Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 466109 B.C. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for double the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 2010. There were two co-tenants on the tenancy agreement a copy of which has been provided in evidence by the tenant. Rent for this unit was $850.00 due on the 1st of each month. The tenants paid a security deposit of $425.00 on June 01, 2010. The parties agree that no inspections reports were completed at the start or end of the tenancy. The tenant gave the landlord a forwarding address in writing on May 30, 2011 and vacated the unit on that date.

The tenant testifies that the landlord has not returned the security deposit with 15 days of either the end of the tenancy and the date the landlord received the tenants forwarding address in writing. The tenant testifies that he gave the landlord his forwarding address when he gave the landlord a letter in person on May 30, 2012 agreement with the tenant when the co-tenant had given notice to vacate the unit.

The tenant seeks to recover double the security deposit to the sum of $850.00 and seeks to recover the $50.00 filing fee from the landlord.

The landlord disputes the tenants claim. The landlord testifies that the tenant did not give one clear months Notice and therefore the landlord held the security deposit for unpaid rent and damages.

The landlord testifies that he did receive a written Notice from the tenants co-tenant saying the co-tenant was vacating the rental unit on May 31, 2012. The landlord testifies that he asked this tenant what he was doing as the Notice only had the other co-tenants name on it. The landlord testifies that this tenant said he wanted to stay but

wanted the whole back yard for his dog. The landlord testifies that this tenant only gave Notice to end the tenancy and a forwarding address on May 30, 2012. The landlord testifies that he started to advertise the unit for rent straight away but the unit was not re-rented until July 01, 2012.The landlord seeks to recover unpaid rent for June, 2012 of $850.00.

The landlord testifies that the tenant failed to clean the rental unit. The bathtub and a sink were left filthy, the whole unit had to be cleaned including the carpets as they were left stained and the back yard had to be cleaned of dog feces and have holes filled in from the tenants dog. The landlord seeks to recover $100.00 to clean the yard and $200.00 for cleaning the unit. The landlord testifies that the unit was clean at the start of the tenancy and the carpets had been professionally cleaned. The landlord testifies that he has provide a letter from other tenants living in the building regarding the condition of the backyard and the problems they had with the tenants dog digging holes in the back yard and how unsafe it was in the backyard because of the dog.

The tenant testifies that the co-tenant gave Notice on April19, 2011 effective May 31, 2011. The tenant testifies that by the co-tenant giving Notice this effectively ended the tenancy on May 31, 2011 for both tenants. The tenant testifies that he sent the landlord a letter on May 30, 2011 that informed the landlord that as the tenancy agreement signed between the tenants no longer had any effect as of May 31, 2011 and the landlord refused to provide a new tenancy agreement for this tenant that the tenant has found a new place to live

The tenant disputes the landlord's claims concerning damages and about the tenants dog. The tenant testifies that the dog did poop in the backyard but the tenant testifies that he always cleaned up after the dog and the tenant states he never received any complaints from the other tenants. The tenant disputes that his dog dug holes in the backyard and testifies that the yard was made up of a lot of gravel and long weeds. The landlord did put up a dog pen but not until after the tenant moved out. The landlord had

also notified the tenants in writing that as of June 01, 2011 the yard was going to be used for a trucking company.

The tenant testifies that he cleaned the unit at the start of the tenancy as it was provided to the tenants in a dirty condition; the bathtub had lots of staining including rust stains which could not be cleaned. The doors had holes and paint was missing on some walls. The carpets had not been cleaned; the kitchen was not cleaned and their were cobwebs and a cat litter box left in the unit. The landlord's wife who showed the unit to the tenants asked the tenant to take care of the cleaning. The tenant testifies they did so and also pulled all the four foot weeds out of the yard. The tenant testifies that they did not meet this landlord until a month after they moved in and no inspection report was done with the tenants.

The tenant testifies that he still had access to the unit until May 31, 2011 at 1.00 p.m. as rent had been paid up to that date. The tenant testifies that when he returned to the unit at 9.30 a.m. on May 31, 2011 the landlord had changed the deadbolt on the door and the tenant could not gain access to make sure everything had been left clean.

The tenant cross examines the landlord and asks the landlord about his testimony that the tenant had not given proper notice and yet the evidence shows that proper notice was given on April 19, 2011. The landlord responds that he did not get Notice from this tenant until May 30, 2011. The tenant asks the landlord about photographic evidence showing the yard and asks the landlord when the landlord's pictures were taken as the tenant's pictures show trucks in the yard and the landlord's pictures show no trucks in the yard. The landlord responds that his pictures were taken after the tenants moved out. The tenant asks the landlord how the tenants could have full use of the yard if the yard had been rented to a trucking company. The landlord responds that the tenants moved out two years ago and the landlord can do what he wants with the yard after that.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for double the security deposit; section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 30, 2011 and the tenancy ended on May 31, 2011. As a result, the landlords had until June 15, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit until May 24, 2013. Therefore, I find that the tenant has established a claim for the return of double the security deposit of **$850.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords claim for unpaid rent; I refer the parties to the Residential Tenancy Policy Guidelines # 13 which clarifies the rights and responsibilities of co-tenants and states, in part, that Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper

notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

With this in mind I have considered the landlords claim that this tenant did not give proper notice and the landlord is entitled to recover rent for June. As the co-tenant gave written notice to the landlord on April 19 effective May 31 then that is the date the tenancy ends. As no new agreement was entered into for this tenant and no rent was paid for June then a new tenancy agreement was not entered into between this tenant and the landlord and this tenant was not required to provide any further notice to the landlord. Consequently the landlords claim for unpaid rent for June is dismissed without leave to reapply.

With regard to the landlords claim for damages and cleaning; the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord did not complete a move in inspection report to show the condition of the unit at the start of the tenancy. 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 7 to 15 days). 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 a tenant has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during 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.

The landlord has provided photographs showing the yard; however these pictures do not show any dog feces or holes in the yard. The landlord was not able to provide any corroborating evidence to support his claim that the unit was cleaned at the start of the tenancy or that the carpets were clean at the start of the tenancy. The landlord has also not proven that the tenant had not cleaned dog feces from the yard or that the tenant's dog had dug holes in the yard. Consequently the landlords claim for damage and cleaning is dismissed without leave to reapply.

The landlords claim to keep the security deposit is also dismissed without leave to reapply as the landlord did not file an application to keep the security deposit within 15 days of the end of the tenancy and the tenant has been awarded the return of the security deposit.

The tenant is entitled to recover the **$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **$900.00** consisting of double the security deposit and the filing fee. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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: August 26, 2013

Residential Tenancy Branch