Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF
MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords.

One of the landlords and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the testimony and evidence provided.

During the course of the hearing the landlord advised that he hadn't received some of the tenant's evidentiary material or the tenants' application for dispute resolution. The tenants provided a tracking number assigned by Canada Post and stated that the evidentiary material was sent by Registered Mail to the landlords' address on May 22, 2015 with the Tenant's Application for Dispute Resolution and notice of this hearing. An on-line tracking of the mail shows a person's name which appears to be that of the other landlord. The landlord did not object to the evidentiary material being considered and referred to in this hearing, and stated that he assumes that the signatory on the mail is that of his wife.

All evidence and testimony of the parties has been reviewed and is considered in this Decision. No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for per diem costs associated with damage and sale of the rental unit?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2014 and was to expire on August 31, 2015, however the parties mutually agreed to end the tenancy on February 28, 2015. Rent in the amount of $2,690.00 per month was payable under the tenancy agreement, although the agreement is silent with respect to the day rent is due, and there are no rental arrears. At the outset of the tenancy the landlords' agent collected a security deposit from the tenants in the amount of $2,200.00 which is also described in the tenancy agreement as liquidated damages. The landlords have received that money from the landlords' previous agent, and it has not been returned to the tenants. A copy of the tenancy agreement has been provided.

Once the parties had agreed to end the tenancy the landlords listed the rental unit for sale, and it sold. Based on what the landlords knew at the time, the possession date was set at March 14, 2015.

The landlord further testified that during the tenancy, in December, 2014, a pipe had leaked under the dishwasher and damaged the hardwood floor. The rental unit is an apartment style, high-end condominium, and the insurance company paid for the repair to the floor. On January 21, 2015 a contractor attended the rental unit to assess the damage and gave a quote. When the contractor attended to do the work on February 26, 2015 he discovered a new 10 square foot patch of damaged flooring in front of the dishwasher. The landlords have provided a copy of an email from the contractor dated February 26, 2015 which states that the area was not present at the time of the January 21, 2015 assessment, and recommends purchasing another box of flooring. Photographs illustrating the additional affected area have been provided. As a result, the possession date had to change to March 28, 2015 causing the landlords to incur costs. Taxes were $11.19 per diem, strata fees worked out to $21.58 per diem, and

mortgage interest was $40.54 per diem. The costs totaled $73.31 per day, for 14 days, for a total claim of $1,026.34.

The tenants were neglectful in not notifying the landlords immediately when the damage to the floor was getting worse, which would have been corrected sooner and would not have caused the possession date to be changed by 2 weeks.

The landlord further testified that the tenants have not provided a forwarding address in writing and the landlords found out by other means that they reside in the same building.

The first tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution on May 22, 2015 which contains the tenant's forwarding address in writing. Further, the landlord has an email from the tenant dated March 4, 2015 that also contains the tenants' forwarding address. A copy has been provided.

The tenant further testified that the landlords were made aware of the leak in the dishwasher on December 3, 2015, and the tenants waited almost 2 months to have a contractor attend. Between December 3, 2014 and January 21, 2015 an insurance adjuster and the building manager looked at the damage. Then the contractor assessed it on January 21, 2015. The contractor gave a quote, but the flooring wasn't restored and water stayed under the floor, and continued through the floor cavity. Had the floor been done sooner, this wouldn't be an issue. The dishwasher leak was repaired on December 16, 2014.

The tenants did not notice a difference in the condition of the floor in that 5 week period that was significant enough to notify the landlord.

The second tenant testified that the tenants were very accommodating for anyone who wanted to see the floor, and turned off the dishwasher to prevent further leaking.

After the contractor assessed the floor on January 21, 2015, the tenant noticed discoloration, but there wasn't any new damage in her mind.

Analysis

Where a party makes a claim against another party for compensation for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

In this case, the landlords claim costs incurred by having to change the possession date after the end of the tenancy for a sale as a result of the tenants' failure to notify the landlords that a damaged floor was worsening.

The landlords have provided evidence of the amount of the monetary loss, and I find that elements 1 and 3 have been satisfied.

With respect to element 2, there is no dispute that the leaky pipe was reported to the landlords or the landlords agents on December 3, 2014, the floor was assessed by the contractor on January 21, 2015 and was re-assessed on February 26, 2015 by the same contractor. One of the tenants testified that it was shown to the building manager and insurance adjuster prior to January 21, 2015. The tenant also testified that no one cleaned up the water under the floor and it was allowed to spread, and the landlord didn't dispute that. The tenants cooperated with people and didn't notice any significant change in the flooring, and it took approximately 5 weeks for the first assessment by the contractor. In the circumstances, I find that the landlords have failed to establish that the loss occurred as a result of any negligence by the tenants. I further find that the landlords have failed to establish mitigation; there is no evidence before me that any of the landlords' contractors or agents did anything about the water remaining under the floor knowing full well that the floor was damaged by a leaky pipe under the dishwasher.

The landlords' application is hereby dismissed.

With respect to the security deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit in full or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double. In this case, the tenancy ended on February 28, 2015, the landlord testified that he found out by other means where the tenants resided. The tenant testified that the forwarding address was received on the application for dispute resolution which was served on March 22, 2015, and in an email on March 4, 2015, but there is no response from the landlords or any confirmation when the landlords received the email. The landlords filed the application for dispute resolution on March 11, 2015, which is within 15 days of that in any event. Therefore, I find that the tenants are not entitled to double. The landlords now have the tenants' forwarding address in writing, and I order the landlords to return the security deposit to

the tenants within 15 days of this Decision. If the landlords fail to do so, the tenants will be at liberty to apply for double.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the $50.00 filing fee.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,250.00.

This order is final and binding and may be enforced.

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: August 06, 2015

Residential Tenancy Branch