Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was the hearing of applications by the tenants and by the landlords. The tenants applied for the return of their security deposit including double the deposit amount. The landlords applied for a monetary award and for an order to retain the security deposit. The hearing was conducted by conference call. The tenants and the named landlord called in and participated in the hearing. The tenants' application was filed on September 18, 2014. The tenants served the landlords with the application, Notice of Hearing and supporting evidence by registered mail sent on September 25, 2014. The landlords filed their application for dispute resolution on March 12, 2015.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Are the landlords entitled to a monetary award and if so, in what amount?
Are the landlords entitled to retain all or a part of the security deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on July 1, 2011. Monthly rent was $1,775.00 payable on the first day of each month. On June 9, 2011 the tenants paid a security deposit of $887.50 and a $200.00 key deposit for a total deposit of $1,087.50.

On July 15, 2014 the tenants gave the landlord notice that they would move out at the end of August. The tenants provided the landlord with their forwarding address and the landlord acknowledged receiving it. There was no condition inspection report prepared

when the tenants moved into the rental unit and the parties did not conduct a condition inspection when the tenancy ended.

The landlord claimed that the tenants damaged the rental unit by causing a crack to the toilet bowl. The landlord retained $300.00 from the tenants' security deposit and returned the sum of $787.50 by cheque dated September 1, 2014. The tenants acknowledged that they received the cheque on September 11, 2014.

The tenants denied that they caused the damage. They described it as a hairline crack and said that it was present when the tenancy started. The tenants requested the return of double the deposit, less the amount refunded.

The landlord claimed a monetary award in the amount of $4,744.70. The landlord claimed that the tenants did not give proper notice and he was therefore unable to advertise or re-rent the unit until it was vacant. The landlords claimed the following:

- Replace cracked toilet: $600.00
- Carpet Cleaning: $131.25
- Repairs to wall and paint: $550.00
- Loss of rent for September: $1,900.00
- Sublease of parking space without permission: $1,440.00
- Apartment cleaning charge: $123.45

The landlord testified that the rental unit included two parking stalls and during the course of the tenancy, the tenant sublet one of the parking stalls to a third party. The landlord objected to this arrangement and claimed payment of the sum of $1,440.00. He claimed that this was the amount improperly received by the tenant for the parking stall rental. The landlord testified that the tenants caused damage to the rental unit and did not clean properly, hence the claims for repairs, painting and carpet cleaning. The tenants noted that no condition inspections were performed when the tenancy began, or when it ended. The tenant denied that there was any damage that exceeded reasonable wear and tear after a tenancy of three years. He referred to an e-mail from the landlord dated September 3, 2014 wherein the landlord remarked that he appreciated the tenant's effort to return the unit to as close to the state it was when he took it on, but remarked that the crack in the toilet was unexplained.

Analysis

Dealing first with the landlord's claim for a monetary order, the landlord waited for almost six months before filing his claim. The landlord failed to conduct condition inspections when the tenancy began, or when it ended and his testimony that the tenants damaged the rental unit and failed to clean it properly is contradicted by his own statements in an e-mail to the tenant in September, 2014. The tenants denied that they damaged the toilet; they said it was damage that was present when the tenancy began.

The landlord has the burden of proving his claims on a balance of probabilities and in the absence of any move-in inspection I find that the landlord has failed to show that the tenants caused this damage. The landlord has made a claim for loss of rental income, but did not submit evidence to show what steps he took to advertise. The tenants gave the landlord notice on July 15th. The landlord did not object to the form of Notice and did not make any claim for loss of rental income in September when he communicated with the tenants. I do not accept that the landlord has proven that the tenants are responsible for his claimed loss of rental income for September and this claim is denied. The landlord complained that the tenant sublet a parking stall; there is no evidence that the landlord suffered any loss as a result and there is no basis for his claim for compensation on this account. The landlord made no mention of any claims for cleaning or painting when the tenancy ended and he waited six months to make these claims; the claims appear to be a retaliatory response to the tenants' application. I find that the landlord has failed to establish that he is entitled to a monetary award in any amount and the landlords' application is therefore dismissed without leave to reapply.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlords with their forwarding address in writing, based upon the acknowledgement of the landlord at the hearing and I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded in full within 15 days as required by section 38(1) of the *Residential Tenancy Act*, the landlords did not make a claim to keep

all or part of the deposit within the 15 day period and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of $1,387.50, being double the amount of the deposit, less the sum of $787.50 that was repaid to the tenants. The tenants are entitled to recover the $50.00 filing fee for this application for a total claim of $1,437.50 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the 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 5, 2015

Residential Tenancy Branch