Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF
MNSD MNDC FF

Introduction

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

The Landlords filed their application on May 20, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their application on September 04, 2014, seeking a Monetary Order for the return of double their security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the Landlord R.S. and the Tenant E.L. The Landlord affirmed that M.C. S. was in the room with him but that he would be representing both Landlords (R.S. and M.C.S.). The Tenant affirmed that she was representing both Tenants (E.L. and A.S.) and indicated that A.S. was close by and would be called upon if required. A.S. was not called upon to provide evidence during this hearing. Based on the foregoing and for the remainder of this decision, terms or references to both the Landlords and the Tenants importing the singular shall include the plural and vice versa.

The parties gave affirmed testimony and confirmed receipt of evidence served by the other. 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.

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 monetary compensation?
2. Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

It was undisputed that the Tenant A.S. had occupied the property under a separate tenancy agreement with a different co-tenant who both attended and signed a move in condition inspection report on August 31, 2010. The co-tenant moved out sometime around September 28, 2011. A walk through inspection was conducted on September 28, 2011, with the Landlord, A.S. and the co-tenant; however, no condition report was completed or signed at that time. A.S. continued to occupy the rental property as sole tenant from September 29, 2011 to October 31, 2011.

On October 18, 2011, A.S. and his girlfriend E.L. entered into a written tenancy agreement for a fixed term tenancy that commenced on November 1, 2011; which switched to a month to month tenancy after October 31, 2012. The Tenants were required to pay rent of $1,700.00 and on or before November 1, 2011 the Tenants paid $850.00 as the security deposit.

The Landlord testified that on April 2, 2014 the Tenants served the Landlords with written notice to end the tenancy effective May 1, 2014. The Tenants remained in possession of the property until the evening of May 5, 2014, at which time they put the keys inside the mail box. The Tenants provided the Landlords with their forwarding address on May 7, 2014. The move out condition inspection was conducted on May 8, 2014 at 6:00 p.m.; however the Tenants refused to sign the condition inspection report form.

The Landlord submitted that they had erred in their interpretation of the law and as a result they thought the Tenants were entitled to their last month's rent free because the Landlords were planning to sell the property. As a result, the Landlords returned the Tenants' full April rent payment. The Landlord argued that they have since learned the tenancy law and determined that despite them initially accepting the Tenants' notice, they were not required to return the April rent and that they were also entitled to May rent because the Tenants served them with their notice to end tenancy late, on April 2, 2014.

The Landlords filed their claim for $4,657.00, which was originally based on estimates. The Landlord testified that as per the photographs and receipts provided in their evidence, their claim is now $4,474.14 and consists of: $1,700.00 April 2014 rent; $1,700 May 2014 rent; $407.00 for carpet cleaning; $430.89 Municipal water/utility bill;

plus $236.25 ($225.00 plus 5% tax) for window cleaning. The Landlords' photos were taken on approximately May 10 or 11, 2014.

The Tenant disputed all of the items claimed by the Landlord and pointed to their evidence in support of their testimony which included, among other things, copies of text messages and photos which were taking May 8, 2014 during the move out inspection. The Tenant confirmed that they refused to sign the move out condition report and argued that it was not a standard government form and was missing required information.

The Tenant argued that they attempted to deliver their rent and notice to end tenancy to the Landlords on March 31, 2014 but the Landlords were not home. The Tenants attended the Landlords' home on April 2, 2014 to deliver their cash payment of rent and their notice to end tenancy. It was during the April 2nd meeting that the Landlord, M.C.S., told them that they did not have to pay their last month's rent because they were good tenants and because the Landlord was going to sell the property. The Landlord did not hand back the rent at that time; rather they waited until approximately 7 days later when the Landlords gave the Tenants their April rent back and said they could stay for their last month free.

The Tenant testified that they remained in possession of the unit until May 5, 2014, and argued that they were given permission to do so by the Landlords, as indicated in their text messages. The Tenant confirmed that they did not have the carpets steam cleaned but they did pre-treat the stains; and they did not pay the final municipal utility bill, despite the account being in the Tenant's name and despite receiving a copy from the Landlords prior to this dispute.

The Tenant disputed the claim for window cleaning and argued that there was a pre-existing problem with moldy window sills, as noted on the move in condition inspection report form. She argued that the Landlords resolution to the problem was to bring them bleach and to tell the Tenants to clean the window sills.

The Tenant submitted that they are entitled to the return of double their security deposit because the Landlord did not complete proper condition inspection report forms and because he did not communicate clearly weather the utilities would be deducted from their deposit.

In closing, the Landlord stated that they made no effort to re-rent the property as they were listing it for sale. The Landlord clarified that they made no effort to get the April rent repaid until after the tenancy ended when they saw the condition the property was left in. He noted that the photos provided in evidence by the Tenants clearly show the stains on all of the carpets, displays the conditions of the windows and proves that the rental property was not properly cleaned at move out.

Analysis

After careful consideration of the foregoing, documentary evidence, 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.

The applicant must meet all four criteria in order to establish a claim.

Landlords' application

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement.

In this case the Tenants paid their April 2014 rent, albeit one day late, and the Landlords chose to return the payment to the Tenants. The Landlords now claim ignorance or lack of knowledge of the Act to substantiate their claim for April and May rent.

