Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On February 13, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were personally delivered to a third party at the Tenant's residence. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Although the Application for Dispute Resolution was not served to the Tenant within three days of it being filed, as is required by section 59 of the *Residential Tenancy Act (Act),* I find that the Tenant did have sufficient time to respond to the claims made and I find there is no need to delay this hearing as a result of the late service.

On March 04, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution. The female Tenant stated that on March 05, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord via registered mail. The Landlord acknowledged receipt of these documents.

On May 14, 2014 the Tenant submitted documents to the Residential Tenancy Branch. The female Tenant stated that copies of these documents were mailed to the Landlord on May 14, 2014. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2012 and that it end on January 31, 2014. The parties agree that the monthly rent was $1,100.00.

The Landlord and the Tenant agree that a security deposit of $550.00 was paid for this tenancy; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Tenant provided the Landlord with a forwarding address, via email, on February 13, 2014.

The Landlord and the Tenant agree that a condition inspection report was completed at the start of the tenancy; that the rental unit was inspected on February 01, 2014; and that the Landlord failed to complete a condition inspection report at the end of the tenancy.

The Landlord and the Tenant agree that battery acid leaked onto the laminate floor in one of the bedrooms during the tenancy. The female Tenant stated that they did not notice the damage until January 30, 2014 and that it was reported to the Landlord on January 31, 2014. The Landlord stated that it was reported will before the end of the tenancy.

The female Tenant stated that they were prepared to repair the floor on February 01, 2014 but the Landlord asked them to wait until the following weekend. She stated that they made arrangements to have the floor professionally repaired on February 08, 2014; that those arrangements fell through; and that they had the floor repaired on February 09, 2014, at the expense of the Tenant.

The Tenant stated that the Tenant did not make arrangements to have the floor repaired on February 01, 2014 and that she wanted it repaired prior to her new tenant moving in on February 03, 2014. She stated that the Tenant made arrangements to have the floor fixed on February 08, 2014 and that the new tenant vacated the rental unit to avoid the noise/mess of the repairs. She stated that the new tenant also vacated the rental unit on February 09, 2014 for approximately six hours to avoid the noise/mess of the repairs.

The Landlord stated that she gave her new tenant $100.00 in compensation for his inconvenience, for which she is seeking compensation. She stated that the new tenant also asked her to be present when the work was being completed in the unit and that

she was in the unit while the repairs were being completed, for which she is seeking compensation of $50.00.

Analysis

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the floor that was damaged during the tenancy by the end of the tenancy. As the Tenant did pay for the cost of repairing the floor, which was repaired on nine days after the end of the tenancy, I find that the Landlord is not entitled to compensation for the cost of those repairs. I do find, however, that they are responsible for paying any costs arising from the delay in the repair.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the new tenant was inconvenienced by the planned repair on February 08, 2014 and by the actual repair on February 09, 2014. I find the Landlord acted reasonably when the Landlord paid compensation to the new tenant for this inconvenience, as it breached his right to the quiet enjoyment of the rental unit. I find, however, that compensation of $100.00 is excessive for this inconvenience.

Although I do not know how much the current tenant is paying in rent, the Tenant was paying $1,100.00, which is $37.08 per day. Given that the new tenant did not need to vacate the rental unit for the entire two days, I find that compensation of $50.00 is more reasonable. I find that the Tenant must pay this amount to the Landlord, in partial compensation for the amount she gave her new tenant.

While I accept that the Landlord was also inconvenienced by the delayed repair, I find that she is not entitled to compensation for her time. She was not obligated to be present when the repairs were being done and she did so as a courtesy to the new tenant. If the new tenant did not want the workers in the rental unit to be unattended, he could have remained in the unit. Given that he was compensated for his inconvenience, I find it would not have been unreasonable for him to remain in the unit if he did not want to leave the unit unattended.

Section 35(3) of the *Act* stipulates that a landlord must complete a condition inspection report at the end of the tenancy. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 35(3) of the *Act.*

Section 36(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not compete a condition inspection report at the end of the tenancy and/or if the landlord fails to provide the tenant with a copy of that report. As I have concluded that the Landlord failed to comply with section 35(3) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2)(c) of the *Act,* the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

I find that the Application for Dispute Resolution filed by both parties has some merit and that they are, therefore, each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $50.00, in compensation for the delay in repairing the floor. The Tenant has established a monetary claim, in the amount of $1,100.00, which is double the security deposit. After offsetting the two claims, I find that the Landlord owes the Tenant $1,050.00.

Based on these determinations I grant the Tenant a monetary Order for $1,050.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, 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: May 30, 2014

Residential Tenancy Branch