Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNDC MNSD O FF

Preliminary Issues

The Tenant confirmed receipt of the Landlord's evidence however she noted that she did not take it out of her mailbox until January 15, 2012. She agreed with the Landlord when he stated that they clarified in the November 27, 2012 hearing that the Tenant's mail is delivered to a non-Canada Post site and that there is a person who signs receipt of all registered mail and places it in their mailbox. The Landlord checked the Canada Post website and confirmed their evidence package was signed received on January 9, 2013, at 9:00 a.m. The Landlord also affirmed that they sent the Tenant the exact same evidence that was provided to the *Residential Tenancy Branch.* I mentioned the evidence received by the *Residential Tenancy Branch* and the Tenant confirmed she received the same evidence.

Based on the foregoing, I informed the parties that I found the Tenant to be sufficiently served with copies of the Landlord's evidence, in accordance with the Act, and we proceeded with oral submissions.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenant.

The Landlords filed on January 8, 2013, seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed on October 25, 2013, seeking a Monetary Order for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double her security deposit, for other reasons, and to recover the cost of the filing fee from the Landlords for her application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be awarded a Monetary Order?
2. Should the Tenant be awarded a Monetary Order for the return of double her security deposit?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: a property tax report; the move in and move out condition inspection reports; e-mails between the parties from March 29, 2012 to August 1, 2012; photos of the rental unit; an environmental inspection report dated July 20, 2012; a letter from the strata corporation; a CD containing photos of the unit; a November 27, 2012 Dispute Resolution decision; tenancy agreements; Canada Post receipts; and receipts for work performed on the unit.

The Tenant submitted documentary evidence which included, among other things, copies of: a letter dated October 2, 2012 and Canada Post receipts.

The following facts were not in dispute and were confirmed by each party during this proceeding:

- The Tenant has occupied the rental unit since December 1, 2007 and continued to sign subsequent fixed term tenancy agreements.
- The last tenancy agreement started on September 1, 2011 and ended August 31, 2012. Rent was payable on the first of each month in the amount of $1,750.00 and on November 26, 2007 the Tenant paid $850.00 as the security deposit.

- The parties signed a move in condition inspection report form on December 1, 2007 that listed the rental unit as being brand new with no damage.
- The parties signed a move out condition inspection report form on August 12, 2012 noting damage to the unit and the Tenant wrote how she disagreed with the damage that was listed.

The Tenant stated that she sent the Landlord her forwarding address in writing on October 2, 2012, by registered mail. She provided the tracking information in her testimony; however I noted that it was also provided in her evidence and was dated October 29, 2012. She was not able to provide me with tracking information relating to an October 2, 2012 registered mail.

The Landlords confirmed receipt of the October 2, 2012 letter but argued that they received it at the same time they received the Tenant's application for dispute resolution. They have no record of receiving it previously.

The Tenant denied being the first person to occupy the rental unit and argued that she had received someone else's mail when she first moved in. She later confirmed that she agreed to and signed the move in inspection report that indicates the unit was brand new.

The Landlords refuted the Tenants statement and stated that she was in fact the first person to occupy the rental unit. They noted that the first property manager who dealt with the Tenant is now deceased and another property manager took over for about one year prior to them being hired at the end of March 2012. They confirmed shortly after they were hired they attempted to conduct an inspection of the Tenant's unit; however, she continued to put them off as supported by the e-mails they provided in evidence. Once inside they noticed damage to the unit and a chemical smell which prompted them to get an environmental assessment.

The environmental assessment was completed and the report of July 20, 2012, indicated that there was the presence of chemicals and damage that was indicative of an illegal clandestine methamphetamine drug lab. The Landlord pointed to the report provided in their evidence to page five, paragraph two, which states:

> *The unit is not safe for entry under the current state without proper personal protective equipment by trained personnel. It is likely there is some level of chemical contamination throughout the unit. A comprehensive assessment, remediation plan and professional remediation is required.*

The Landlord advised that after receiving the report they requested the Tenant move out of the unit so they could complete the repairs. She vacated by August 12, 2012.

