Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application made by the Tenants for monetary orders for compensation under the Act or Tenancy Agreement, for return of double the security deposit paid and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has there been a breach of the Act or tenancy agreement by the Landlords entitling the Tenants to recover double the security deposit?

Has there been a breach of the Act or tenancy agreement by the Landlords entitling the Tenants to other monetary compensation?

Background and Evidence

The parties entered into a written, standard tenancy agreement on March 6, 2010. The tenancy began on April 1, 2010, and had an initial term of three months, then continued on a month to month basis. The Tenants paid a rent of $1,270.00 per month and paid a security deposit of $625.00 on or about April 1, 2010. The Tenants paid the Landlords a pet damage deposit, however, both parties agree the pet damage deposit had been returned to the Tenants prior to the end of the tenancy.

On December 30, 2010, the Tenants wrote to the Landlords giving them notice to end the tenancy at the end of January 2011, as the Tenants believed they were moving to another province. The female Tenant testified she sent this by email to the Landlords, however, the Landlords have submitted a copy left in their mailbox, which shows the signatures of the Tenants. I note most of the correspondence between the parties occurred via email, although this notice was signed before physical delivery to the Landlords.

In or about the middle of January 2011, the Tenants wrote to the Landlords and asked if they could rescind their notice to end tenancy.

The Landlords agreed and the parties entered into a new tenancy agreement on January 25, 2011. The new tenancy agreement incorporated the terms and conditions of the first agreement, and was for a fixed period of time ending March 31, 2011. Both parties initialed the clause in the tenancy agreement indicating that at the end of the fixed term, March 31, 2011, the Tenants must move out of the rental unit.

In February and March of 2011, the Tenants wrote to the Landlords asking if they had intended on giving the Tenants a notice to vacate for the Landlords' use, as the Landlords wanted to occupy the rental unit or were planning on selling it.

The Tenants felt that they had missed an opportunity to get one month of free rent, such as occurs when a tenancy ends for the landlord's use of the rental unit, pursuant to section 49 of the Act. The Landlords replied to the Tenants that they had both entered into the fixed term agreement and were not willing to make any other financial accommodations for the Tenants, as the Landlords had already made plans for the rental unit.

During the course of the hearing the Tenants alleged the new tenancy agreement was signed under duress.

The Landlords wrote to the Tenants on March 19, 2011, asking if they had any times in mind for the outgoing condition inspection report and to deal with the deposit. The Tenants replied they did not have the time yet.

The Landlords sent another email on March 20, 2011, setting out two different times and dates for the outgoing condition inspection report, referring to the Act as this being their responsibility. The Landlords also indicated they could accommodate an earlier or alternate time for the inspection. The Tenants replied that they, "… would prefer it if you did not make reference to the RTA rules. After having sidestepped the guidelines in respect of the the free months rent, referencing them now is inappropriate." [Reproduced as written.]

The Landlords replied with an alternate time and date for the condition inspection report. The Tenants replied that the date chosen by the Landlords was accepted, "OK, the 31st at 11 am." [Reproduced as written.]

The Tenants ended this email by stating, "If for some reason we cannot make the inspection we will take photos ahead of time. You can mail the completed form with check to us." [Reproduced as written.]
The Landlords wrote back to the Tenants explaining this was not in accordance with the Act, and copied sections 35 and 36 of the Act to the Tenants. The Tenants also indicated in this email that they did not want communications from the Landlords any

longer. During the course of the hearing the Tenants alleged this was a threatening letter.

The Landlords completed a written Notice of Final Opportunity to Schedule a condition inspection and set out the date that the Tenants had earlier agreed to in their email. The Landlords testified they posted this at the door of the rental unit on March 27, 2011.

The Tenants vacated the rental unit on or about March 31, 2011, and did not attend for the final condition inspection. During the hearing, one of the Tenants testified that they thought it would be okay to miss the outgoing inspection, as they had not been present for the pet damage inspection, which had occurred earlier.

The Tenants submit that the Landlords did not provide them with two opportunities for the inspection.

