Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RR, (FF)

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit, for compensation for damage or loss under the Act or tenancy agreement and for an Order that the Landlords comply with the Act. The Tenants also applied for a rent reduction, however, as the tenancy has ended, I find that this remedy is not available to them (but is recoverable as compensation) and as a result, it is dismissed without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on July 1, 2006 and ended on September 1, 2010 when the Tenants moved out. Rent was $1,800.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $900.00 at the beginning of the tenancy.

The rental unit is one of 3 suites in the rental property. The Tenants are two of 4 tenants who occupied the rental unit at the beginning of the tenancy. The other 2 tenants who signed the tenancy agreement moved out prior to the end of the tenancy and were replaced by 2 other "unauthorized" occupants who did not sign the tenancy agreement. The Tenants said that one of their former co-tenants, M.C., was the first to occupy the rental unit and she claimed in her written statement that the Landlords did not conduct a move in condition inspection. The Tenants also claim that the Landlords did not do a move in inspection with them. The Landlords claim that they did do a move in inspection with M.C. but said they could not locate a copy of the condition inspection report. The Parties agree that a move out inspection was done on September 1, 2010. Prior to that time, the Landlords gave the Tenants a document called "Move out Checklist" which set out items that the Landlords wanted cleaned or repaired at the end of the tenancy.

The Parties agree that the Tenants gave the Landlords their forwarding address by e-mail approximately a week prior to moving out and on September 20, 2010, the Landlords sent the Tenants $184.44 of their security deposit to that address (by mail). The Parties also agree that the Landlords deducted $715.56 from the security deposit without the Tenants' written authorization. In particular, the Landlords deducted $190.40 for repainting the porch area and front door, $431.20 for a bed bug treatment, $67.11 for hydro and $26.85 for gas. The Tenants said they are willing to reimburse the Landlords for hydro and gas and one-half of the bed bug treatment.

The Parties agree that in February of 2010, the Landlords gave the Tenants a 2 Month Notice to end the tenancy as of April 1, 2010 because they wanted to renovate the rental unit and sell it. The Tenants, who are students, said they told the Landlords that as they did not receive 2 clear month's notice, they would not vacate by April 1, 2010 so the Landlords withdrew that Notice. The Landlords said at this time they discovered there were two unauthorized occupants in the rental unit and threatened to end the tenancy for that reason. The Tenants said they did not want to have to move so they agreed to stay while the Landlords made renovations and showed the rental unit to prospective purchasers.

The Tenants said the Landlords initially advised them that they would only be making renovations to the exterior of the rental unit (power washing and painting) but then decided to renovate the interior (by painting). The Tenants said that the Landlords harassed them into moving their furniture and other belongings from the front deck and inside the rental unit so it could be painted but refused to compensate them for their labour. The Tenants also said their right to quiet enjoyment was also interfered with by having contractors and realtors attending the property. The Tenants argued that the Landlords did the renovations without their consent and also refused to compensate them for the inconvenience of dealing with the renovations and showings. The Tenants also claim that they lost laundry facilities during this time as well as the loss of use of the living room for 4 days and the kitchen and a bathroom for 2 days while they were being painted. For all of these reasons, the Tenants sought compensation equal to one month's rent.

The Landlords said the Tenants were always given 24 hours notice when work would be done on the property or if contractors were coming to inspect for other reasons. The Landlords said the power washing and painting of the exterior of the rental property began in mid-March 2010 and took a total of two weeks to complete. During this time, the Landlords said they offered the Tenants a storage area in the back of the property to store their belongings. The Landlords said at this time they also renovated the laundry area which took at total of 5 days. The Landlords said they gave the Tenants advance notice that the laundry facilities would be unavailable and recommended that they do their laundry in advance. The Landlords also said that showings of the rental unit started after the renovations were completed and continued to the end of May. The Landlords said the Tenants were always given advance notice of showings and argued that their realtor quit at the end of May because the Tenants were "sabotaging" showings by doing such things as leaving underwear lying out and the suite messy.

Consequently, the Landlords argued that the Tenants agreed to the renovations and showings and that any interruption was minimal.

On August 13, 2010, the Tenant (S.S.) advised the Landlords by e-mail that there was a possibility that she may have brought bedbugs into the rental unit but she was not sure but she thought it would be a good idea to treat the rental unit. The Tenants argued that because there was no evidence of a bedbug infestation and because the Landlords were responsible to make sure the rental unit was habitable for new tenants, the Tenants should only be responsible for one-half of that expense. The Landlords argued that the Tenants were responsible for a possible bedbug infestation and were the ones who recommended that the rental unit be treated and therefore should bear the whole cost.

The Tenants also sought to recover $33.60 for a replacement piece of glass for the refrigerator. The Tenants claim that during the tenancy, there was a small crack in a piece of glass shelving in the refrigerator which grew over time. The Tenants said the Landlords told them at the end of the tenancy that they had to replace it which they did. The Tenants now argue that they should not have been responsible for the cost of replacing the glass. The Landlords claimed that they had to replace the glass in the refrigerator on two previous occasions during the tenancy (which the Tenants denied). The Landlords argued that as a result, they concluded that the glass broke a third time due to the Tenants' carelessness and therefore they were responsible for replacing it.

