Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants requested compensation for damage or loss under the Act and return of double the security deposit paid.

Both 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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties confirmed that a hearing was held on July 26, 2012 (file 793792) as a result of the tenant's application requesting compensation for damage or loss under the Act, in relation to a pest infestation. The parties came to a mutually settled agreement and the landlord has made payment to each tenant; as agreed.

The tenants have now submitted a claim for damage or loss, again for the pest infestation and for a lack of repairs, dating back to the start of the tenancy. A detailed calculation of the claim was not supplied; only a total amount claimed for the deposit and damages was indicated on the application.

I explained that the tenants were required to bring all of their claim forward at the time of the July 26, 2012 hearing and that they cannot make duplicate claims for any loss related to pests. Therefore, I determined that I would hear only that portion of the claim that post-dated the hearing held on July 26, 2012; the balance of the claim, from January to July 26, 2012, was declined, as it has already been decided the other matters were not clearly set out.

Therefore, the tenant's claim has been pro-rated to $83.33 per month from July 25 to October 31, 2012.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $83.33 per month from July 26, 2012 to October 31, 2012 for damage or loss under the Act?

Are the tenants entitled to return of double the $750.00 security paid?

Background and Evidence

The tenancy commenced in January 2012; rent was $1,500.00 per month. A deposit in the sum of $750.00 was paid.

Neither a move-in or move-out condition inspection report was scheduled or completed; this was confirmed by both parties.

At the July 5, 2012 hearing the tenants had agreed they would vacate the unit by October 31, 2012 and that the landlord should be given an Order of possession. The Order was conditional upon the landlord ridding the unit of cockroaches by the end of August, 2012. The tenants did vacate on October 31, 2012.

The landlord confirmed that on October 31, 2012 when he issued each tenant a receipt for $250.00 payments made, as agreed at the July 25, 2012 hearing, the tenant's forwarding address was written on the female co-tenant's receipt. A copy of this receipt was supplied as evidence. The landlord confirmed he has not submitted an application claiming against the security deposit and the deposit has not been returned to the tenants.

The tenants have claimed compensation as requested repairs were not made during the tenancy and treatment for cockroaches was not completed.

The tenants supplied copies of letters given to the landlord dated February 18, March 22, May 3, June 15, July 4, and October 16, 2012. Another, undated letter was given to the landlord after September 1, 2012. Several letters requested repairs, but the main focus was on the need for pest control treatments. At the hearing held on July 26, 2012, it was agreed that the landlord would have pest control attend the unit as soon as possible so that a cockroach problem could be addressed.

In the undated letter the tenants alleged that cockroaches were present in the lower unit of the building and that the pests had access to the tenant's unit. The October 16 letter

indicated that cockroaches were still present in the unit and that a pest control company had been contacted by the tenants, so a quote could be obtained.

The tenants said that the lack of repairs and the presence of cockroaches were very disturbing. The tenants had to purchase bins for all of their food and could not leave any dishes on the counters, for fear of bugs crawling on them.

The parties agreed that 4 pest control treatments were completed in the 4 unit building. Treatments took place twice in July 2012; on August 1 and September 24, 2012. Invoices were supplied as evidence of these treatments. The September 2012 invoice indicated that 3 units were treated using gel and that no live cockroaches had been found.

An October 17, 2012 letter issued by the pest control company that had completed the September treatment was supplied as evidence; this letter explained that treatment after September 24, 2012 had not occurred as the company and property manager could not come to an agreement on pricing. The company also explained that the absence of any live cockroaches on September 24 did not mean that there was not an on-going issue in the units and that they had planned to return to complete further control work.

The landlord said that occupants of 1 of the units had caused problems, resulting in the pest control company wanting double the usual fee for any subsequent treatment; the landlord said the tenants had also caused issues with the pest control company. The landlord had tried to have a different company provide service after September 24, 2012, but that company was not available.

The tenants indicated that the toilet in the master bathroom was sinking down through the flooring; that they had repeatedly requested repair, but it was not completed. The landlord said that the tenants must have been sitting too firmly on the toilet and that they caused the toilet to sink into the floor. A photograph of the flooring around the toilet was supplied as evidence; which showed a degraded floor. The tenants were able to use the toilet but were afraid it might fall through the floor.

The tenants said that the back door could not be locked, that the living room window was not secure, that the dishwasher was broken and that a kitchen drawer needed repair.

