Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This matter dealt with an application by the Landlord for compensation for lost rental income, for cleaning and repair expenses, 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, to recover an overpayment of rent and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord claimed that she had not been properly served with the Tenant's Application and Notice of Hearing as they were left on the steps of her residence. The Landlord also claimed that her first name was spelled incorrectly on the Tenant's application. However, the Landlord admitted that she received those documents and agreed to waive strict compliance with the service requirements under s. 89 of the Act. In the circumstances, I also find that it would be appropriate to amend the Tenant's application to correct the spelling of the Landlord's first name as it is set out on the Landlord's application.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to recover an overpayment of rent?
3. Is the Tenant entitled to the return of a security deposit?

Background and Evidence

This month-to-month tenancy started on May 27, 2010 and ended on July 25, 2012 when the Tenant vacated the rental property. Rent was $650.00 per month at the beginning of the tenancy. The Parties verbally agreed to increase the rent to $700.00 per month effective May or June 2012. Rent was due in advance on the 1st day of each month, however the parties agree that it was their practice for the Tenant to pre-pay one half of a month's rent on the 15th day of the preceding month. The Tenant paid a security deposit of $325.00.

The Landlord and her 16 year old son reside in the lower floor of the rental property and the Tenant resided in the upper floor of the rental property with her teenaged daughter

until 2 weeks prior to the end of the tenancy when the Tenant claims her daughter moved out. The Landlord claimed that on the morning of July 23, 2012 a stranger called the fire department to report a fire on the roof of the rental property. The Tenant was at work at the time and the Landlord claims the Tenant's daughter was in the rental unit with two friends. The Landlord also claimed that the Tenant's daughter or her friends were smoking on the roof and a discarded cigarette started the fire. The Landlord said her son was let into the rental unit by the Tenant's daughter and that he was able to extinguish the fire before the fire department arrived.

The Tenant denied that her daughter was in the rental unit that day and claimed that when she left for work around 5 am the rental unit was empty. The Tenant said the Landlord contacted her at work to inform her about the fire and she immediately contacted her brother who confirmed that her daughter was at his residence and still asleep. The Tenant said she woke up her daughter to speak to her and her daughter also denied being at the rental property earlier that morning. The Tenant claimed that she never locked her door and that the Landlord's son often went into the rental unit and smoked on the roof. The Tenant said she also went to the fire department following this incident and was advised by a member that only the Landlord's son was in the rental unit when they arrived at the rental property. Consequently, the Tenant denied any responsibility for the fire.

The Tenant said she attended the Landlord's residence later in the day on July 23, 2012 to give the Landlord a written notice to end the tenancy effective October 1, 2012 however the Landlord became verbally abusive and told her to leave the property within 24 hours. The Tenant said she was unable to gain entry to the rental unit and believed the Landlord changed the locks so she went to the police station because she was also concerned about her safety. The Tenant said when she returned to the rental property with an RCMP officer, the rental unit was unlocked and she began packing her belongings. The Tenant said on July 25, 2012 she finished cleaning and took a video of the condition of the rental unit. The Tenant also said she and gave the keys and a letter containing her forwarding address and a request for the return of her security deposit and rent-prepayment to the Landlord's son because the Landlord was not home.

The Landlord admitted that she knew the Tenant was moving out and saw her remove her belongings from the rental unit. The Landlord claimed that as the Tenant had paid rent up to August 15, 2012, she did not attempt to re-rent the rental unit until August 18, 2012. On that day, the Landlord said she changed the locks and put advertisements in some online websites and in the local newspaper. The Landlord said she was unable to re-rent the rental unit until October 1, 2012 and as a result, she sought compensation for a loss of rental income for ½ of August and all of September 2012. The Tenant argued that she would have stayed until October 1, 2012 but the Landlord refused to accept her notice and kicked her out earlier and as a result, she was entitled to the return of her rent pre-payment for ½ of August.

The Landlord said she did not complete a condition inspection report at the beginning or at the end of the tenancy. The Landlord provided three black and white photographs,

one of which showed debris behind a stove, one which showed drip marks down one side of the stove and one which showed a damaged area of the roof. The Landlord sought compensation of $50.00 to clean the shop area as she alleged the Tenant's daughter and her friends left food, bottles and cigarette butts there. The Tenant said she had no knowledge of this. The Landlord also sought compensation of $300.00 to clean the rental unit. The Landlord said it took her and her daughter 5 hours each to clean appliances and to wash walls, bathrooms and windows. The Tenant claimed that she left the rental unit reasonably clean and that any debris behind the stove must have been there at the beginning of the tenancy.

The Landlord also sought $300.00 to repair the roof of the rental property which she alleged was damaged by the Tenant's daughter. The Landlord said this amount was based on her estimate to remove and replace the damaged roofing tiles herself. The Tenant denied that she or her daughter were responsible for the roof fire and argued that her daughter had not been to the rental unit for the previous 2 week period. The Landlord also sought $100.00 for the cost to move the Tenant's washer and dryer into the shop on the rental property and to store it there. The Tenant admitted that she did not have time to arrange for a vehicle to move these appliances and also admitted that she would not now be returning to the rental property to get them.

