Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MND, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and utilities, for compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

The Tenant applied for the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlord's alleged failure to return them as required by the Act. The Tenant also applied to recover an overpayment of utilities, for compensation for alleged breaches of his right to quiet enjoyment and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with his first Application and Notice of Hearing (the "hearing package") by registered mail on August 12, 2011 and with his second Application and Notice of hearing on August 22, 2011. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing packages as required by s. 89 of the Act.

The Tenant named another party, K.W., as a Landlord in these proceedings and she was present on the conference call at the start of the hearing. K.W. is another tenant in the rental property, however the Tenant argued that she acted as an agent of the Landlord during the tenancy. In particular, the Tenant claimed that when K.W. received a utility billing statement from the Landlord, G.T., she calculated the Tenant's share of the bill and gave it to him. The Tenant also claimed that he was advised by the Landlord, G.T., that K.W. was the caretaker of the rental property.

Section 1 of the Act sets out the definition of a Landlord which includes "an agent or other person who on behalf of the landlord permits occupation of the rental unit or exercises powers and performs duties under the Act or tenancy agreement." I find on a balance of probabilities that K.W. is not a Landlord as defined by the Act because she had no authority to rent the rental property to anyone or to evict them, nor did she collect rent on behalf of the landlord or perform any other of the Landlord's duties (such as repairs). Consequently, I find that K.W. is not properly named as a Party in these proceedings and the style of cause is amended by removing her.

Because K.W. was named as a Party, she submitted an evidence package in response to the Tenant's application. However, given that I have found K.W. is not a Party, I find that there are no grounds for admitting her package of documents and written submissions into evidence and they are accordingly excluded. K.W. claimed however, that she could nevertheless participate in the hearing by giving witness evidence on behalf of the Landlord, however, the Landlord did not call K.W. as witness and neither party applied prior to the hearing for a summons to compel her to attend. Consequently, the Dispute Resolution Officer asked K.W. to leave the hearing.

The Landlord, G.T., did not attend the hearing but instead provided written submissions that stated in part as follows:

> "I am sorry to say that I will not be available for the conference call as I have been called to work on a two and a half year contract out of the country and I will be relocating myself. I will forward my address to rtb when I am in a semi-permanent situation. As I will be working out in the "*boonies*" so to speak there is no chance of me getting to a phone for the conference call. As instructed by a legal representative, I could have him represent me, but the fees are more than I can afford.....I hope that with this signed testimony the details of the claim [that this] can be resolved without my presence."

Although the Act makes provision for a hearing to be conducted by way of documentary evidence only, the Applications of both parties in this matter were scheduled ***as an oral hearing***. Furthermore, all of the documentary evidence submitted by the Landlord is hearsay and unreliable because its veracity cannot be tested. As an example, the Tenant's advocate argued that 2 written estimates for floor repairs provided by the Landlord were unreliable because the authors of those estimates were unknown to other flooring companies in the same community. The Tenant's advocate also argued that the amount of the estimates was unreasonable given the nature of the repair in question. As a result, in the absence of any other reliable evidence to support of the Landlord's claim, I find that there is insufficient evidence and accordingly, the Landlord's application is dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit and pet damage deposit and if so, how much?
2. Is the Tenant entitled to recover an overpayment of utilities?
3. Is the Tenant entitled to compensation for a breach of his right to quiet enjoyment?

Background and Evidence

This fixed term tenancy started on August 5, 2010 and ended on July 31, 2011 when the Tenant moved out. Rent was $800.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit and pet damage deposit

of $400.00 each at the beginning of the tenancy. The Tenant resided in the basement suite of the rental property and K.W. resided in the upper suite of the rental property.

Security Deposit and Pet Deposit: The Tenant said he gave the Landlord a letter on July 25, 2011 in person in which he advised the Landlord that his advocate in this matter would be acting on his behalf at a move out inspection and in which he requested another copy of all utility statements for the tenancy period. The Tenant said he discovered that he had not written his forwarding address on this letter, so he added it to the Landlord's copy before giving it to him. The Tenant said that during the move out inspection, his advocate gave the Landlord written authorization to keep $30.00 of his security deposit for cleaning expenses. The Tenant said the Landlord has not returned any of his security deposit or pet damage deposit.

