Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF
MNDC, MNSD, RR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act, for a rent reduction and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?
3. Is the Tenant entitled to the return of her security deposit and if so, how much?
4. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started on March 27, 2009 and ended on October 15, 2010 when the Tenant moved out. The Landlord said rent was $2,200.00 per month but that the Tenant could deduct $75.00 from the rent each month for cutting the grass on the rental property. The Tenant said rent was $2,125.00 per month. The Tenant paid a security deposit of $1,200.00 at the beginning of the tenancy.

The Landlord's Claim:

The Parties completed a move in condition inspection report on March 27, 2009. The Parties participated in move out condition inspection on October 25, 2010. The Parties each filled out information on a move out Condition Inspection Report. The Tenant said the Landlord would not give her an opportunity to review the information on his Report, wanted her to sign a document releasing her security deposit to him and demanded that she leave the rental property when she would not. The Landlord said the Tenant was becoming unreasonable when he tried to point out deficiencies so he did not give her a copy of his report. The Tenant provided a copy of the move out Condition Inspection

Report she completed, however the Landlord did not provide a copy of the Report he completed. The Landlord said he took photographs of the condition of the rental property on October 16, 2010 and on October 25, 2010 when the Tenant was not present.

The Parties agree that the Tenant put a stop payment on her rent cheque for October 2010 and that rent for that month remains unpaid. The Landlord said he is seeking the full amount of rent from the Tenant (without the $75.00 reduction) because he argued the Tenant did not mow the lawn that month or alternatively, did a poor job of it. In particular, the Landlord claimed the grass around the patio stones and stairs was 8 – 10 inches tall in places at the end of the tenancy.

The Landlord also sought $1,300.00 for compensation for repair expenses due to damages he said the Tenant caused. In particular, the Landlord said the Tenant painted a wall in one bedroom a dark red colour, left white primer on a wall in another bedroom and on a wall (and built-in storage unit) in the recreation room, and painted the kitchen a bright emerald green. The Landlord said he told the Tenant to get his approval if she was going to use colours other than neutral ones. The Landlord admitted that he saw the colours of the paint applied by the Tenant when she was painting and took no issue with them because he said he believed the Tenant would change the colours at the end of the tenancy. The Landlord also claimed that the Tenant put a dent in the bathroom wall, damaged the corner of another wall, scraped 3 doors and dented 6 door knobs.

The Tenant argued that the Landlord approved the colours she painted the rooms. The Tenant said the rental unit had not been painted since 2002 and the colours at the beginning of the tenancy were a bright blue and green. The Tenant also said that the Landlord saw the walls when she was painting and said the colours looked nice. The Tenant said she asked the Landlord if he wanted her to repaint the walls at the end of the tenancy but the Landlord would not respond. The Tenant said she also plastered over the damages to the corner of a wall and was going to come back to finish it but the Landlord would not let her.

The Landlord admitted that he did not make any repairs to the rental unit or do any of the yard maintenance because he decided to sell the property to a builder who would be demolishing the rental unit. The Landlord said he did not have the time to repair the damages caused by the Tenant and argued that as a result, he suffered losses when he sold the property to a builder in January 2011. In support of his position, the Landlord provided a copy of an e-mail dated February 22, 2011 from his realtor that stated,

> "having evaluated the property in March 2009 and then again when it was vacant in November 2010 it was apparent that the property had lost a considerable amount of value, poor repainting, damage to walls, and poor general upkeep since my last viewing. Given the current condition of the property the best strategy was to sell to a builder."

The Landlord further sought $250.00 for cleaning expenses. The Landlord said he had to wash walls and floors, wipe out kitchen drawers, wipe off some walls, remove dust from the fireplace screen and clean up the yard. The Tenant argued that the rental unit was reasonably clean at the end of the tenancy and relied on witness evidence and photographs that she said she took of it on October 10, 2010. The Tenant said she washed all the walls and cleaned all the floors but admitted that she may have missed the fireplace screen. The Tenant said she never used a hot tub that the Landlord claimed she had left water in. The Tenant also said she mowed the grass but admitted that she did not trim the edges.

