Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF
MNDC MNSD

Preliminary Issues

At the outset of this proceeding the Tenant appeared and requested that her boyfriend be allowed to act on her behalf as her agent. She then removed herself from the hearing and had her Agent submit all the evidence on her behalf.

Hereinafter, all submissions received from the Agent will be referred to as being received from or on behalf of the Tenant.

Upon review of the documentary evidence the Tenant argued that they received only one package of evidence from the Landlord which contained twenty two (22) pages. They did not receive the second package consisting of thirty eight (38) pages, as evidence for this proceeding.

The parties acknowledged that there had been two previous hearings, one on May 13, 2013 and a second on June 18, 2013. The Landlord had served the Tenant with the thirty eight (38) pages of evidence for the June 18, 2013 hearing but did not serve them with that package as evidence for this proceeding.

Sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulate that if a party wishes to rely on evidence at the proceeding they must serve the other party and the *Residential Tenancy Branch* with copies of the evidence prior to the hearing.

Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenant has not received copies of the Landlord's thirty eight (38) pages as evidence for this hearing I find that that evidence cannot be considered in my decision. I did however consider the testimony pertaining to that evidence, as well as all other testimony and the twenty two (22) page package that was properly served.

Introduction

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

The Landlord filed on September 27, 2013 seeking a Monetary Order for damage to the unit, site, or property, for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on July 18, 2013, seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the return of double the security deposit.

The parties appeared at the teleconference hearing 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. Is the Landlord entitled to a Monetary Order?
2. Is the Tenant entitled to a Monetary Order?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on April 15, 2012, and ended by a settlement agreement on June 30, 2013. Rent was payable on the last day of each month in the amount of $490.00 plus $50.00 per month utilities and on April 15, 2012 the Tenant paid $245.00 as the security deposit. Although the parties did a walk through of the rental unit there were no condition inspection report forms completed or signed.

The Landlord testified that he attempted to comply with the repair orders that were listed in the May 13, 2013 decision by having a pest control person attend the unit, replacing the weather stripping, and by giving the Tenant a replacement fridge by May 28, 2013. He argued that the Tenant claimed the replacement fridge was broken and then she

purposely prevented him access to the unit so he would be unable to complete the required repairs by the deadline. He testified about a note that the Tenant had posted on her door which indicated that the Landlord was not allowed access to the unit until after the June 18, 2013 dispute resolution hearing.

The Landlord stated that he purchased a third fridge in anticipation of the outcome of the June 18, 2013 hearing However, when he finally got access to the rental unit he found the second fridge had simply been unplugged and there was nothing wrong with it. He said he cleaned it up and plugged it in and it has been working fine since. As a result he is out the cost of purchasing the third fridge which he is seeking compensation for in the amount of $382.13.

The Landlord argued that he should be entitled to payment for June 2013 rent because he had complied with the repair orders but that it was the Tenant's actions that prevented him from getting inside to see that they had simply unplugged the second fridge. The pest control report was given to the Tenant on May 28, 2013; the fridge was provided May 22, 2013; and the weather stripping was completed by May 28, 2013.

The Landlord is also seeking $250.00 for unpaid utilities for five months prior to November 1, 2012. He testified that he wrote a demand letter for the utilities but that she continued to refuse to pay that amount even thought the tenancy agreement required her to pay a flat rate for the utilities.

The remaining portion of the Landlord's claim is comprised of cleaning and repair costs for the following: $375.00 for front door; $40.00 door knob/ lock; $125.00 general cleaning; $425.00 for drywall repairs and paint touch up; and $100.00 for satellite dish removal and disposal. He pointed to the photos in his evidence as support for these items claimed and argued that was the condition of the rental unit at the end of the tenancy.

The Landlord submitted that the Tenant had initially told him that the front door was broken during a break in of her apartment. He had requested that the Tenant get a police file number so he could claim the repair on his insurance but she refused to do so.

The Tenant's testimony refuted all items claimed by the Landlord and pointed to the photos they provided in evidence. They argued that they cleaned the rental unit and that all damage to the front door was either normal wear and tear or caused by a pre-existing crack that water had dropped into to make the crack larger.