Overpayment of Utilities: The Tenant said he initially agreed to pay 50% of the utilities for the rental property (ie. electricity, heat and water) but now believes he should only have paid 40% because his suite was smaller than the upper suite. The Tenant claimed that K.W. used more electricity, turned up the heat when he was at work and did more laundry than he did. The Tenant also claimed that K.W. often left the water on in the yard for prolonged periods of time. The Tenant admitted that there were not separate meters for each of the rental suites in the property to determine the actual consumption. The Tenant also admitted that his Advocate resided with him in the rental unit for approximately 3 and ½ months but argued that this made little difference to his usage of the utilities. The Tenant also argued that K.W. had someone stay with her for a continuous period of a month and also had short term guests from time to time.

Loss of Quiet Enjoyment: The Tenant said he had no control over the heat or air conditioning in the rental property because the controls were located in K.W.'s suite. The Tenant claimed that K.W. refused to use the air conditioning in the summer months and turned up the heat in the winter months which made it uncomfortable in the rental unit. The Tenant also claimed that he was often disturbed by the loud noise of K.W.'s television which was directly above his bedroom. The Tenant said K.W. often left her television on all night. The Tenant further claimed that his use of the common back yard was restricted by K.W. who insisted that he have her approval before he could use it. In particular, the Tenant said K.W. would not allow him to plant a garden but instead insisted that he use containers and put them where she instructed.

The Tenant said he approached K.W. about many of these things however she was difficult to deal with, was verbally abusive at times and physically intimidating. The Tenant said he also brought these things to the attention of the Landlord but he did nothing about it. The Tenant said he believed that the Landlord was also intimidated by K.W., did not want to have to deal with her and hoped that things would just work themselves out.

The Tenant said that shortly after his advocate moved in, K.W. constantly asked him what his advocate was doing and how long he would be staying. The Tenant said he

did not feel this was any of K.W.'s business. In any event, the Tenant said at the end of May 2011, K.W. advised him that she believed he should be paying 2/3 of the utility bills given that he had another occupant residing with him. The Tenant said he disagreed and paid K.W. only ½ of the utility bills. The Tenant said this infuriated K.W. and on June 3, 2011 she started yelling and banging on his door. The Tenant said he opened his door a crack but K.W. pushed the door open and a verbal altercation took place. The Tenant said K.W. told him she was going to speak to the Landlord about the payment of utilities. The Tenant also claimed that shortly thereafter, one of K.W.'s sons threatened him. The Tenant said the Landlord spoke with him at the end of June 2011 and asked him if he was willing to pay more.

The Tenant said the cable and internet bill was in K.W.'s name. The Tenant said that in exchange for signing up for "optic tv", K.W. was entitled to a promotional offer which was a laptop computer for a $10.00 payment over 12 months. The Tenant said he had an agreement with K.W. that he would pay for 50% of the cable bill plus make the $10.00 payments and he would keep the laptop. The Tenant said he made some of these payments to K.W. in addition to his 50% share of the monthly cable billings. However, at some point in July 2011, the Tenant said K.W. showed up at his door and again pushed the door open when he appeared at the door. The Tenant said K.W. had 2 of her sons with her and they entered the rental unit and took the lap top (plus a television set of K.W.'s that the Tenant was using) without his consent.

As a result of these incidences, the Tenant said his right to quiet enjoyment was breached and he sought $1,200.00 compensation.