The Tenant's Claim:

The Tenant said she gave her forwarding address in writing in a letter sent to the Landlord on October 4, 2010 via regular mail. The Tenant said she did not give the Landlord written authorization to keep the security deposit and the Landlord has not returned it.

The Tenant also sought compensation equivalent to one month's rent as she claimed she did not have a working stove from August 21, 2010 until approximately September 4, 2010 and that the refrigerator also broke down on August 23, and again from September 19 – October 7, 2010. The Tenant said she advised the Landlord about the stove not working properly on August 23, 2010 when he came to the rental unit (because the refrigerator was being repaired). The Tenant said the Landlord tried to fix the stove a few days later but was unable to do so and left her without a working stove until he replaced it shortly after he returned from a vacation on September 4, 2010.

The Landlord claimed that the Tenant did not advise him about problems with the appliances right away. In particular, the Landlord said he discovered on August 23rd that the Tenant was under the misapprehension that she was responsible for repairs because she told him that she was upset about the cost of repairs and wanted him to pay for it. When he arrived at the rental unit shortly thereafter, the Landlord said the Tenant also told him that the oven had not been working for the past 6 months. The Landlord said he returned 2 days later to fix the oven and while he was unable to do so, he believed the stove top still worked because the Tenant said nothing about it.

The Landlord said the Tenant contacted him again in September to tell him that the refrigerator had broken again but she wanted to be there when the repair person came. The Landlord said he contacted the repair person who said he would contact the Tenant to set up a time. The Landlord said he contacted the Tenant a couple of days later but she said she had not heard from the repair person. The Landlord said he then contacted the repair person who claimed he had left messages for the Tenant but she had not returned his calls. Consequently, the Landlord said he asked the Tenant to arrange a time with the repair person and when he did not hear back from the Tenant for some time, he said he thought the refrigerator had been fixed. The Landlord said that when he contacted the Tenant however, he discovered that it had not been fixed.

As a result, the Landlord told the Tenant that he would hire another person to make the repair and got her verbal authorization to enter the rental unit to do so while she was not there. The Landlord said he went to the rental unit the following day to make the repair and the Tenant was extremely upset and denied giving him permission to enter the rental unit. Consequently, the Landlord said he recommended that the Tenant start communicating with him by e-mail.

The Tenant said she was becoming frustrated with the appliances constantly breaking down and with the increased costs to her of losing spoiled food and having to eat out with her children. The Tenant said she also believed that the issue with the appliances was part of a bigger safety issue with the wiring in the rental unit because she could not plug 2 things into any given outlet without the breaker tripping. The Tenant said she was also frustrated with the Landlord's and his spouse's reactions when she reported problems with the appliances and felt they were holding her responsible for them. Consequently, the Tenant said she advised the Landlord verbally in September 2010 that she was looking for another residence. The Tenant admitted that she did not tell the Landlord the real reasons she was moving until October 4, 2010 when she gave him written notice that she was ending the tenancy early because she believed he was in breach of a material term of the tenancy agreement.

The Tenant also claimed that her use and enjoyment of the rental unit was diminished because the Landlord failed or refused to address her concerns about mould. The Tenant said there was mould under the linoleum flooring in the downstairs bathroom, laundry room and hallway that was visible as a dark stain however the Landlord initially told her it was part of the pattern. The Tenant said that as the edge of flooring began to lift, the mould became more visible. The Tenant also said that she contacted a company in May or June of 2009 to do a free inspection and they advised her that the mould was the result of water damage under the rental unit. The Tenant said that she advised the Landlord about the results of the initial inspection and asked the Landlord to follow up with a full inspection but he did not do so. The Tenant said she also reminded the Landlord about this periodically throughout the tenancy and told him in August 2010 that she believed the mould was making her sick but he still took no action. The Tenant claimed that she had an allergic reaction to the mould and as a result suffered breathing difficulties for which she had to be prescribed inhalers. The Tenant said her breathing difficulties went away after she moved out of the rental unit.

