Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking a monetary order as well. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on August 1, 2012 and ended on December 31, 2013. The tenants were obligated to pay $3500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $1750.00 security deposit and $1750.00 pet deposit.

The relationship between these two parties is an acrimonious one. Both parties repeatedly interrupted one another and stated the other was not being truthful. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their 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.

I will deal with the each party's application and my findings as follows:

Tenants Claim - The tenant is seeking $4061.67. The tenant stated that when he moved into the home he was not informed that he would be paying the electricity for the entire home. The tenant stated that the basement was occupied by other tenants. The

tenant stated that the other tenants' electricity was included in their rent. The tenant stated that he felt the landlord was not acting in good faith. The subject tenant feels that he occupied "about half of the house" and should not have to pay for the downstairs tenants share. The landlord stated that the tenant should have been aware of this arrangement as the landlord was bearing the cost of internet for the subject tenant. The landlord stated that the tenant occupied two thirds of the home. The landlord stated the tenants' bills were exacerbated by them allowing unauthorized parties to use the laundry facilities. The landlord stated that the tenant is seeking $504.00 as part of the total claim that was a refundable deposit from B.C. Hydro, but should not be considered.

The Residential Tenancy Policy Guidelines under Shared Utility Service clearly addresses the issue before me. It states:

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Based on the above I do find that the tenant is not required to pay for a portion of the home that he was not using or was not part of his tenancy agreement. I do find that the tenant occupied two thirds of the home and was responsible for that amount. I accept the evidence of the landlord in regards to the $504.00 refundable deposit and that it should not be part of the total. The calculations used to come to an amount are as follows. Total electricity cost of $3557.67 X 33% (the amount the tenant is entitled to recover) = $1174.03. I find that the tenant is entitled to that amount.

Landlords Claim – The landlord is seeking $1201.98 for the costs of repairing the unit they allege the tenant damaged. The landlord stated that they had returned $2750.00 of the $3500.00 in deposits. The landlords withheld $750.00 as they thought that would be sufficient for the costs of repairs. The landlords stated that when they had a contractor come and give formal quotations the actual amount of repairs was $1201.98. The landlords advised that none of the work has been conducted as they were waiting to see if they were going to be successful in this hearing. The landlord stated a condition inspection report was conducted at the beginning of the tenancy with the tenant but was conducted without the tenant at the end of tenancy. The landlord stated that the tenant

was given two opportunities in accordance with the Act, however the tenant chose not to participate.

Section 35 and 36 of the Act addresses the matter before me and it states:

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 **(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished** if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The tenant acknowledged that the landlord offered several different dates however the tenant stated those dates "weren't going to do it". The tenant stated that the home was 80-90 years old and was in disrepair. The tenant stated the landlords claims can be attributed to normal wear and tear and the poor condition of the home. The landlord has not conducted any repairs and is not "out of pocket" any monies. The landlord did not provide sufficient evidence to support his claims for damages and I therefore dismiss that portion of the landlords claim. However, based on the above I find that the tenant has extinguished his right to the remaining portion of the deposit of $750.00.

As both parties have been successful in obtaining a monetary award, and using Section 72 of the Act to "offset" the costs I hereby apply the landlords $750.00 award against the tenants' award of $1174.03 for a final amount owing to the tenant of $424.03.

I decline to make a finding in terms of the recovery of the filing fee and each party must bear that cost.

Conclusion

The tenant has established a claim for $424.03. I grant the tenant an order under section 67 for the balance due of $424.03. This order may be filed in the 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: March 10, 2014

Residential Tenancy Branch