Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee.

The landlords and tenants appeared at the teleconference hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised an issue regarding the documentary evidence or the application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, 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 landlords entitled to retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The written tenancy agreement supplied shows that this fixed term tenancy began on July 15, 2012, monthly rent was $1395, and the tenants paid a security deposit of $700, which has not been returned to the tenants. I heard undisputed evidence that the tenancy ended on July 28, 2013.

As I was informed at the hearing, these parties were previously in dispute resolution on the tenants' application for a return of their security deposit. In a Decision dated December 3, 2013, file number 811759, another Arbitrator determined that there was a question as to the landlords receiving the tenants' written forwarding address, and therefore dismissed the tenants' application, with leave to reapply.

Additionally, in that Decision of December 3, 2013, the landlords were deemed to have received the tenants' written forwarding address on December 3, 2013, and they were ordered to deal with the tenants' security deposit as required by section 38 of the Act. Following that Decision, the landlords' made the present application on December 16, 2013.

The landlords' monetary claim listed in their application was $987.67; however the landlords did not provide a detailed calculation as required by section 59 (5)(a).

The tenants were offered the opportunity to proceed with the hearing and allow the landlords to testify about the breakdown of their claim, or have the landlords' application dismissed, with leave to reapply.

The tenants stated that they wished to proceed with the hearing.

I then asked the landlords for a breakdown of their claim, and the landlord stated that their claim consisted of damage to the wall bed of $372.75, repair for damage to the doors to the wall bed for $200 plus tax, cleaning for $105, garage door damage of $51.52, service for a patio door, in the amount of $148.40, $50 for a move-in fee and $50 for a move-out fee, as charged by the strata company, and light bulbs for $45.85.

The landlords' relevant documentary evidence included the written tenancy agreement, with an addendum titled "Report of Rental Premises and Contents," email communication between the parties, a document titled "Report of Rental Premises and Contents," dated July 28, 2013, a quote for the wall bed panel installation, an emailed quote mentioning $200 for repair to the wall bed, emailed, small, black and white copies of photographs of the rental unit, an invoice for a patio door reset, a receipt for reprogramming of the garage door opener for $51.52, and a letter from the strata company.

It is noted that the "Report of Rental Premises and Contents" lists an inventory and attachments of a locker room, bedroom, bathroom, and kitchen, mentioning such items as a wall bed, towel rack, tissue holder, mirror, entertainment center, refrigerator and ice trays, etc. Additionally, the document stated that there are door keys and an air conditioner.

In support of their application, the landlord submitted that the pictures show the damage to the wall bed, and to the front panel to the wall bed, for which the tenants are responsible.

According to the landlords, the tenants failed to properly clean the rental unit when they vacated, explaining that the tenants received the rental unit in a clean condition and they expected the same condition at the end of the tenancy.

The landlords submitted that the tenants caused damage to the garage door and to the patio door, which caused a replacement by the landlords.

As to the move-in and move-out fee, the landlord submitted that the strata has charged $100 to their account, and that the tenants were responsible for this fee, as they were informed prior to the tenancy.

The landlord submitted that they had to replace the broken and burnt out light bulbs at the end of the tenancy, for which the tenants were responsible.

In response to my question, the landlords confirmed that the tenants had not signed documents in which the tenants agreed to strata charges.

In further response to my question about a condition inspection report, the landlords submitted that the 1 page document titled “Report of Rental Premises and Contents” was the parties’ inspection of the premises, as the instructions on the document stated that “if something is dirty or damaged, describe it fully on the same attached sheet of paper.”

In response, the tenant submitted that the wall bed was broken when they moved in and that the front panels were already chipped.

The tenant submitted that they provided a thorough cleaning of the rental unit when they moved out.

The tenants submitted that the door handle was broken when they moved in and that they never used the garage door opener.

The tenant submitted that the hinges on the patio door were problematic the entire tenancy, as they kept popping out of the track.

The tenant submitted that the light bulbs were already burned out, and that they never replaced the bulbs, as they were too high to reach.

The tenant submitted that the parties never had a move-in or move-out inspection.

The tenants’ relevant documentary evidence included copies of black and white photographs of the rental unit, which the tenants submitted showed the condition of the rental unit at the beginning of the tenancy, showing existing damage.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlords 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 party took reasonable measures to mitigate their loss.

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

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

I find the document submitted and relied upon by the landlord to serve as a condition inspection report does not meet the requirements of the Act and Residential Tenancy Regulation. Section 20 of the Regulations requires that the condition inspection reports contain specific information and content and be in a specific format. Standard forms are available to landlords on the Residential Tenancy Branch ("RTB") website. For instance, among other requirements, the condition inspection report must contain the correct legal name of the landlords, their address for service, a statement of the state of repair and general condition of each room in the rental unit, and a space for the signature of both the landlord and tenant, all of which this document lacked.

Additionally, I had no evidence that the parties inspected the rental unit together.

Additionally, the landlords failed to submit any independent evidence of the condition of the rental unit at the beginning of the tenancy.

As I have found that the 1 page document supplied by the landlords to be deficient as required under the Act and the Regulations, I therefore find that the landlords' failed to failed to meet their obligation under of the Act of conducting move-in and move-out inspections and completing the inspection reports complying with the Act and Regulations.

Due to the lack of a compliant condition inspection report taken at the beginning or end of the tenancy, or other evidence, including photographs and the disputed verbal evidence of the parties, I find the landlords submitted insufficient evidence to support their claim that the tenants caused damage to the rental unit and **I dismiss their monetary claim for damage to and cleaning and light bulb replacement for the rental unit.**

As to the landlords' claim for the move-in and move-out fee as charged by the strata corporation, in this case the landlords failed to have the tenants sign a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them.

Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As the tenants have not signed the Form K, which becomes part of the tenancy agreement, I find that the landlords have failed to prove that the tenants have violated the tenancy agreement or the Act, and **I dismiss their claim for $100**.

As I have dismissed the landlords' application, I decline to award them recovery of their filing fee.

I next considered the issue of the tenants' security deposit.

Under sections 24(2) and 36(2) of the Act, when a landlord fails to conduct an inspection with the tenants and properly complete a condition inspection report, the landlord's right to make a claim against the security deposit for damage to the property is extinguished. As I have found that the landlords in this case did not carry out move-in or move-out inspections or complete condition inspection reports, they extinguished their right to claim the security deposit for damage to the property.

The landlords were therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The tenancy ended on July 28, 2013, and the landlords received the tenants' forwarding address on December 3, 2013, as declared in an earlier Decision of another Arbitrator. The landlords were therefore required to return the tenants' security deposit within 15 days of December 3, 2013, and failed to do so.

Because the landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenants' security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the landlords pay the tenants double the amount of their deposit.

I therefore find that the tenants are entitled to a monetary award $1400, or double their security deposit of $700.

Conclusion

The landlords' application has been dismissed.

As the landlords' application has been dismissed, I have granted the tenants a monetary award in the amount of $1400, comprised of their security deposit of $700, doubled. I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of $1400, 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 landlords.

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: April 18, 2014

Residential Tenancy Branch