The Landlord claimed that he told the Tenant at the beginning of the tenancy that if she found mould to let him know and he would take care of it. The Landlord said the Tenant never told him that she had had an inspection done, never gave him any evidence that there was mould and he denied that there was any mould.

Analysis

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 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 offset those damages from the security deposit.

Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. As a result, the Landlord is deemed to have received the Tenant's forwarding address in writing on October 12, 2010 (given that October 9-11, 2010 fell on non-business or mail delivery days). I also find that the tenancy ended on October 15, 2010. Consequently, the Landlord had until October 30, 2010 *at the latest* to either return the Tenant's security deposit or to file an application for dispute resolution to make a claim against the security deposit. I find that the Landlord did not return the Tenant's security deposit and did not have the Tenant's written authorization to keep the security deposit. However, the Landlord filed an application for dispute resolution on October 28, 2010, which ~~it~~ was made ~~after~~ within the 15 days (following the end of the tenancy) granted under s. 38(1) of the Act. As a result, I find that ~~pursuant to s. 38(6) of the Act,~~ the Landlord is not responsible for returning ~~must return~~ double the amount of the Tenant's security deposit but rather only the original amount ($1,200.00). ~~security deposit or $2,400.00.~~

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one full, calendar month's notice in writing that they are ending the tenancy. The only exception to this rule, it s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period ***after the tenant has given written notice of the failure,*** the tenant may end the tenancy without further notice to the Landlord. Although the Tenant said she decided to end the tenancy in September 2010 due to the Landlord's failure to make repairs, I find that the Tenant did not give the Landlord written notice of this until October 4, 2010 (in a letter sent by mail) at which time she also advised him that she was ending the tenancy on October 15, 2010. Consequently, I find that the Tenant did not give the Landlord a reasonable opportunity (or any opportunity for that matter) to rectify any breaches of alleged material terms raised by her in that letter. As a result, I find that the earliest the Tenant's Notice dated October 4, 2010 could have taken effect would have been November 30, 2010. Consequently, I find that the Tenant is responsible for rent for October 2010.

Section 27(2) of the Act says (in part) that if a Landlord terminates or restricts a service or facility, the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction. Section 32 of the Act says that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

The Tenant claimed that due to the Landlord's failure to make repairs, she lost the use of her stove and refrigerator for an unreasonable amount of time and had to live with mould that made her ill. Having regard to the photographic and witness evidence provided by the Tenant, I find that there probably was mould under parts of the linoleum flooring in the basement of the rental unit. However, the Tenant provided no evidence that this mould was toxic or otherwise rendered the rental unit unfit for occupation. The Tenant also provided no medical evidence to support her allegation that the mould caused or contributed to her breathing difficulties or made her sick. Furthermore, given the contradictory evidence of the Parties, I find that there is insufficient evidence to conclude that the Tenant advised the Landlord about the results of the inspection for mould until a week prior to the end of the tenancy.

I find that appliances were included in the Tenant's rent. The Tenant argued that the Landlord did not make repairs in a timely manner and the Landlord argued that the Tenant was responsible for the delay in repairing the appliances. On this issue, the Tenant has the burden of proof and must show that the Landlord was aware of the need for repairs but did not complete them within a reasonable time. I accept the evidence of the Landlord that prior to August 23, 2010 the Tenant probably did not report the need for repairs to him because she was under a misapprehension that she was responsible for repairs. The Tenant did not deny this and it is apparent in that the Tenant did not report problems with the refrigerator until 2 days after it stopped working and it appears the oven was also not working for a period of time before that as well.