The Tenant denied moving out on August 12, 2012 and said she had moved out by July 11, 2012. She could not provide additional testimony about her move out date and then recanted her testimony acknowledging that she attended the move out inspection on August 12, 2012 therefore she moved out in August, 2012.

The Landlord provided receipts of work performed to fully remediate the unit. They noted that they are seeking to recover the lost rent for the period that the unit was undergoing remediation in the amount of $6,125.00 plus the cost of the repairs which total over $50,274.24, as supported by their documentary evidence which included copies of the repair receipts. They acknowledged that the maximum amount they can claim under the *Residential Tenancy Act* is $25,000.00 and that they accept that some of the required repairs could have been required due to normal wear and tear of a five year tenancy. Therefore, they are only seeking to recover $25,000.00 from the Tenant.

The Landlords confirmed that the owner contacted his insurance company to attempt to recover the cost of the remediation and was refused. They stated that the owner's insurance would not cover the loss because the loss was possibly linked to an illegal chemical drug lab.

The Tenant argued that her rental unit had an electrical problem from the start of her tenancy which caused the bathroom light to short out. She alleged that she requested the building staff fix the problem on numerous occasions and noted that they did attend the rental unit and fixed the problem more than once. I asked if they reset the breaker for the bathroom when the light went out and she stated that she did not see how they fixed it. She confirmed that the building staff brought in an electrician on several occasions to repair the problem but could not provide testimony as to the dates when they attended.

The Tenant advised that she was of the opinion that the electrical problem in the bathroom is what caused the smoke residue throughout the apartment and also caused the damage to the stove top, cupboards and all other damage except for the blinds. She confirmed that the Landlord attended the unit with an inspector but argued that she was not told he was an environmental or chemical inspector. She claims there was no chemical smell in her apartment other than bleach and noted that the inspector asked her if she used bleach on the floor.

After a quick review of the photos the Tenant stated that the blinds did require repairs and the walls needed painting. She confirmed that she did not provide evidence in support of the alleged electrical problem but claimed she had asked the building manager for proof and they told her it was in storage.

The Tenant stated that she was dealing with other issues at the time the problems were going on so she did not concern herself with the alleged electrical problems. She said she felt comfortable knowing that the building had a fire alarm system.

In closing, the Landlords confirmed they contacted the strata manager when they were first hired and introduced themselves. At that time the strata managers did not inform them of any problems with the unit however they did inform them of the problems that had occurred during the time the Tenant was moving out which is supported by the invoice and letter provided in their evidence.

Analysis

I have carefully considered the above and all of the documentary evidence and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.
5.

Tenant's application

In the absence of proof to the contrary, I accept that the Landlords were served with the Tenant's forwarding address letter dated October 2, 2012, by registered mail on October 29, 2012 along with her application for dispute resolution.

Based on the foregoing, I find that at the time the Tenant filed her application for dispute resolution, the Landlord(s) were under no obligation to return the security deposit and therefore this application is premature. Accordingly, I dismiss the Tenant's application.

As the Tenant has not been successful with her application I find she must bear the burden of the cost to file the application.

Landlord's application

I do not accept the Tenant's argument that the unit was damaged by a pre-existing electrical problem as there is insufficient evidence to support such an allegation. Upon consideration of the documentary evidence and testimony before me, and in the presence of the Tenant's contradictory testimony, I accept the version of events as discussed by the Landlords and corroborated by their volumes of documentary evidence.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act by leaving the rental unit unclean and extensively damaged at the end of the tenancy.

As per the foregoing I find the Landlords have met the burden of proof to establish their claim for loss of rent and extensive damages to the unit. Accordingly, I award them the full amount of their claim in the amount of **$25,000.00**.

The Landlords have been successful with their application; therefore I award recovery of the **$100.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages & loss of rent	$25,000.00
Filing Fee	100.00
SUBTOTAL	$25,100.00
LESS: Security Deposit $850.00 + Interest 14.03	- 864.03
Offset amount due to the Landlord	**$24,235.97**

Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

The Landlords have been awarded a Monetary Order in the amount of **$24,235.97**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: January 24, 2013

Residential Tenancy Branch