Analysis

Security Deposit and Pet Deposit: 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 tenancy ended on July 31, 2011. I note that the Landlord's evidence package contains the *original* copy of the Tenant's letter dated July 25, 2011 and that it *does not* contain any additional writing such as the Tenant's forwarding address as he alleged. The Landlord admitted in his submissions that on August4, 2011 he received a letter from the Tenant dated August 1, 2011 which contained the Tenant's forwarding address in writing and therefore I conclude that this was likely the day he received it. Consequently, the Landlord had until ***August 19, 2011 at the latest*** to either return the Tenant's security deposit and pet damage deposit or to file an application for dispute

resolution to make a claim against them. I find that the Landlord did not return the Tenant's security deposit of $400.00 and pet damage deposit of $400.00 and that he only had the Tenant's written authorization to keep $30.00 of the security deposit for cleaning expenses. Although the Landlord made an application for dispute resolution on August 16, 2011 to make a claim against the deposits, it was dismissed without leave to reapply for the reasons set out above. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the balance of the security deposit (or $740.00) and double the amount of the pet damage deposit (or $800.00) for a total of $1,540.00.

Overpayment of Utilities: The Parties' tenancy agreement says that the Tenant is responsible for all utilities. The Tenant admitted that he verbally agreed to pay 50% of the utilities and did pay that amount throughout the tenancy. The Tenant claimed however, that he now believes he was paying more than his fair share. I find that there was an agreement that the Tenant would pay ½ of the utilities for the rental property and as a result, I find that it is not now open to him to try to change the terms of that agreement. Furthermore, there is little reliable evidence as to how much water, hydro and heat the Tenant used compared to K.W. In fact, the Tenant admitted that his dispute with K.W. arose in part because he believed he should pay more for utilities because he had an additional occupant residing with him for a 3 and ½ month period. For all of these reasons, I find that there is no merit to this part of the Tenant's claim for an overpayment of utilities and it is dismissed without leave to reapply.

Loss of Quiet Enjoyment: The Tenant claimed that throughout the tenancy his use and enjoyment of the rental unit was disturbed by another tenant of the rental property, K.W., who controlled the temperature settings and who often turned up the volume on her television. The Tenant also claimed that his use of common areas was restricted by K.W. who would not let him dig a garden in the back yard. The Tenant claimed that K.W. also violated his right to privacy by entering his suite without his consent on 2 occasions in June and July 2011 respectively. The Tenant further claimed that during the last 2 months of the tenancy K.W. intimidated and harassed him about paying a greater share of the utilities. The Tenant said he brought these matters to the Landlord's attention but he did nothing about it.

I find that there is little evidence to corroborate the Tenant's assertion that he brought his complaints about K.W. to the Landlord's attention prior to giving his notice ending the tenancy on June 7, 2011. In particular, I find that there is no reliable or corroborating evidence that the Tenant asked the Landlord to do something about the air conditioning or heat levels. I also find that there is no reliable or corroborating evidence that the Tenant complained to the Landlord about his alleged restricted use of the back yard. While a Landlord has a responsibility to ensure that occupants of a rental property do not intimidate or threaten other tenants, a Tenant cannot hold a Landlord responsible for the actions of another tenant when the Landlord does not know about it or have an opportunity to address it. The Tenant admitted at the hearing that he was intimidated by K.W. and afraid to approach her or to provoke an altercation and

therefore he “let things slide.” Consequently, I find that the Tenant did not bring his complaints about K.W. to the Landlord until June 7, 2011 when he gave his notice to end the tenancy and as a result, his application for compensation for a loss of quiet enjoyment is dismissed without leave to reapply.

Filing Fee: The Tenant filed his first application on August 11, 2011 and paid a $50.00 filing fee. The Tenant then filed a second application on August 19, 2011 and paid another $50.00 filing fee. However, I find that it was unnecessary for the Tenant to incur the second filing fee because he could have simply amended his first application to include the claim he made on the second application. Consequently, I find that the Tenant is not entitled to recover both filing fees from the Landlord and I award him only one or $50.00.

Conclusion

A Monetary Order in the amount of **$1,590.00** 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.

As K.W. was not properly named as a party in these proceedings, I find that the is no jurisdiction under the Act to hear the Tenant’s claim to recover payments made to her for the purchase of a lap top and that part of the Tenant’s application is dismissed without leave to reapply.

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: November 16, 2011.

Residential Tenancy Branch