I find that the Landlord acted in a timely manner in having the refrigerator repaired on August 23, 2010. I also find that the Landlord acted in a timely manner when the Tenant reported further problems with the refrigerator on September 19, 2010. The Landlord argued that the Tenant was responsible for the delay in having the refrigerator repaired on this occasion because she did not return his calls to let him know if she had heard from the repair person and should have contacted him to let him know if she was having problems arranging a time. The Landlord said that when he finally found out from the Tenant that she had been unable to make arrangements to have the repairs done, he arranged to have someone else make the repair the following day. The Tenant insisted that she did return the Landlord's telephone calls but argued that they did not leave messages or complete phone numbers on some occasions. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Tenant, I find that there is insufficient evidence to

conclude that the Landlord breached his duty under s. 32 of the Act to repair the refrigerator as soon as was reasonably possible.

However, I also find that the Landlord knew the stove was not working at all on August 25, 2010 after he failed to repair it. I accept the evidence of the Tenant that when the Landlord left that day, he unplugged the stove because it would not stop beeping. Consequently, I find that the Landlord was aware that the stove was not working on August 25, 2010 and left the Tenant without the use of it until he returned from vacation on September 4, 2010. As a result, I find that the Tenant is entitled to a rent reduction of $150.00 for the loss of use of the stove for a period of approximately 2 weeks and that she has made out a total monetary claim for $1,350.00.

The Landlord's Claim:

The Parties disagreed as to whether rent was $2,200.00 with a $75.00 reduction for yard work or whether rent was $2,125.00 with the Tenant to be responsible for yard work. Neither party provided a copy of the tenancy agreement as evidence at the hearing. Given that a tenant of a single family dwelling is responsible for routine yard maintenance such as mowing lawns and weeding garden beds under s. 32 of the Act (see RTB Policy Guideline #1), I find that there was no need to reduce the rent and therefore I conclude that rent was $2,125.00 per month. The Parties agree that the Tenant did not pay rent for October 2010 and as a result, I find that the Landlord is entitled to recover unpaid rent and a loss of rental income for October 2010 in the amount of $2,125.00.

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. The Landlord claimed that the Tenant caused damages and sought compensation for a number of repairs but admitted that he did not actually make any of the repairs because the rental unit was subsequently demolished. The Landlord also claimed that he had to clean the rental unit but I find this unlikely given that the Landlord admitted that he decided shortly after dealing with the Tenant that he did not want to re-rent the rental unit and decided to sell the rental property to a builder.

The Landlord also argued however that he suffered losses because as a result of the damages caused by the Tenant, he had to sell the property to a builder at a reduced price. The difficulty with this argument is that the Landlord provided no evidence that he incurred a financial loss or that if he did it was caused in whole or in part due to damages allegedly caused by the Tenant. Although the Landlord relied on the e-mail of his realtor that "the property had lost considerable value" since the beginning of the tenancy due to damages attributed to the Tenant, the writer of that e-mail did not attend the hearing and could not be cross-examined on his statement or on his qualifications to make that statement. As a result, I find that the e-mail of the Landlord's realtor is hearsay and unreliable and I give it no weight.

Furthermore, I find it unreasonable that the Landlord would incur what he claimed were significant financial losses because he decided to sell the rental unit as a demolition property rather than to repair the few damages allegedly caused by the Tenant. Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to minimize their losses. Consequently, if the Landlord did, in fact, sell the rental property as a "tear down" because he failed or refused to make a few repairs attributed to the Tenant, then I find that the Landlord failed to mitigate his damages and I would also dismiss his claim on those grounds. In summary, I find that there is insufficient evidence that the Landlord incurred losses due to a breach of the Act or tenancy agreement by the Tenant and as a result, this part of the Landlord's claim is dismissed without leave to reapply.

As the Parties' both sought to recover their respective filings fees for this proceeding, I find that they would cancel each other out and as a result, that part of their respective applications are dismissed without leave to reapply. I order pursuant to s. 62(3) and s. 72 of the Act that the Parties' respective monetary claims be offset with the result that the Landlord will receive a Monetary Order for the balance owing to him of $775.00.

Conclusion

A Monetary Order in the amount of **$775.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: March 14, 2011.

Residential Tenancy Branch

NOTE: THIS AMENDED DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON MARCH 14, 2011.