Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD
MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on March 6, 2014, seeking to obtain a Monetary Order for damage to the unit, site or property, and to keep all of the security deposit.

The Tenants filed on June 12, 2014, seeking to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; the return of double their security deposit; and to recover the cost of the filing fee from the Landlords for their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords were represented by Landlord J.S. who affirmed that he was at the hearing to represent both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Landlord confirmed receipt of the Tenants' application for Dispute Resolution and copies of their evidence. He noted that he did not pick up the registered mail package until June 19, 2014. The Landlord said that he was of the opinion that this evidence was served late and then stated that he had had time to review everything and he wished to proceed today.

The Tenants submitted evidence that their application and evidence were served upon the Landlord, by registered mail on June 12, 2014 which is the same date they filed their application. Accordingly, I find the Tenants served the Landlord with their application and evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* #

3.1 and 4.1. Therefore, I will consider all relevant documentary evidence provided by the Tenants.

The Landlords did not submit documentary evidence to support their claim and requested permission to submit evidence after the hearing had started. The Landlord argued that they were told by the staff at the *Residential Tenancy Branch* that they would receive information on how to serve their evidence at a later date. He argued that in order to make this proceeding fair he should be allowed to submit evidence as the Tenants provided evidence.

When a party files an application for Dispute Resolution they are provided a copy of the *NOTICE OF A DISPUTE RESOLTUION HEARING* which provides *GENERAL INFORAMTION* about your responsibility and the hearing and states at item #1:

> *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

In addition to the above document, applicants and respondents are provided fact sheets and are assisted by well trained employees who inform participants to read the information carefully.

The *Residential Tenancy Branch Rules of Procedure # 11.5 (b)* provides that the arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

After careful consideration of the foregoing, I denied the Landlord's requests to submit evidence after the hearing. I denied the requests in part because the burden lies with the participant to know their obligation to provide evidence to support the merits of their claim, as stipulated in the *Residential Tenancy Branch Rules of Procedure.*

Furthermore, the Landlords had been provided the required information on service of evidence, as were the Tenants who were able to get their evidence served in time, despite the Tenants' application being filed eleven days before the hearing. If I was to accept evidence from the Landlords after the hearing, it would be unfairly prejudicial to the Tenants, who complied with the *Act* and *Rules of Procedure* and served their evidence prior to the hearing, as required.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to a Monetary Order?
2. Have the Tenants proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on May 1, 2012 and switched to a month to month tenancy after May 1, 2013. The Tenants were required to pay rent of $2,000.00 on the first of each month and on April 15, 2012 the Tenants paid $1,350.00 as the security deposits which comprised of $1,000.00 damage deposit plus $350.00 as the pet deposit and hot tub security deposit.

The Landlord testified that they completed a walk through with the Tenants at move in and he recalls completing a condition inspection report form but he was not certain who signed the form. He stated that he had an agent attend the move out inspection on February 28, 2014 at 1:00 p.m. and the Tenants refused to sign the condition inspection form.

The Landlord submitted that they received the Tenants' forwarding address by e-mail and noted that it should have been provided in writing with their signature. He stated that e-mail became the normal mode of communication near the end of the tenancy as the Tenants' no longer wanted to communicate by telephone or by text, as they had done previously. The Landlord confirmed that he acted on the e-mail forwarding address as he used that address when he served his application for Dispute Resolution to the Tenants.

The Tenants disputed the Landlords testimony and argued that no condition inspection report forms were completed at move in and the Landlords' agent did not have any forms with him when he attended the move out inspection. They pointed to their evidence and noted that their letter, which was amended by the agent, was the only document that was signed at the move out inspection.

The Tenants confirmed that they sent their forwarding address by e-mail on February 27, 2014, and on January 24, 2014, they sent their notice to end their tenancy via e-mail. The Tenants submitted that they had e-mailed, sent text messages, and had verbal communication with the Landlords throughout the tenancy, but chose only e-mail near the end of the tenancy when things became adversarial.

