee for this proceeding.

While the Landlords provided some documentary evidence, I find that it is hearsay and unreliable and in the absence of any other evidence from the Landlords, I find that there is insufficient evidence to support their application for cleaning and repair expenses and their application is dismissed without leave to reapply.

Conclusion

The Landlords' application is dismissed without leave to reapply. A Monetary Order in the amount of **$4,377.78** has been issued to the Tenants 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: February 07, 2011.

Residential Tenancy Branch