The Landlord also sought $75.00 to repaint trim in a bedroom. The Parties agree that the Tenant painted the room a purple colour and was supposed to return it to its original colour at the end of the tenancy. The Tenant admitted that she did not have time to repaint the trim at the end of the tenancy. The Landlord also sought compensation of $60.00 to replace the mail box lock and the rental unit lock as she claimed that the Tenant did not return the keys at the end of the tenancy. The Tenant denied this and claimed that she gave the keys to the Landlord's son on July 25, 2012.

The Tenant claimed that she also gave the Landlord's son a letter on July 25, 2012 that contained her forwarding address. The Tenant said she recorded this conversation on her video recording. The Landlord denied receiving the Tenant's letter (or keys) and argued firstly that the video was inadmissible as evidence because it was taken without her son's knowledge and secondly that the Tenant said nothing on the recording to substantiate her claim that she gave keys and a letter to her son. The Parties agree that the Tenant did not give the Landlord written authorization to keep her security deposit and that it has not been returned to her.

Analysis

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give a landlord one full, calendar month's notice in writing. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do

whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that on July 23, 2012 the Tenant offered the Landlord her written notice as required by s. 45(1) of the Act but that the Landlord refused to accept it. I also find that the Landlord told the Tenant that she wanted the tenancy to end immediately. As a result, I find that the Landlord waived the requirement of the Tenant to comply with s. 45 of the Act and as a result, the Landlord is now disentitled from claiming lost rental income after July 31, 2012. The Landlord also provided no evidence of her efforts to re-rent the rental unit and would have not succeeded in recovering lost rental income on that basis as well. Consequently, I find that the Landlord was not entitled to retain the Tenant's rent prepayment for August 2012 in the amount of $350.00 and I find that the Tenant is entitled to recover it.

Section 37 of the Act says at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines reasonable wear and tear as "*natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion*."

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within specific time limits). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean and that any damages were the result or an act or neglect or the Tenant or another occupant or guest of the Tenant's. 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.

The Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy. The Landlord provided three photographs, two of which show an area behind and beside the stove. The Landlord provided no other corroborating evidence in support of her claim for cleaning expenses. The Tenant claimed that she left the rental unit reasonably clean and that any debris behind the stove was likely there at the beginning of the tenancy. I find that there is little evidence to support the Landlord's claim for cleaning expenses and in particular, I find that the only evidence that further cleaning was necessary are the photos of the area around the stove. However, as there is no evidence that the side and back of the stove were clean at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the

Tenant was responsible for cleaning these areas. Consequently, the Landlord's claim for cleaning expenses (both for the rental unit and shop) is dismissed without leave to reapply.

The Tenant admitted that she repainted a room but did not return it to its original color at the end of the tenancy. As a result, I find that the Landlord is entitled to her reasonable expenses to repaint the trim in the amount of $75.00. The Tenant also admitted that she abandoned a washer and dryer on the rental property at the end of the tenancy and as a result, I award the Landlord compensation of $100.00 for storage and removal and/or disposal expenses.

The Landlord claimed that the Tenant's daughter was responsible for a fire on the roof because cigarette butts were found outside her bedroom window. The Landlord also claimed that the Tenant's daughter let her son into the rental unit on July 23, 2012 to extinguish the fire. The Tenant denied these allegations and claimed that her daughter was asleep at her brother's home at the time in question. The Tenant also claimed that when she spoke to a member of the fire department that attended the rental unit, only the Landlord's son was there. The Tenant alleged that the fire was started as a result of the Landlord's son smoking on the roof. Given the contradictory evidence of the parties on this issue and in the absence of any corroborating evidence from the Landlord (who bears the onus of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant was responsible for damages to the roof and that part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also claimed that the Tenant did not return a mailbox key and the rental unit keys at the end of the tenancy. The Tenant claimed that she gave those keys to the Landlord's son on July 25, 2012 and she relied on a recording that she said she took at the time without the Landlord's son's knowledge. The Landlord argued that the recording should not be admitted into evidence but provided no authority for that proposition. I find that the Tenant's video recording is admissible however, I find that in many respects it is of little assistance in this matter; ie. the quality of the images and audio recording are poor with the result that little can be make out. I also find that the Landlord is correct in her assertion that there is nothing on the recording to corroborate the Tenant's allegation that she left her keys with the Landlord's son. The Landlord provided a copy of a locksmith receipt however, no date is apparent on it therefore it is inadequate to show that this expense was incurred after the tenancy ended. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

I find on a balance of probabilities that the Landlord did receive the Tenant's forwarding address in writing. The Tenant claimed that approximately two weeks after she vacated, the Landlord arrived at her brother's home where she was staying to return some belongings. The Landlord argued that she knew the Tenant was moving in with her brother and had been to his home before and as a result, that was how she knew where to find the Tenant. Furthermore, the Tenant's video recording shows a copy of the letter and it does not stand to reason why the Tenant would not leave the letter as

she claimed in the video that it was her intention to do in order to have the security deposit and rent payment returned. Consequently, I find that the Tenant has complied with s. 38(1) of the Act and is entitled to the return of her security deposit of $325.00.

I make no award to either party of the filing fee they paid for their respective applications as they would be offsetting in any event. In summary, I find that the Landlord is entitled to a total monetary award of $175.00 and the Tenant is entitled to a total monetary award of $675.00. I Order pursuant to s. 38(4) and 72(2) of the Act that the Parties' respective monetary awards be set off with the result that the Tenant will receive a Monetary Order for the balance owing of $500.00.

Conclusion

A Monetary Order in the amount of $500.00 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: November 28, 2012.

Residential Tenancy Branch