Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD, FF; MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / loss of rental income; compensation for damage to the unit, site or property; retention of the security deposit, and recovery of the filing fee; ii) by the tenants for a monetary order reflecting the double return of the security deposit, and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on May 1, 2011. Monthly rent of $700.00 is due and payable on the first day of each month, and a security deposit of $350.00 was collected. A move-in condition inspection report was not completed.

The tenancy ended effective February 29, 2012 and rent was fully paid to the end of that month. The tenants testified that they completed the major part of their move out on or around February 12, 2012. There is conflicting testimony around the manner in which the tenancy was ended: the tenants claim that notice was given in writing on January 28, 2012 and that it was affixed to the outside of the landlord's door; the landlord claims that no such notice was ever received, and that he became aware that the tenants had vacated the unit when no payment of rent was received for March 2012. A move-out condition inspection report was not completed.

As to the provision of a forwarding address, the tenants claim to have provided this in writing on February 29, 2012 and depositing it in the landlord's mailbox. The landlord

acknowledges receiving some contact particulars on “a scrap of paper” which he claims were not fully legible.

Subsequent to the tenants’ filing of their application for dispute resolution on April 8, 2012, the landlord filed an application on May 11, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings around each are set out below.

LANDLORD:

$700.00: *loss of rental income for March 2012*. Section 45 of the Act speaks to **Tenant’s notice**, and provides in part as follows:

> 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

On a balance of probabilities, I prefer the tenants’ evidence and I find that they gave written notice to end the tenancy by posting same on the landlord’s door on January 28, 2012. As this manner of giving notice to end tenancy effective February 29, 2012 complies with the above statutory provisions, this aspect of the landlord’s application is hereby dismissed.

$150.00: *labour & materials for miscellaneous cleaning and repairs.* In relation to making a claim for damage against the security deposit, sections 24 and 36 of the Act address **Consequences for tenant and landlord if report requirements not met**, respectively, at the start, and at the end of a tenancy. The landlord’s right to a claim for damage against the security deposit is extinguished in the event the landlord fails to

"meet start of tenancy condition report requirements," or fails to "meet end of tenancy condition report requirements." Further to the lack of any receipts in evidence, in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the landlord's application is hereby dismissed.

$182.00: *cost of plumber's bill.* The parties testified that this expense was incurred in August 2011, or approximately four (4) months after the start of tenancy. The tenants testified that they notified the landlord of a blocked drain, and claimed that the drain was slow from the very start of tenancy. The tenants also stated that while the plumber determined that the drain was clogged by a clump of human hair, he was unable to say with certainty how long the blockage may have existed.

I note that the landlord did not identify the plumber's cost as an issue in dispute until after being served with the tenants' application for dispute resolution, approximately three (3) months after the end of tenancy, and nine (9) months after the plumber's work had been completed. In this regard, I find that there is an argument to be made in relation to the "doctrine of laches," defined in part in Black's Law Dictionary as follows:

> [the] neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Notwithstanding the above, I find in any event that, on a balance of probabilities, the landlord has failed to meet the burden of proving that the tenants were responsible for the clogged drain and that, as a result, they should be found responsible for the plumber's bill. This aspect of the application is, therefore, hereby dismissed.

$50.00: *filing fee.* As the landlord has not succeeded with the principal aspects of his application, the application to recover the filing fee is hereby dismissed.

Total allowed: Nil.

TENANTS:

$700.00*: *double the amount of the security deposit (2 x $350.00).* Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenants' forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make

a claim against the security deposit and must pay the tenants double the amount of the security deposit.

In the circumstances of this dispute, even if I accept the landlord's claim that the "scrap of paper" on which the tenants provided their forwarding address was incomplete or not fully legible, I find that the landlord failed to either repay the security deposit or file an application for dispute resolution within 15 days following his receipt of the tenants' application for dispute resolution, which itself clearly includes their current address. In the result, I find that the tenants have established entitlement to the double return of their original security deposit.

$50.00*: *filing fee*. As the tenants have succeeded in their application, I find that they have established entitlement to recovery of the full filing fee.

Total allowed: **$750.00***.

Conclusion

The landlord's application is hereby dismissed in its entirety.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$750.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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 6, 2012.

Residential Tenancy Branch