During the course of the hearing, and in their written submissions, the Tenants also allege they appointed the Landlords to act as their agent for the outgoing condition inspection report.

In April of 2011, the Tenants wrote to the Landlords asking for the return of the security deposit. The Landlords explained in their reply email that they believed the Tenants left the rental unit damaged and unclean in certain areas, and that in any event, the Tenants had lost the right to the return of the security deposit by failing to attend for the final condition inspection report.

The Tenants provided the Landlords with an email of the forwarding address to return the security deposit to. The email is not signed, and does not contain the city or postal code for the forwarding address.

The Tenants left a file cabinet in the rental unit when they vacated. They have asked the Landlords for the return of a file cabinet, or for the Landlords to purchase the file cabinet for the sum of $100.00.

The Landlords replied that the Tenants abandoned property, including the file cabinet, at the rental unit. They testified they stored it for a while, and then determined it had a market value of less than $500.00, and the cost of removing it and storing it would exceed its proceeds, and they then gave it away.

The Tenants claim $1,250.00 for return of double the security deposit, $1,270.00 for one month of rent due to the owners occupying the rental unit after the tenancy ended, $38.96 for preparing for the hearing, $100.00 for the file cabinet and $50.00 for the filing fee for the Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Application of the Tenants must be dismissed in its entirety.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Tenants, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed, and finally, proof that the party took all reasonable measures to mitigate their loss.

In regard to the security deposit claim, I find that the Tenants extinguished their right to the return of the deposit when they failed to participate in the outgoing condition inspection report. The parties had agreed to a time and date for this inspection to occur. When the Tenants informed the Landlords in the email that they might not attend, the Landlords sent the Tenants a copy of the portion of the Act which applies. I can find no hint of a threat in this reply to the Tenants, rather it appears to be a warning, which the Tenants likely should have heeded. The Landlords then provided a written notice of final opportunity to inspect, as required under the Act, citing the time and date that the Tenants had already agreed to.

I find the Tenants have failed to prove the Landlords breached the Act in regard to the outgoing condition inspection report. I find the Tenants failed to attend the final condition inspection and therefore they extinguished their right to the return of the deposit under the Act.

To address their alternative argument, the Tenants made submissions that they appointed the Landlords as their agent to conduct the inspection. I find this argument fails on at least two points; firstly, the Tenants have no evidence to support they informed the Landlords they had appointed them as agents or representatives for the inspection. Secondly, even if there had been evidence of them appointing the Landlords as agents, then the Tenants gave the Landlords permission to sign off the deposit on their behalf and they must accept the work of their “agent”. Regardless of this second point, I find the Tenants had no evidence to support their position they appointed the Landlords as their agents for the inspection.

As to the claim for a free month of rent, the initial tenancy ended on the last day of January 2011, due to the notice to end tenancy given by the Tenants. The Landlords were not required to extend the initial tenancy or enter into a new tenancy agreement. Nevertheless, the Landlords and the Tenants entered into a new, second tenancy agreement.

Had the Landlords given the Tenants a two month Notice to End Tenancy for the Landlords’ use of the rental unit, the Tenants would have been entitled to one month of free rent. However, this tenancy ended due to the expiry of the second tenancy agreement. The Landlords were never under an obligation to provide the Tenants with the free month of rent in these circumstances.

I also find the Tenants had insufficient evidence to prove they signed the second, new tenancy agreement under duress. One of the Tenants may have been under stress due to family matters in another province, however, this certainly does not prove the Landlords forced the Tenants into signing the second, new tenancy agreement. Furthermore, it is clear from the evidence and testimony that the first tenancy ended due to the Tenants notice and the new tenancy started because of the request of the Tenants.

As to the filing cabinet, I find the Tenants abandoned this in the rental unit. I find the Tenants have failed to prove the Landlords breached the Act in their handling of the abandoned property.

Lastly, there is no provision under the Act to award the Tenants the cost of preparing for the hearing.

Conclusion

The Tenants' Application is dismissed without leave. The Tenants failed to prove the Landlords had breached the Act or tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act and 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: August 09, 2011.

Residential Tenancy Branch