The Landlord testified that they are seeking monetary compensation that is approximately $5000.00, which consists of: (a) money to either clean or replace the stained carpet; (b) repair the chipped counter top that was new just prior to the start of the tenancy; (c) painting costs to repaint the kitchen, dining room, living room, and upstairs bedroom after the Tenants painted the rooms white, without the Landlords' written permission; (d) to replace garden boxes that were removed and repair landscaping, bushes, and garden beds that were altered without the Landlords' permission; and (e) replace stained linoleum that was in the basement.

After submitting his testimony outlining the details of his claim, the Landlord offered to settle both claims with the Tenants by offering to keep their deposits and calling everything even. The Tenants refused to accept his offer and stated that they wished to proceed with their claim as filed.

The Tenants disputed the Landlords' claim in its entirety. They argued that the Landlords provided no evidence to prove the condition of the rental property at the onset of the tenancy, as there was no move in condition inspection report form completed, and there was no evidence to prove the condition at the end of the tenancy. They provided a specific response to each item claimed as follows:

(a) The carpets were stained when they moved in and they had the carpet professionally cleaned at the end of their tenancy.
(b) The Tenants were not aware that the counter was chipped; therefore, they were questioning if the chip happened after their tenancy had ended. There was no inspection and there is no evidence to prove a chip even exists in the counter.
(c) The Tenants argued that the Landlords authorized them to paint. They pointed to the pictures provided in their evidence to support what the conditions of the walls were prior to them painting. The Landlords were happy that they wanted to paint because the house was up for sale and it was improving the value of the house to change it was colored walls to white walls.
(d) The Tenants confirmed that they disassembled the planter boxes and pointed out that they did so with the Landlords' permission. The wood from the planter boxes was left at the rental unit. They did not remove any plants that were planted in the ground. They had removed their own plants that were in pots and trimmed the bushes and trees, as the male Tenant is a professional landscaper.
(e) The Tenants were fully aware of the red stain on the linoleum in the basement because it was there since before the onset of their tenancy, and was not caused by them.

The Tenants presented their evidence in support of their claim which consisted of: (1) $2,700.00 for the return of double their deposits, (2) $2,000.00 compensation equal to their last month's rent for harassment and loss of quiet enjoyment; and (3) $1,617.00 compensation for labour and maintenance costs related to the landscaping work.

The Tenants argued that they should be entitled to double their security deposits because the Landlords did not complete condition inspection report forms and did not return their deposits within 15 days of getting their forwarding address.

The Tenants testified that during their last month of tenancy the Landlord was harassing them to move out by the 15th of the month. They stated that they had told the Landlords that they were getting possession of their new house on February 15th but that did not change their possession of the current rental unit. The Landlords continued to harass them to move out early through numerous telephone calls and even berated the female Tenant on three separate occasions. The last call was made to the Tenant while she was at work and was so harassing that she ended up in tears and finally told the Landlord to speak only to her husband from that point on. The Tenants stated that it was a very stressful time just with moving, that they did not need to have to endure the continued harassing behaviour for the last month of their tenancy, regardless if the Landlords wanted to sell their house quickly. They lost a full month of quiet enjoyment and feel they should be compensated for that.

The Tenants pointed to an invoice they had created and provided in their evidence to support their claim for labour and material costs incurred in completing the landscaping work in the back yard. They argued that they had the Landlords' permission to complete the work but were aware that they had nothing in writing to support any agreements that may have been made for payment for the work. The Tenants confirmed that the work was completed over the entire period of their tenancy.

The Landlord disputed all of the Tenants' claims and argued that they are not entitled to anything that has been claimed. His response to their claim for double the deposits was, "No". As for pressure to move out early, he said the Tenants told him they would be moving out the weekend after the 15th so he was simply checking to make sure that was still their plan.

The Landlord said he admits to having one conversation where the Tenant became upset; however, he did apologize afterwards. He denied badgering anyone and said it was just basic communication as he tried to work with the real estate agent showing times and the Tenants' schedule. He said the Tenants provided no accommodation to the real estate showing schedules and he was simply the third man in the process of trying to arrange everything. He was not pressuring the Tenants to leave.