The Tenant confirmed that a note was posted to the Tenant's door advising the Landlord he would be arrested by the police if he attempted entry prior to the June 18, 2013 hearing. They also wrote on a copy of the May 13, 2013 decision stating the Landlord was being charged and that he had no rights to enter the rental unit. They argued that the Landlord had been going into the unit without proper notice prior to the proceeding so they wanted to make sure he did not gain illegal access.

The Tenant testified that they provided the Landlord with the forwarding address on June 18, 2013 and he refused to return the security deposit.

At this time the parties were given the opportunity to attempt to settle these matters. The parties were too far apart and based on their comments it became evident that neither party really understood their rights or obligations under that Act. As a settlement agreement was not reached I informed the parties that the hearing would be concluded and I would make an arbitrated decision.

Analysis

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;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Landlord's Claim

On May 13, 2013 the Landlord was ordered to provide a replacement fridge immediately upon receipt of the decision and to have a pest control company treat the unit and repair the weather stripping on the front door no later than June 10, 2013. If the Landlord failed to comply with these orders then the Tenant would not be required to pay rent for June 2013.

The evidence supports that the fridge was replaced May 22, 2013, the weather stripping was replaced May 28, 2013, and pest control attended May 28, 2013. The Tenant filed for another dispute resolution hearing on May 23, 2013, alleging the replacement fridge did not work and prevented the Landlord access to the unit until after the June 13, 2013 hearing.

Upon consideration of the above, I accept the Landlord's submission that he completed the repairs within the required time frame and that the Tenant simply unplugged the second fridge and then prevented him access to investigate the problem prior to the June 18, 2013 hearing. Accordingly, I award the Landlord compensation for unpaid June 2013 rent and utilities in the amount of **$540.00** ($490.00 + $50.00 utilities).

When parties agree that utilities are to be paid at a flat rate each month a landlord is not required to provide the tenant with copies of the monthly utility bills. It is only in cases where the tenancy agreement stipulates that a tenant pays a percentage of each bill that copies of the actual invoices are required.

Section 26 of the Act stipulates that a tenant must pay rent and utilities in accordance with the tenancy agreement.

In this case the tenancy agreement stipulates that the Tenant must pay $490.00 for rent plus $50.00 each month for utilities and the evidence supports that the Tenant failed to pay the utilities for five months up to November 2012. Therefore, I find the Landlord has met the burden of proof and I award him **$250.00** in unpaid utilities.

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.

Upon review of all the evidence before me I favor the evidence submitted by the Landlord over the Tenant which indicated the rental unit required some cleaning and some repairs to the front door and minor drywall repairs.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Upon review of the amounts claimed by the Landlord for repairs, I find the invoice for drywall repairs to be excessive considering the work that was required. Furthermore, I do not accept the Landlord's claim for the cost of a third fridge because if he had purchased a brand new fridge there is no reason why he would not return it for a refund if it was not used.

There was no evidence before me as to the age of the front door. Furthermore, there is evidence that there was a pre-existing crack to the door. Accordingly, I find there is insufficient evidence to prove the Tenant is responsible for the cost to repair the cracked front door.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the aforementioned, I find the Landlord has met the burden of proof and I award him damages in the amount of **$415.00** ($125.00 cleaning + $40.00 lock + $150.00 drywall repair + $100.00 satellite dish removal).

The Landlord has primarily been successful with their application; therefore I award recovery of the **$50.00** filing fee.

The Landlord has been granted a monetary claim in the amount of **$1,255.00** ($540.00 + $250.00 + $415.00 + $50.00).

Tenant's claim

The evidence supports that the Tenant provided her forwarding address on June 18, 2013 and the tenancy ended on June 30, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 15, 2013. The Landlord did not file his application for dispute resolution until September 27, 2013.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenant has succeeded in proving the test for damage or loss and I approve her claim for the return of double her security deposit plus interest in the amount of **$490.00** (2 x $245.00 + $0.00 interest).

Monetary Order – I find that the above monetary claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlord's monetary award	$1,255.00
LESS: Tenant's monetary award`	-490.00
Offset amount due to the Landlord	**$ 765.00**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$765.00**. 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: October 10, 2013

Residential Tenancy Branch