The Tenants said the Landlords also told them at the end of a tenancy that they had to repaint a room that they had painted a dark colour during the tenancy. The Tenants said the Landlords gave them consent to paint the room this colour but they were unsure if the Landlords told them that they would have to restore it to its original colour at the end of the tenancy. In any event, the Tenants argued that they were not responsible for this expense (as well as to caulk holes in the bedrooms and living room) and they sought to be reimbursed $90.72 for this expense. The Landlords said they told the Tenants they only had to repaint the room with the dark colour if the new tenant wanted it restored to its original color.

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.

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 Tenants applied to recover only the original amount of the security deposit, I find that they did not specifically waive reliance on s. 38(6) of the Act.

Section 24(2) of the Act says that if a Landlord does not complete a move in 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 she may not deduct those expenses from the security deposit but must return it to the Tenant.

I find that the Landlords received the Tenants' forwarding address in writing on August 25, 2010 and that the tenancy ended on September 1, 2010 but the Landlords have only returned $184.44 of the Tenants' $900.00 security deposit. I also find that the Landlords did not have the Tenants' written authorization to keep the balance of their security deposit and did not make an application for dispute resolution to make a claim against it for unpaid utilities or repair expenses. As a result, I find that pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the security deposit ($1,800.00) to the Tenants with accrued interest of $29.57 (on the original amount) less the amount returned for a total of $1,645.13.

The Tenants also sought compensation equal to one month's rent as they claimed that the Landlords harassed into agreeing to their making renovations and showing the rental unit. The Tenants also claimed that during this time they were inconvenienced by the renovations and showings and were not compensated for the loss of the use of rooms and laundry facilities or for their labour in moving their furnishings around.

I find that there are no grounds for this part of the Tenants' claim. In particular, in the Supreme Court of British Columbia decision of *Whiffin v. Glass & Glass (July 26, 1996) Vancouver Registry No. F882525 (BCSC),* the Court held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. In other words, as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

I find that the Tenants' agreement to the Landlords making renovations while they occupied the suite was not given as a result of coercion or harassment but rather made on the understanding that it was a benefit to the Tenants that the Landlords would not end the tenancy (for an alleged breach of the tenancy agreement) provided that the Tenants accommodated renovations and showings. I find that the renovations were not lengthy as the Tenants claimed and interfered with their use of the rental unit (or

laundry facilities) for 5 days at the most. I also find that the Landlords took reasonable steps to give the Tenants advance notice of when work would be done or contractors attending. I further find that the Tenants were given reasonable notice of realtor showings and note that they entered into a written agreement whereby the Tenants reserved the right to refuse showings in certain circumstances.

I also find that there are no grounds for the Tenants to recover compensation for their labour to move their furnishings while the rental unit was being painted. As a practical matter, the Tenants' belongings had to be moved so they were not damaged during painting. There is no authority under the Act or the tenancy agreement for the Landlords to compensate the Tenants for safeguarding their own possessions. Consequently, this part of the Tenants' application is dismissed without leave to reapply.

The Tenants also sought to recover the cost of painting and repair expenses to change the colour of a room they painted and to caulk and paint over holes in two other rooms. RTB Policy Guideline #1 says a Landlord is responsible for painting the interior of the rental unit at reasonable intervals however a tenant is responsible for returning the property to its original condition unless the change is expressly consented to by the Landlords. The Tenants admitted that they were unsure if they were told by the Landlords at the beginning of the tenancy that they would have to restore the dark paint to its original colour. In the absence of any evidence from the Tenants that the Landlords agreed that they *did not* have to restore the room to its original colour, I find that they are responsible for that cost and are not entitled to recover it (or the expense to repair nail holes) from the Landlords and this part of their application is dismissed without leave to reapply.

The Tenants also sought to recover expenses for a broken piece of glass in the refrigerator. The Tenants claim that they were not responsible for the glass breaking because it may have been cracked at the beginning of the tenancy and just got worse toward the end of the tenancy. The Landlords claimed that this piece of glass was replaced on 2 prior occasions during the tenancy which the Tenants disputed. Although there is little reliable evidence of the condition of the rental unit at the beginning of the tenancy, I find it unlikely that it would take 4 years for a piece of glass to split and conclude that it was broken during the tenancy. I also find it unlikely that the glass would have split as a result of "reasonable wear and tear" and conclude instead that it likely cracked as a result of either something hot being placed on it or being struck. Consequently, I find that there is insufficient evidence to support this part of the Tenants' claim and it is dismissed without leave to reapply.

As the Tenants have been successful on at least one part of their application, I find that they are entitled pursuant to s. 72(1) of the Act to recover the $50.00 filing fee they paid for this proceeding. Consequently, I find that the Tenants have made out a total claim for $1,695.13. The Tenants consented at the hearing to a deduction from their award of $67.11 for hydro and $26.85 for gas and therefore I find that they are entitled to a Monetary Order for the balance of $1,601.17.

While the Tenants did agree at the hearing to reimburse the Landlords ½ of their bedbug treatment expense, I find that there was no agreement between the Parties that the Tenants' liability should be limited to that amount. Consequently, the Landlords will have to make a separate application for dispute resolution if they wish to recover that expense or the expense to repaint the front door and porch.

Conclusion

The Tenants' application is granted in part. A Monetary Order in the amount of **$1,601.17** 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: June 02, 2011.

Residential Tenancy Branch