Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD, FF
For the landlords: MNSD, MND, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for a return of their security deposit and pet damage deposit, and for recovery of the filing fee paid for their application. Their application also indicated they requested that the two deposits be doubled.

The landlords applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for alleged damage to the rental unit, and for recovery of the filing fee paid for their application.

This hearing began on July 7, 2015, dealt with the tenants' application in full and the landlords presented testimony and referred to documentary evidence in support of their application.

An Interim Decision was entered on July 9, 2015, should be read in conjunction with this Decision and it is incorporated by reference herein.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider tenants' response to the landlords' application, including consideration of the tenants' documentary evidence submitted during the period of adjournment.

This hearing proceeded with the tenant agreeing that their responsive documentary evidence would comprise their response to the landlords' application.

During the original and reconvened hearing, the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Are the tenants entitled to a return of their security deposit and pet damage deposit, further monetary compensation comprised of double their deposits, and to recovery of the filing fee paid for this application?
2. Are the landlords entitled to monetary compensation for alleged damage to the rental unit and to recovery of the filing fee paid for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on November 15, 2013, monthly rent was $3800.00, and the tenants paid a security deposit and a pet damage deposit of $1900.00 each. The undisputed evidence shows that the tenancy ended on November 15, 2014.

The parties agreed that there is no move-in or move-out condition inspection report.

Tenants' application-

The tenants' monetary claim is in the amount of $7600.00, comprised of their security deposit of $1900.00, doubled to $3800.00, their pet damage deposit of $1900.00, doubled to $3800.00, and additionally for recovery of the filing fee paid for this application.

The tenants submitted that they provided the landlord with their written forwarding address on November 16, 2014, in an email communication with the landlords, and that the landlords have not returned any portion of their security deposit or pet damage deposit.

Landlord's response-

The landlord confirmed receipt of the tenants' forwarding address on the date and manner mentioned by the tenants, as this was the address the landlords used to file their own application.

Landlords' application-

The landlords' monetary claim was originally listed at $5900.00; however, the landlords amended their application and listed a new monetary claim, as follows:

Replace broken valve, pool pump	$386.57
Water damage	$386.40
Crawl space clean-up	$250.00
Carpet cleaning	$399.00
Furnace/duct cleaning	$430.22
Showerhead replacement	$73.99
Showerhead replacement	$83.20
Repairs to vinyl deck, exterior door, damaged carpet, wallpaper kitchen cabinet millwork	$2420.00
Interior cleaning, post tenancy	$711.45

Clean-up costs, post tenancy	$575.78
Repair of hardwood floors	$1365.00
Septic tank cleaning	$215.25
Repair of lawn damage	$650.00
Repair of lawn damage	$318.50
Spa cover, spa pump, damaged pool liner replacement	$1881.57
Lawn tractor repair	$499.95

The landlords submitted a significant amount of evidence, which included, but was not limited to, email correspondence between the parties during the tenancy, receipts, invoices and estimates regarding the landlords' claim, undated property images, the written tenancy agreement, with addendum, and a written supporting statement.

In support of their application, the landlords submitted the rental unit is in a million dollar neighbourhood, with an expectation that the tenants would maintain the property in a commensurate condition. As such, the landlords submitted further that as they are out-of-town owners and do not rely on a property manager for maintenance issues, all tenants of the rental unit are required to have a "high level of competency and experience as well as financial means to live in, and look after, our million dollar plus home (no exceptions)". The landlords submitted further that it soon became apparent to them that these tenants lacked the knowledge and experience to look after the property.

The landlords submitted further that the tenants wanted a quick occupancy at the beginning of the tenancy and accepted the rental unit in an "as is" condition, as noted in the written tenancy agreement.

The landlords submitted further that tenant MW caused damage to the crawl space by turning up the water pressure, causing seal and/or pipes to burst, the repair and clean-up for which should be the tenants' responsibility.

The landlords submitted that the tenants caused damage to the pool and spa, and that the tenants refused to use the recommended pool company, instead electing to go with their own pool company. The landlords submitted that the pool company selected by the tenants was incompetent and improperly installed equipment, causing the landlords to expend funds to have their own pool company correct the problems caused.

The landlords submitted that the tenants damaged the interior of the rental unit, to such an extent that the landlords were required to make repairs; additionally, the landlords submitted that the tenants failed to properly clean the rental unit prior to departure and had allowed the rental unit to deteriorate during the tenancy to such an extent, additional expenditures were required in order to bring the rental unit back to a livable standard.

The landlords submitted that due to the damage to the yard and home caused by the tenants' dog, it was necessary to remediate the lawn and landscaping.

The landlords submitted that tenants damaged the deck, requiring repairing and replacement of fixtures.

The landlords submitted that the tenants' actions caused expenses for a pool start-up, damaged hot tub, and damage to the lawn tractor.

Tenants' response-

The tenants submitted that the rental unit was in poor condition at the start of the tenancy and that the landlord never dealt with their repair requests, causing the tenants to lose the use of the pool and spa for 8 weeks during the summer. The tenants submitted that there was a leak in the pool and that it was necessary to hire one pool company as the pool company recommended by the landlords failed to respond.

