Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested compensation for damage to the unit, compensation for damage or loss under the Act, to retain the security and pet deposits and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

All parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The application was amended to correct tenant I.B's name.

The 3 tenants confirmed that they were each served with Notice of the hearing and the relevant documents that are included with an application. Each tenant confirmed receipt of 7 pages of documents. None of the 3 tenants received a written submission with the hearing package. The landlord's agent stated that he was with the landlord when each of the tenants was served via registered mail. The agent he was sure an evidence submission had been included with the hearing documents.

In the absence of evidence that the unnumbered evidence submitted to the Residential Tenancy Branch (RTB) by the landlord was in fact given to the tenants, I set aside that evidence.

The landlord was not sure that a separate 4 page evidence submission made to the RTB on August 10, 2012 was given to the tenant's; the tenants said they did not receive that package; therefore I determined it would be set aside.

The tenant's 26 page evidence was served to the landlord via email; the landlord did not receive the evidence package. In the absence of acknowledgment of the landlord that the emailed evidence was received, that evidence was set aside and not considered.

Both parties were at liberty to make oral submissions.

At the start of the hearing the landlord's monetary claim was reviewed. The details of dispute section of the application indicated a claim of $2,500.00 for the garbage disposal, damage and compensation. The landlord stated that the actual loss exceeded $2,500.00 and that $1,068.48 plus $1,370.88 was spent on property management costs.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage and damage or loss under the Act in the sum of $2,500.00?

Is the landlord entitled to retain the deposits paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The tenancy commenced in January 2011,
- The initial tenancy was a 1 year fixed-term;
- In January 2012 the tenants signed a document agreeing to extend the term by another 1 year;
- That rent at the end of the tenancy was $1,854.00 per month due on the first day of each month;
- That move-in and move-out condition inspection reports were not completed or initiated by the landlord;
- That the tenants paid a $900.00 security deposit and $900.00 pet deposit, plus 3 key fobs deposits of $75.00 each;
- That the tenants vacated on July 31, 2012 and new occupants moved in on August 1, 2012; and
- That the landlord received the tenant's forwarding address, sent via email on August 2, 2012.

On August 1, 2012, the landlord had submitted the application, claiming against the deposits paid, which included the tenants current addresses.

The landlord stated that the tenants caused a loss as the landlord had hired a property management company to locate them as tenants and then had to hire a company to locate new occupants when the tenants ended the tenancy. The early end of the tenancy was an inconvenience to the landlord that resulted in costs. The tenants also damaged the garbage disposal.

The tenants said they never received any receipts for the costs the landlord is claiming and that they did not cause damage to the unit. The tenants also showed the unit for the landlord; although the number of showings was disputed by the landlord.

The parties discussed a possible settled agreement; the tenants wished to have their deposits returned to them; the landlord wanted some sort of compensation. A settled agreement was not reached.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations 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 proof that the party took all reasonable measures to mitigate their loss.

During the hearing I explained that the landlord's claim had flaws; there was no detailed breakdown or calculation of the claim and even if I had considered the written submission given to the RTB with the application, it did not contain a definitive detailed calculation. I proceeded to allow the landlord to make his submission and to hear the tenant's response. The parties were informed that I would apply the Act in relation to the deposits paid and that I would be guided by policy.

In the absence of a detailed calculation setting out the claim for $2,500.00 and in the absence of evidence of a loss, I find, on the balance of probabilities that the landlord has failed to meet the burden of proof in support of the claim and that the claim is dismissed.

Even if the landlord had supplied invoices and proof of payment of property management costs; that is a cost that the landlord choose to incur. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, not for services the landlord chose to contract out for property management fees. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

There was no evidence before me of damage to the garbage disposal, although any cost for this item would have exceeded that claimed.

In relation to the deposits, I have considered RTB policy which suggests that when a landlord applies claiming against a deposit, any balance owed should be returned to the tenants. I find this policy to be a reasonable stance.

I have considered the sections of the Act that reference condition inspection reports and return of deposits. Section 23 of the Act requires a landlord to schedule a move-in condition inspection at the start of a tenancy; the landlord agreed that this had not occurred.

Section 24 of the Act provides:

Consequences for tenant and landlord if report requirements not met

> ***24*** *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> *(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and*
>
> *(b) the tenant has not participated on either occasion.*
>
> ***(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***
>
> ***(a) does not comply with section 23 (3) [2 opportunities for inspection],***
>
> ***(b) having complied with section 23 (3), does not participate on either occasion, or***
>
> ***(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.***

(Emphasis added)

Therefore, as the landlord failed to complete a move-in condition inspection report I find that the landlord extinguished their right to claim against the deposits.

Section 38(1) of the Act requires a landlord to return the deposits to a tenant within fifteen days of receipt of the written forwarding address. If the landlord fails to return the deposits within that time frame section 38(6) of the Act provides:

> *(6) If a landlord does not comply with subsection (1), the landlord*
>
> *(a) may not make a claim against the security deposit or any pet damage deposit, and*
>
> *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

The landlord acknowledged that the written forwarding address was received on August 2, 2012; the address was sent via email. As email is a commonly used method of communication and the landlord confirmed receipt, I find pursuant to section 71(2) of the Act, that the forwarding address was sufficiently given to the landlord.

The landlord was barred from claiming against the deposits for any damage to the unit, as the right to claim was extinguished when a move-in condition inspection was not completed. The deposits had to be returned within fifteen days of August 2, 2012. Further, section 38(7) prohibits a landlord from retaining a pet deposit unless they submit a claim against that deposit, for damage caused by a pet. There was no allegation of any damage that was caused by a pet.

Therefore, I find, pursuant to section 38(6) of the Act that the tenant's are entitled to return of double the pet and security deposits paid in the sum of $900.00 each.

A monetary order has been issued to the tenant's in the sum of $3,600.00.

Conclusion

The landlord's claim is dismissed.

The landlord's right to claim against the deposits was extinguished when a move-in condition inspection report was not completed. As the landlord's claim to retain the deposits is dismissed and the landlord failed to return the deposits within fifteen days of August 2, 2012, I find that the tenants are entitled to return of double the $1,800.00 in deposits paid.

Based on these determinations I grant the tenants a monetary Order in the sum of $3,600.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 18, 2012.

Residential Tenancy Branch