Based on the above, I find the Landlords have not proven their claim for April 2014 rent as there is no evidence that the Tenants breached the Act. Ignorance is not a defense. In this case the Landlords made a choice to return the rent. Accordingly, there is insufficient evidence to meet the 4 criterion for the test for damage or loss, as listed above, and the claim for $1,700.00 April 2014 rent is dismissed, without leave to reapply.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Residential Tenancy Policy Guideline # 3 provides that if the part elect to end the tenancy and the landlord intends to sue the tenant for loss of rent, the tenant must be put on notice that the landlord intents to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given.

In addition to section 7 of the Act, Residential Tenancy Policy Guideline #3 further provides that in all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In this case the Tenants provided late notice to end their tenancy on April 2, 2014, which was initially accepted by the Landlords. The parties had a mutual agreement that the Tenants would be allowed to remain in possession of the unit while they took the time to move out and clean. At no time did the Landlords advise the Tenants that they would be required to pay a daily rental for each day they remained in possession of the unit past the end of April 2014. Furthermore, the Landlords did not inform the Tenants of their intent to seek compensation for May 2014 rent due to late notice, until they served the Tenants with their application for dispute resolution.

In addition to the foregoing, the Landlords made no effort to re-rent the unit as they had decided to sell the property. Accordingly, I find the Landlords have failed to provide sufficient evidence to meet all 4 of the criterion for the test for damage or loss and I dismiss their claim for May 2014 rent, without leave to reapply.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 provides that the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mold. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness during the tenancy. General, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

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.

Based on the aforementioned, and upon review of photos provided by both the Landlords and the Tenants, I find the Tenants have breached section 37(2) of the Act, leaving the rental unit requiring cleaning at the end of the tenancy.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the submissions of the Landlord that the Tenants failed to clean the carpets and the windows during and at the end of the tenancy. The evidence supports the carpets were new in 2011 and this tenancy was from 2011 to 2014. The Landlord submitted an invoice which indicates his claim of $236.25 was for cleaning the inside and outside of the windows plus an invoice for carpet cleaning of $407.19.

As per the foregoing I find the Landlords have met the burden of proof and I award them damages for cleaning in the amount of **$525.32** (1/2 of $236.25 + $407.19).

The tenancy agreement stipulates that water and garbage collection are not provided for in the cost of rent. The municipal utility bill was in R.S.'s name and had been paid for by the tenants since they occupied the property in September 2010. It was undisputed that the Tenants did not pay the last municipal bill. Accordingly, I find the Tenants breached their tenancy agreement, which caused the Landlords to suffer a loss of $430.89 for utilities. The Landlords were required to pay the outstanding bill to prevent it from accruing late charges and being levied against their property taxes. Accordingly, I award the Landlords unpaid utilities in the amount of **$430.89.**

The Landlords have primarily been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Tenants' application

Section 35(1) of the *Act* stipulates that a landlord and a tenant must inspect the rental unit at the end of a tenancy before a new tenant begins to occupy the rental unit on, or after, the day the tenant ceases to occupy the rental unit.

Notwithstanding that a condition inspection report form was not signed, it was undisputed that the Landlord, R.S. and the former co-tenant conducted a walk through when the co-tenant vacated at the end of September 2011, and at the time of that walk through R.S.'s possessions were still in the unit as he continued to occupy the rental property.

Section 23(1) of the *Act* stipulates that a landlord and a tenant must jointly inspect the rental unit on the day the tenant is entitled to possess the rental unit or on another mutually agreed upon day. Although there was no attempt to inspect the rental unit when E.L. moved in November 1, 2011, it does not dissuade me from concluding that a new tenancy began on that date.

Section 14 of the Residential Tenancy Regulation stipulates that the rental unit must be inspected when the rental unit is empty of the Tenant's possessions, unless the parties agree on a different time.

I find that the Landlord complied with the spirit of the legislation when the rental unit was inspected on September 28, 2011, a time when A.S. continued to occupy the rental unit and that E.L. was in essence added to the tenancy when she moved in sometime around November 1, 2011. In my view, the legislation does not contemplate that a new inspection report be completed if a party simply enters into a new tenancy without physically vacating the rental unit.

In the case before me I find the Landlords' right to claim against the security and pet deposit for damages would be extinguished, pursuant to Section 35 of the Act if their application for Dispute Resolution was filed only to seek compensation for damages. In addition to a claim for compensation for damages the Landlords' application was filed to recover the costs for unpaid utilities and rent. Therefore, I find the extinguishment provision does not apply here.

Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates the rental unit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended May 5, 2014, pursuant to section 44(1)(d) of the Act, and the Landlords were provided the Tenants' forward address on May 7, 2014. Therefore, the Landlords were required to return the Tenants' security deposit plus interest in full or file for dispute resolution no later than May 22, 2014. The Landlords filed their application on May 20, 2014.

Based on the above, I find that the Landlords have complied with Section 38(1) of the *Act* and that the Landlords are NOT subject to Section 38(6) of the *Act* which requires a landlord to pay double the security deposit. Accordingly, I find the Tenants' application to be meritless and I dismiss their claim, without leave to reapply.

The Tenants have not succeeded with their application; therefore, I decline to award recovery of the Tenants' filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages for Cleaning	$525.32
Municipal Utilities	430.89

Filing Fee	50.00
SUBTOTAL	$1,006.21
LESS: Security Deposit $850.00 + Interest 0.00	-850.00
Offset amount due to the Landlord	**$156.21**

Conclusion

The Landlords have been awarded a Monetary Order for **$156.21**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants 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: September 30, 2014

Residential Tenancy Branch