The tenants submitted that it was necessary for him and his family to stop using the pool due to safety concerns about the pool and that the valve was replaced shortly after the tenancy began, suggesting an old valve from the start.

The tenants submitted that an expert suggested that the tenants refrain from using the deck area, due to the dangerous state of the deck, such as rotting joists, and that the deck was in poor condition at the start of the tenancy.

The tenants submitted that they were required to clean out the crawl space due to the leak from an old brittle pipe, although the landlord did pay for the tenant's time.

The tenants submitted that alleged dog damage was done by the previous tenants' dogs.

The tenants submitted that their photographs show that they steam cleaned the carpet prior to vacating the rental unit.

The tenants submitted that the showerheads needed replacing at the start of the tenancy and is not their responsibility to replace old fixtures.

The tenants submitted that they rental unit was cleaned prior to vacating, that the back yard was in bad condition when the tenancy started, that they tried to plant grass seeds, but the seeds did not grow, that the hardwood floors were marked and stained at the beginning of the tenancy and the landlord said it was too costly to repair or replace. The tenants referred to their extensive photographic evidence, and mentioned that the landlords failed to submit interior photographs themselves.

The tenants' additional evidence included emails between the parties and receipts from the pool company.

Analysis

Tenants' application-

Pursuant to sections 23 and 35 of the Act, the landlord and tenant must inspect the rental unit together at the beginning and end of a tenancy and the landlord is required to complete a condition inspection report in both circumstances in accordance with the Residential Tenancy Regulation.

In this case, I find the undisputed evidence shows that the landlords failed to comply with their obligation under the Act in arranging for both a move-in and move-out inspection and preparing the condition inspection report. I find the landlords were not relieved of their responsibility under the Act simply because of an additional clause in the addendum to the written tenancy agreement that the rental unit was accepted in an "as is" condition.

Sections 24(2) and 36(2)(a) of the Act stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with sections 23 and 35 of the Act. As I have concluded that the landlords failed to comply with sections 23 and 35 of the Act of inspecting the rental unit and completing a condition inspection report, I find that the landlords' right to claim against the security deposit and pet damage deposit for damage was extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In the case before me, the tenants communicated their forwarding address in an email transmission. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the extensive evidence of both parties and as the landlords confirmed using this address to file their application against the tenants.

Although section 88 of the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' forwarding address through the November 16, 2014, email to the landlords, with the landlord's response, sufficiently served, pursuant to section 71 of the Act.

In circumstances such as these, where the landlords' right to claim against the security deposit and pet damage deposit has been extinguished, pursuant to section 36(2) of the Act, the landlords do not have the right to file an application for dispute resolution claiming against the deposits for damage to the rental unit and the only option remaining open to the landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

I find that the landlords did not comply with section 38(1) of the Act, as the landlords have not yet returned the deposits.

Section 38(6) of the Act stipulates that if a landlord does not comply with subsection 38(1) of the Act, the landlords must pay the tenants double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the landlords did not comply with section 38(6) of the Act, I find that the landlords must pay double the pet damage deposit and security deposit to the tenants.

I also approve the tenants' request to reimbursement of their filing fee of $100.00, pursuant to section 72(1) of the Act.

Due to the above, I grant the tenants a monetary award of $7700.00, comprised of their security deposit of $1900.00, doubled to $3800.00, their pet damage deposit of $1900.00, doubled to $3800.00, and recovery of their filing fee of $100.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $7700.00, which is enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Landlords' application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 32 of the Act states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit. It is not the obligation of the tenants to provide maintenance and repairs during a tenancy, as claimed by the landlord due to being an out-of-town landlord. Although the written tenancy agreement provides for such repairs and deficiencies by the tenants, the parties cannot contract outside of the Act and I find portion of the tenancy agreement unenforceable under the Act.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I find that a key factor in establishing a claim for damage allegedly caused by a tenant, repairs, and replacement of building elements is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. As discussed, sections 23, 24, 35, and 36

of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the circumstances before me, as I have previously found that the landlords failed to meet their obligation under of the Act of conducting an inspection with the tenants and completing the inspection reports, I find this failure results in the landlords being unable to submitted sufficient evidence to show the condition of the rental unit either at the beginning of the tenancy or at the end. The landlords also failed to produce any other independent records showing the state of the rental unit at the start and end of the tenancy, as I could not rely on undated property images.

Additionally, Residential Tenancy Branch Policy Guideline 1 states that a landlord is responsible for duct cleaning and for septic field cleaning and maintenance.

In the absence of any such evidence, I find the landlords have not met their burden of proof on the balance of probabilities that the tenants caused damage to the rental unit in excess of reasonable wear and tear or left the rental unit unreasonably clean. Due to the insufficient evidence of the landlords, I therefore dismiss the landlords' claims for damages, cleaning and repair of the rental unit and for replacement of building elements.

I therefore dismiss the landlords' application for monetary compensation against the tenants, without leave to reapply.

Conclusion

The tenants' application is granted, for the reasons stated above.

The landlords' application is dismissed, for the reasons stated above.

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 28, 2015

Residential Tenancy Branch