Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, (MND), FF
MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, 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 security deposit due to the Landlord's alleged failure to return it as required under the Act. The Tenant also applied for compensation for the value of personal belongings that he claimed the Landlord refused to return to him and to recover the filing fee for this proceeding.

At the beginning of the hearing the Landlord said he served the Tenant with his evidence package when he served the Tenant with his application and Notice of hearing on August 10, 2011. The Tenant said the Landlord's evidence package was not included with his application. On this issue, the Landlord must prove on a balance of probabilities that he served the Tenant with his evidence package. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In the absence of any corroborating evidence, I find that the Landlord has not provided sufficient evidence to show that he served the Tenant with his evidence package. I am further persuaded that this is the case given that the Landlord only submitted his evidence package to the Residential Tenancy Branch on October 6, 2011. Consequently, I find that the Landlord's evidence package is excluded pursuant to RTB Rule of Procedure 11.5(b). The Landlord admitted that he received the Tenant's Application and evidence 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 compensation for personal possessions?
3. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started in February 2010 and ended on March 25, 2011 when the Tenant moved out. Rent was $900.00 per month. The Tenant paid a security deposit of $450.00 at the beginning of the tenancy.

The Tenant's Application:

In previous proceedings held on August 9, 2011, the Tenant's application for the return of his security deposit was heard. However, the Dispute Resolution Officer found that the Tenant had not provided the Landlord with his forwarding address in writing (as required by s. 38(1) of the Act) and dismissed his application with leave to reapply. However, the Dispute Resolution Officer stated as follows:

> "at the hearing the Tenant confirmed that the address for service he provided on his application for dispute resolution is his forwarding address. The landlord is hereby put on notice that he is deemed to have received the tenant's forwarding address in writing on August 9, 2011, the date of this hearing."

The Parties agree that the Tenant did not give the Landlord written authorization to keep the security deposit and that the Landlord has not returned it. The Parties also agree that the Landlord did not complete a move in condition inspection report. The Parties further agree that they participated in a move out inspection on March 29, 2011 however the Landlord did not complete a move out condition inspection report. The Tenant said the Landlord told him after the move out inspection that he would return all of the security deposit. The Tenant also said that the Landlord never told him why he later decided not return the security deposit until he received the Landlord's application.

The Tenant also claimed that he could not retrieve some of his children's toys and a swing set from the back yard at the end of the tenancy because they were frozen under snow and as a result, the Tenant said the Landlord agreed he could come back to retrieve them at a later date. The Tenant said he returned to the rental property approximately 2 weeks later to remove the belongings however the tenants residing there at the time advised him that the Landlord said he was not allowed on the rental property. The Tenant said he made some attempts to contact the Landlord by telephone but could not reach him. The Tenant admitted that he did not make any further attempts to contact the Landlord prior to filing his application in this matter. The Tenant said the toys in question were new or almost new and had a total retail value of $575.00. The Tenant said he believes that the new tenants have been using these belongings and have damaged them and as a result, he does not want them returned but rather is seeking compensation equal to their replacement cost.

The Landlord said he had no knowledge that the Tenant had attempted to collect the toys and swing set from the back yard of the rental property and denied telling the new tenants that the Tenant could not do so. The Landlord said the Tenant's belongings

have always been available for him to pick up and he is still welcome to do so. The Landlord also claimed that the toys in question were not new but rather were old and in poor condition and he said that this was the reason why the Tenant never returned to picked up the toys. The Landlord noted that the Tenant did not make a claim in his previous application for these belongings.

The Landlord's Application:

The Landlord said that the rental unit was completely renovated in August of 2009. The Landlord admitted that there was a tenant residing in the rental unit prior to the Tenant in this matter, however he claimed that the rental unit was in good condition and undamaged at the beginning of the tenancy. The Landlord also said that the Tenant did not complain about any damages at the beginning of the tenancy. The Tenant denied this and said that within the first two weeks of the tenancy he approached the Landlord about needed repairs.

The Landlord said that in January 2011, the Tenant's children damaged some taps and as a result, he incurred plumbing expenses of $175.00 to repair them. The Tenant denied that the taps were broken during the tenancy and had to be repaired.

The Landlord also claimed that the Tenant's children pulled away the corners of tub surround with the result that water leaked behind it. The Landlord said he incurred expenses of approximately $450.00 to repair damaged drywall and replace the tub surround. The Tenant claimed that the tub surround was damaged at the beginning of the tenancy and that he had to caulk the area in order to prevent more moisture from getting behind it. The Tenant said he advised the Landlord about the tub surround during their move in inspection.

The Landlord further claimed that the Tenant damaged a bedroom door by putting a hole in it and breaking the hinges. The Landlord said the Tenant also damaged an en-suite bathroom door. The Landlord said he incurred expenses of $180.00 plus taxes to replace the two doors. The Landlord said he also incurred expenses of $120.00 plus taxes to repair holes the Tenant drilled in walls to run cable wires. The Tenant denied that a bedroom or bathroom door was damaged during the tenancy. The Tenant admitted that he drilled holes in walls to run cable wires but claimed he repaired and repainted them at the end of the tenancy.

Analysis

The Landlord's Application:

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 and pet damage 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 offset those damages from the security deposit or pet damage deposit. I find that the Landlord did not complete a move in or a move out condition inspection report in contravention of sections 23 and 35 of the Act and as a result, his application to keep the Tenant's security deposit for damages to the rental unit is dismissed without leave to reapply.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In this matter, the Landlord alleged that the Tenant caused damaged which the Tenant denied and the Landlord provided no other evidence (such as a condition inspection report or photographs) in support of his allegations. In the absence of any corroborating evidence from the Landlord to support his claims, I find that he has not provided sufficient evidence to show that the Tenant damaged the rental unit and as a result, his application for compensation for repairs is dismissed without leave to reapply.

The Tenant's Application:

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 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.

I find that the Landlord received the Tenant's forwarding address in writing on August 9, 2011 but did not return his security deposit of $450.00. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and that his right to make a claim against the deposit for damages to the rental was extinguished under sections 24(2) and 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 or $900.00.

I find however, that there is insufficient evidence to support the Tenant's claim for compensation for items that he alleges were left in the back yard at the rental property, that the Landlord refused to return and that were damaged by his current tenants. The Landlord denied that the Tenant was prevented from retrieving those items and Tenant admitted that he only tried to call the Landlord on a couple of occasions to arrange to get them back. Furthermore, the Landlord denied that the items in question were new

or nearly new and the Tenant provided no corroborating evidence of the age or condition of these items. Consequently this part of the Tenant's application is dismissed without leave to reapply. The Tenant is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the $50.00 filing fee he paid for this proceeding.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **$950.00** 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: October 24, 2011.

Residential Tenancy Branch