The landlord agreed that the living room window might have been insecure at the start of the tenancy; that window had not been repaired.

The landlord said the tenants moved the dishwasher as they thought this was required for pest control. When the machine was moved a line to the dishwasher was kinked, which caused it to malfunction. The landlord discovered this after the tenancy had ended.

The landlord said that the tenants had caused damage to the door as a result of slamming it. The door had already been repaired on 1 occasion.

The landlord did not respond the testimony given in relation to the kitchen drawer.

The landlord stated that the tenants allowed water to pool on the bathroom floor and that they did not pay their hydro bills. The landlord said that if the tenants had had issues with the unit they would have contacted him prior to June, 2012. The landlord's evidence submission indicated that a number of the tenant's documents had not been given to the landlord; those pages were not identified or referenced during the hearing. The landlord said that he did not receive any letters from the tenants until July and that the tenants have falsified letters. The tenants did not respond to this allegation.

The landlord's witness, the current tenant in the unit, did not testify as she supplied a letter dated January 13, 2013; which indicated when she moved into the unit it did require a number of repairs; including the dishwasher, the master bathroom toilet, and several drawers.

The tenants stated that in early October the landlord removed the caulking from around the bathtub; it was never replaced. This was the only attempt at repair made by the landlord during the term of the tenancy.

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.

Residential Tenancy Branch policy suggests that an arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenants.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

There was no dispute that on October 31, 2012, the date the tenancy ended, the landlord was given the tenant's written forwarding address. A receipt issued to the

female co-tenant was supplied as evidence of the address having been supplied to the landlord. The landlord confirmed that he had not submitted an application claiming against the deposit and that it had not been returned.

As the landlord failed to return the deposit to the tenants within 15 days of October 31, 2012 and, in the absence of an application claiming against the deposit for unpaid rent or utilities, I find, pursuant to section 38(6) of the Act, that the tenants are entitled to return of double the security deposit; $1,500.00.

In relation to the claim for damage or loss I find that the landlord did not diligently pursue pest control treatment. There were 4 treatments completed, but after September 24, 2012, the landlord failed to take steps to ensure that follow-up treatments occurred. The tenants reported that pest continued to be seen in their unit which I find could reasonably be expected to negatively impact their enjoyment of the rental unit. There was no evidence before me that the treatments supplied up to September 24, 2012 were insufficient; however, I find, based on the pest control company letter issued on October 17, 2012, that further treatment after September 24 should have occurred. The landlord did not provide any convincing evidence that he was unable to locate a pest control company to continue treatments.

In the absence of evidence of a specific amount of loss that was suffered I find that the tenants are entitled to nominal compensation for the presence of cockroaches from September 24 to October 31, 2012, in the sum of $80.00. I find that up until this point the landlord had taken reasonable steps since July 25, 2012 to treat the unit.

In relation to the balance of the claim made by the tenants, there was evidence before me of repeated requests made by the tenants for repair, in particular the toilet, which the landlord confirmed was falling through the flooring. Even if the landlord had not received any letters of complaint prior to July 2012, I find that the landlord was subsequently informed of the deficiencies.

Based on the failure of the landlord to address repair to the master bedroom floor, the dishwasher, door and window I find that the tenants did suffer a loss of value of the tenancy. For the landlord to say that the tenants were sitting too firmly on the toilet; resulting in the toilet going through the floor; lacked any credibility. It is unreasonable to accept that someone sitting on a toilet could cause the flooring to fail, unless proper maintenance had not been carried out. The landlord provided no explanation as to why he did not repair the flooring. There was no evidence before me that the landlord made any efforts to enter the home in order to complete repairs and the absence of a move-in condition inspection report resulted in a lack of a record of the state of the unit at the start of the tenancy.

Therefore, as I have accepted the tenant’s submissions that repairs were required and not completed, particularly in relation to the master bedroom toilet, I find that the tenants are entitled to nominal compensation in the sum of a further $80.00. The balance of the claim is dismissed.

Based on these determinations I grant the tenants a monetary Order in the sum of $1,660.00. 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.

Conclusion

The tenants are entitled to return of double the security deposit, $1,500.00, plus $160.00 as nominal compensation.

The balance of the claim is dismissed.

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: February 19, 2013

Residential Tenancy Branch