Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application (filed August 18, 2014): MNSD, FF, O

Landlords' application (filed September 3, 2014): MNR, MNSD, FF

Introduction

This Hearing was convened to consider cross applications. The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; "other" orders; and to recover the cost of the filing fee from the Landlords.

The Landlords filed an Application for Dispute Resolution seeking a monetary award for unpaid rent; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants. On December 12, 2014, the Landlords amended their Application for Dispute Resolution to include claim for unpaid utilities and dump fees.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenants with their Notice of Hearing documents by registered mail sent to the Tenants' new address on September 8, 2014. The Landlords served the Tenants with their amended Application for Dispute Resolution and copies of their documentary evidence by registered mail on December 9, 2014. The Landlords provided registered mail receipts and tracking numbers for both packages.

It was also determined that the Tenants served the Landlords with their Notice of Hearing documents by registered mail. The Tenants could not remember when the documents were mailed and did not have the tracking numbers; however, the Landlord's agent acknowledged receiving the package sometime in August, 2014. The Tenants stated that they did not serve the Landlords with their documentary evidence and therefore it was not considered.

Preliminary Matters

At the outset of the Hearing, the female Tenant's last name was amended on the Landlords' Application to reflect its correct spelling.

The Tenants' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they are seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenants' application is dismissed.

Issues to be Decided

1. Are the Landlords entitled to retain the security deposit in satisfaction of unpaid rent and to recover the cost of the utility bill and dump fees?

2. Are the Tenants entitled to return of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on October 1, 2013. Monthly rent was $975.00, due on the first day of each month. Utilities were not included in rent and they were in the Tenants' names. The Tenants paid a security deposit in the amount of $487.50 at the beginning of the tenancy. The Landlords are holding the security deposit.

The parties met to do an inspection at the beginning and the end of the tenancy, however, there was no Condition Inspection Report completed that complies with the requirements of the Act and regulations at the beginning or the end of the tenancy.

The Tenants gave the following testimony:

On July 23, 2014, between 4:00 and 5:00 p.m., the ceiling of the rental unit started leaking. The Tenants stated that it was "raining inside of the house". The Tenants testified that they called the Landlord's agent, who "came the next morning with a bucket and a towel". The Tenants testified that the main beam was sagging, the fuse box and walls and carpets were wet and the ceiling was sagging. The Tenants testified

that the Landlords did not offer alternate accommodation while the rental unit was being repaired.

The Tenants testified that restoration professionals came on July 25, 2014, and told the Tenants “you gotta get out of here”. The Tenants stated that they have two small children, a one year old and a five year old. The Tenants testified that they were warned that they could not turn on the lights in the bathroom, kitchen or living room because it was not safe.

On July 26, 2014, the Tenants gave notice to the Landlords, via e-mail, that they were ending the tenancy immediately because of safety concerns. The Tenants provided the Landlords with their notice in writing on July 31, 2014, when they returned the keys and did the “walk through”.

The Tenants seek return of the security deposit in the amount of $487.50.

The Landlords’ agent NM gave the following testimony:

NM acknowledged that there was a leak in the roof at the rental property, but stated that the Tenants were exaggerating the damage. She stated that the professionals told her that the rental unit was livable, but that it was an “eyesore”. NM stated that it was not dangerous as long as the Tenants did not turn on the lights. She testified that she arranged for the restoration crew to attend at the rental unit in a timely fashion.

NM stated that the Tenants could have moved in with their relatives until the repairs were completed. MN also stated that the Tenants wanted to move out anyway, even before the leak, because their oldest child was starting school in September. NM testified that the Landlords told the Tenants that rent would be reduced because of the repairs. She testified that initially the Tenants and the Landlords had an agreement that the Landlords would keep the security deposit in lieu of paying rent for August, 2014, but that the Tenants later reneged on that agreement and asked for the deposit to be returned.

NM testified that the Tenants did not pay the final hydro bill for up to and including July 31, 2014. The Landlords provided a copy of a letter from the utility company in evidence. The Landlords also seek a monetary award for getting rid of the Tenants’ residential waste at the end of the tenancy. A copy of an invoice from the landfill was provided in evidence.

The Landlords seek a monetary award against the Tenants, calculated as follows:

Reduced rent for August, 2014	$487.50
Unpaid utility bill	$269.74
Dump fees ($8.25), gas and one hour's labour ($25.00)	$33.25
TOTAL	$790.49

The Tenants gave the following reply:

The Tenants acknowledged that they were thinking of moving out of the rental unit, but stated that they were planning on doing so in October or November, 2014. They stated that it was very stressful and that they "didn't want to leave within days". The Tenants testified that they had plans to move because the "hydro was too high" especially in the winter.

The Tenants stated that they don't believe that they should have to pay the total amount of the hydro bill because there were industrial fans blowing for the last few days of July, which used a lot of electricity, and they were not even living there for part of July.

The Tenants agreed that they left a small amount of garbage at the rental unit, but dispute that it took an hour to drive it to the dump.

Analysis

Before an arbitrator can make an order under section 67 of the *Residential Tenancy Act*, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met.

I find that neither of the parties provided sufficient evidence with respect to the severity of the water damage. Neither party provided documentary or witness testimony, for example a statement from the restoration professionals or an electrician regarding safety issues. However, NM did not dispute that it was unsafe to turn on the lights in the rental unit. I find that it was unreasonable to expect the Tenants and their two

young children to live in the rental unit while it was being restored. In such a situation, the Landlords are expected to provide alternative housing while the restoration is taking place. I find that the Landlords did not mitigate their loss by providing alternative accommodation to the Tenants and that they are not entitled to recover any rent for the month of August, 2014. This portion of their claim is dismissed.

The Landlords provided a copy of a letter from the utility company, which identifies the final bill for service up to and including July 31, 2014, is $269.74. The letter indicates that the account is in the Tenants' name and that unpaid balances will be transferred to tax arrears on the rental property, with interest accruing from January 1, 2015, until payment is made. The letter also advises the Landlords that they may pay the outstanding amount and that in the event payment is also received from the Tenants, a refund will be issued to the Landlords. The letter requests the Landlords to advise the utility company if they recover the funds privately from the Tenants so that their records may be adjusted.

The Tenants dispute that they owe the amount reflected in the utility company's letter because:

- Some of the utilities accrued because of industrial fans to dry out the rental unit; and
- The Tenants were not living in the rental unit for the period between July 26 and July 31, 2014.

NM did not dispute that there were industrial fans in the rental unit. The Landlords did not provide evidence with respect to the cost of utilities for the months prior to July, 2014. I find that the Landlords did not provide sufficient evidence with respect to the monetary amount of the loss. However, Section 67 of the Act provides me with the authority to determine the amount of the loss and order that the Tenants pay that amount to the Landlords. I find that the Tenants are responsible for paying a portion of the final utility bill and therefore award the Landlords the amount of **$150.00** for this portion of their claim.

The Tenants did not dispute that they left garbage at the rental property. I find that the Landlords' claim for the cost of disposing of the garbage is reasonable and I award the Landlords **$33.25** for this portion of their application.

Pursuant to the provisions of Section 72 of the Act, I order that the Landlords deduct their monetary award, in the total amount of **$183.25** from the security deposit and that they return the balance of the security deposit in the amount of **$304.25** to the Tenants forthwith. The Tenants are hereby provided with a Monetary Order against the Landlords in the amount of **$304.25**.

Both parties have been partially successful in their Applications and I make no order with respect to recovery of the filing fees.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **$304.25** for service upon the Landlords. This Order may be filed in the Provincial Court 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: April 07, 2015

Residential Tenancy Branch