Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking for a monetary order for money owed or compensation for damage or loss, a monetary order for a return of their security deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation, including their security deposit, and to recover the filing fee?

Background and Evidence

I heard oral evidence that this tenancy officially commenced on April 1, 2005, that the tenants had access to the rental unit on March 1, 2005, that monthly rent, according to the tenants, was $1020, was $920 according to the landlords, and that the security deposit of $460 was paid by the tenants at the beginning of the tenancy.

The parties confirmed that there was no written tenancy agreement.

The tenants' monetary claim listed in their application was $3149.32. In documentary evidence giving a detailed calculation, the breakdown was as follows:

Security deposit	$920
Loss of quiet enjoyment	$1326
Repair costs, baseboards and linoleum	$554.86

The tenants' relevant documentary evidence included a report from the RCMP, receipts for repairs made to the rental unit, copies of email communication between the parties, witness statements, and written summaries.

Although the landlords submitted other documentary evidence, the evidence ***relevant*** to the tenants' application was a written response.

Security deposit-

The tenants submitted that there were no written condition inspection reports, either at the move-in or move-out, that they gave the landlords their written forwarding address at the end of the tenancy, and that the landlords have not returned their security deposit or interest on the security deposit.

The tenants submitted that although they did not pay $460, there was an understanding that their labour on the rental unit when moving in was in lieu of paying the security deposit.

In response, landlord EC admitted that he received the tenants' written forwarding address, and although he was not certain of the date, he agreed that it was within a week of the tenants vacating the rental unit.

The landlord also confirmed that the tenants did provide labour in exchange for an actual payment of $460 for the security deposit, and as such, the landlord said he gave the tenants a receipt showing a payment of $460.

The landlord agreed he has not returned the security deposit.

Loss of quiet enjoyment-

The tenant submitted that on April 24, 2013, she noticed the pilot light on the gas hot water tank was out, leading to the question of whether it was safe in the home.

The tenant said that she called the landlords, speaking to landlord TC. The tenant said that TC informed her that EC would come over the next day.

The tenant stated they called the gas company just to make sure there was no potential danger, and were informed that it was an emergency and that they would come out at no charge. According to the tenant, the gas company representative came to the rental unit, and when he was just finishing his repairs, EC violently burst into the rental unit, yelling and screaming obscenities.

The tenant said due to the violent outburst from EC, she called the RCMP, who investigated the incident. The tenant supplied the report.

The tenants claimed they are entitled to a reimbursement of rent from the date of the incident on April 24, through the end of the tenancy, as they lived in fear of their safety for the duration of the tenancy, due to the landlord's violent behaviour.

In response, the TC said she informed the tenant that EC would go over to the rental unit in an hour as he was in the shower; instead of waiting, the landlords, who lived next door, observed the gas company truck at the rental unit.

According to the landlord, an unlit pilot light is not an emergency and that the tenant would not open the door when he came over.

The landlord denied any violent behaviour.

Reimbursement for repairs made to the rental unit-

The tenants submitted that the parties had an agreement that the tenants would replace the baseboards as they were swollen, and as such, all the baseboards in the rental unit

were replaced and the leftover baseboards were stored in the landlords' home, without being returned. The tenants claimed the amount of $380.63 as shown by the invoice for 290 linear feet of baseboards.

The tenants also claimed that her son burnt 3 tiny holes in the linoleum flooring in front of the stove. The tenant claimed that the female landlord required that they replace the entire flooring, even though the linoleum was old and out of date, and additionally, the landlords asked the tenants to replace the linoleum in the bathroom, the cost for which would be deducted from the rent.

The tenants claim that they should be responsible for only ¼ of the cost of the replacement linoleum, due to the age and condition of the original.

In response, the landlords submitted that the amount of linear feet needed to replace the baseboards was greatly exaggerated, and estimated that 47 feet would suffice for the amount of baseboard needed for replacement.

The landlord also submitted that the damage to the kitchen floor was due to hot oil from the female tenant, and the damage was larger than the tiny holes.

The landlords submitted that they agreed to allow a deduction of $100 from the rent for replacing the flooring in the bathroom.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Security deposit-Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

In the case before me I find that the landlord had received the tenants' written forwarding address at least by the end of the first week in June 2013, by their own admission, the last day of the tenancy was May 31, 2013, and therefore the landlords had until at the latest, June 24, 2013, to file an application for dispute resolution claiming against the tenants' security deposit or to return the security deposit in full. The landlords have done neither.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

I therefore grant the portion of the tenants' application for a return of their security deposit, doubled, and find they are entitled to a monetary award of $936.29 ($460 x 2= $920 + $16.29 interest on the single security deposit)

Loss of quiet enjoyment- With respect to the tenants' request for monetary compensation for a loss of their quiet enjoyment and a subsequent devaluation of their tenancy, I find the tenants submitted sufficient evidence that the male landlord wrongfully burst into the rental unit on the night of April 24, 2013. In reaching this conclusion, I relied on the written report of the RCMP, which confirmed that the call taker for the agency heard "yelling and swearing" in the background. As well, the report related that the gas company representative confirmed the tenant's version of events.

I accept that the sudden intrusion by the landlord deprived the tenants of their right to quiet enjoyment as granted under section 28 of the Act, in this case, freedom from an unreasonable disturbance, and I find that the aggressive nature of the intrusion by the landlord caused the tenants reasonable apprehension of further outbursts.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

As to the tenants' request for reimbursement of their rent from April 24 through May 31, I considered that the tenants still enjoyed the full use of the rental unit for the duration of the tenancy, the unreasonable disturbance did not cause them to immediately end the tenancy, and I therefore am unable to grant them full reimbursement.

I find a reasonable amount of compensation for the sudden aggressive nature of the landlord bursting into the rental unit, causing the tenants to call the police and creating apprehension for further outbursts, to be $400.

Repair costs-As to the tenants' claim for repair costs, I find that the evidence supports that the replacement of the baseboards and replacement of the linoleum were the subjects of a contract for services between the landlords and the tenants. I find I do not have authority of over employment contracts or choices made by the tenants. Additionally, I considered that the tenants were not required to replace the linoleum just on the demands of the landlords, although it might have been possible that the tenants would have been responsible for damage beyond reasonable wear and tear at the conclusion of the tenancy.

The landlords submitted that they accepted responsibility for 47 linear feet, and I therefore find the tenants are entitled to compensation of $58.75 (47 feet x $1.25 per feet as shown by the tenants' invoice).

I also allow the tenants recovery of $100 for replacement of the bathroom flooring, as agreed to by the landlords in their submissions.

I allow the tenants recovery of their filing fee of $50, as their application was partially successful.

Due to the above, I find the tenants are entitled to a total monetary award of $1545.04, comprised of $936.29 for a return of their security deposit, doubled, plus interest as described above, $400 for the loss of the tenants' quiet enjoyment, $58.75 for baseboard costs, $100 for linoleum replacement for the bathroom, and the filing fee of $50.

Conclusion

The tenants' application for monetary compensation is granted in part.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $1545.04, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicants and the respondents.

Dated: October 28, 2013

Residential Tenancy Branch