The Landlord argued that the Tenants did not have written permission to alter their gardens. He did not hire the Tenant to conduct any work and he did not agree to pay him. The rent was originally supposed to be $2,200.00 but they decreased it to $2,000.00 if the Tenant agreed to do regular maintenance such as cutting the grass and weeding the flowerbeds. There was never any discussion or agreement about digging up or removing flowerbeds or removing or moving trees or shrubs.

Analysis

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

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Landlords' Application

Sections 24 and 36 of the Act stipulate that the right of a landlord to claim against a security deposit or a pet damage deposit, or both for damage to the rental property is ***extinguished*** if the landlord does not complete a condition inspection report form at move in or at move out, and give the tenant a copy.

In the absence of evidence to the contrary, I accept the Tenants' submission that no condition inspection report forms were completed. Therefore, the Landlord's right to claim against the security deposit for damage has been extinguished.

The Landlords have claimed approximately $5,000.00 in damages to the rental property based on unsupported amounts which appear to be nothing more than guesses of what the costs would be to repair or replace the listed items.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of

events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In the absence of any documentary evidence, such as a move in or move out condition inspection report forms; or receipts to prove the actual value of the alleged damages; and in the presence of the Tenants' disputed testimony, I find there to be insufficient evidence to prove that damages occurred during the tenancy or that the Landlords actually suffered the losses claimed. Accordingly, I dismiss the Landlords' claim for $5,000.00, without leave to reapply.

Tenants' Application

Because the Landlords' filed their application for dispute resolution within 15 days of the tenancy ending; the Landlords' right to claim against the security deposit for damage to the property was extinguished as noted above; and the Tenants failed to provide their forwarding address in writing, (not by e-mail), I find that the doubling provision under section 38 of the Act does not apply in this case.

Based on all of the above findings, I conclude that both parties extinguished their right to the deposits. In such cases, I refer to the Residential Tenancy Policy Guideline 17 which provides that:

> *8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished,* ***the party who breached their obligation first will bear the loss.*** *For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first. [my emphasis added].*

Based on the above, I find the Landlords bear the loss of entitlement to the deposits and the Tenants are entitled to the return of their full deposits in the amount of **$1,350.00.**

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*; and use of common areas for reasonable and lawful purposes, free from significant interference.

The issues relating to the Tenants' claim for compensation for loss of quiet enjoyment relate to their allegations of harassing behaviour displayed by the Landlord in his attempts to have them move out of the rental unit prior to February 28, 2014.

It was undisputed that rent was paid for the entire month of February, that the Tenants had informed the Landlords that they would have possession of their new unit as of February 15, 2014; and there was one telephone conversation where the Landlord admitted that he displayed such aggressive behaviour that it caused the Tenant to cry which apologized for afterwards.

Upon review of all the evidence before me I accept the version of events as described by the Tenants. Specifically, that the Landlords wanted to sell the house as soon as possible which meant they wanted it vacated as soon as possible to allow unrestricted access for real estate showings. I also accept the Landlord's assertion that the communications were not happening every day. That being said, I find it undeniable that the Tenants' were feeling pressured which resulted in their loss of quiet enjoyment during their last month of tenancy.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that while I accept there were aggressive or harassing conversations that took place during the last month of tenancy, they did not occur every day all day long; and the Tenants remained in full possession of the rental property until February 28, 2014.

Based on the aforementioned I hereby award the Tenants compensation for loss of quiet enjoyment in the amount of **$100.00** which is 5% of the monthly rent.

The Tenants have submitted a claim for $1,617.00 pertaining to services provided for gardening and landscaping maintenance. There was no evidence to support that an agreement was entered into linking the tenancy to a contract for landscaping services and the Landlord denied hiring the Tenant to do landscaping work. Rather, the Landlord argued that the work was done without his permission.

Based on the above disputed verbal testimony, I find there to be insufficient evidence to support the claim for gardening and landscaping maintenance, and the claim is dismissed, without leave to reapply.

The Tenants have partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$50.00.**

Conclusion

I HEREBY DISMISS the Landlords' claim, without leave to reapply.

The Tenants have been awarded a Monetary Order for **$1,500.00** ($1,350.00+ $100.00 + $50.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be 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: June 26, 2014

Residential Tenancy Branch