Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with applications from both parties. The tenants applied for an order for the return of their security deposit and the landlord applied for a monetary order and an order authorizing her to retain the security deposit. The hearing was originally scheduled to convene on September 2, 2015 and on that date, the landlord attempted to access the conference call hearing from overseas, but was repeatedly disconnected. I found it appropriate to adjourn the hearing and it was reconvened on November 9 with both parties in attendance.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on March 15, 2014 at which time the tenants paid a $900.00 security deposit and ended on March 15, 2015. They further agreed that the landlord withheld $423.00 from the security deposit without the tenants' consent and that she returned to the tenants the balance of $477.00 on March 23. The tenants provided to the landlord their forwarding address in writing on March 15 and the landlord filed her application for dispute resolution on April 14, 2105.

The landlord seeks to recover $108.00 as the cost of repairing a timer which operated lights at the rental unit. The parties agreed that during the tenancy, the tenants dismantled the "tripper" on the timer to prevent it from automatically activating lights. The tenants claimed that because they were paying for the hydro, they believed they should have complete control over when the lights were activated. The landlord stated that she did not at any time agree that the tenants could alter the timer. The landlord testified that at the end of the tenancy, she was unable to find the parts to re-activate the timer and had to secure an electrician to repair the unit at a cost of $108.00. The

landlord entered into evidence an invoice dated March 19 which shows she paid this amount for the repair. The tenants insisted that they left the parts in the timer box when they dismantled it and were surprised to discover that the parts were missing at the end of the tenancy. They testified that they offered to replace the parts and provided evidence showing that they ordered the parts, but the landlord had effected the repair by the time the parts arrived.

The landlord seeks to recover $315.00 as the cost of repairing the waterproof vinyl covering on the balcony during the tenancy. The landlord testified that she had left a hose on the deck for the tenants' use, but they disconnected her hose and chose to use their own, which leaked onto the balcony for approximately 6 months. When the landlord performed other unrelated repairs to the balcony in August 2014, she discovered that the vinyl was compromised and several posts had rotted due to the accumulation of water. She entered into evidence an invoice showing that she paid $315.00 to have the affected area of the vinyl repaired and the affected posts replaced. The landlord's invoice states as follows: "Note – water accumulated due to leaking hose." The tenants denied that the hose was the cause of the accumulation of water and theorized that the landlord's gutters were draining onto the deck.

The landlord seeks to recover $63.35 as the final water bill due for the rental unit. The parties agreed that although the tenants occupied the main floor and the landlord and one other occupant occupied the lower floor of the residential property, the tenancy agreement provided that the tenants were entirely responsible for the water bill. The tenants agreed that they did not pay this invoice, which was for the period from January – March 2015, but testified that they have not seen the bill. The landlord did not provide a copy of the invoice, but provided an email from the service provider in which they stated that $63.35 was owing.

Both parties seek to recover the $50.00 filing fees paid to bring their respective applications.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenants' forwarding address in writing, the landlord must either return the deposit in full to the tenants or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenants double the security deposit.

I find that the tenant paid a $900.00 security deposit and vacated the rental unit on March 15, the same date on which they provided to the landlord their forwarding address. I find that the landlord wrongfully withheld $477.00 from the deposit and did not file her application for dispute resolution until April 14, which was 15 days beyond the last day to file her application. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenants double the security deposit. I therefore award the tenants $1,323.00 which represents double the security deposit less the $477.00 already returned to the tenants.

The tenants did not have the landlord's permission to dismantle the timer and although they may have left the parts in the timer box, I find that they had the obligation to reassemble the timer and ensure that it was in working order prior to the time they surrendered possession of the unit. The landlord had no obligation to allow them to repair the timer after the tenancy ended. I find that landlord is entitled to recover the cost of repairing the timer and I award her $108.00.

Although the tenants claimed that the damage to the balcony was caused by the landlord's faulty gutters, they provided no evidence to corroborate this allegation. I find the notation on the landlord's invoice to be persuasive and I find it more likely than not that a leak from the tenants' hose caused the damage to the balcony. I therefore find that the landlord is entitled to recover the cost of that repair and I award her $315.00.

I dismiss the landlord's claim for the cost of the final water bill. The parties agreed that the tenants were responsible under the terms of the tenancy agreement to pay for all of the water consumed in the residential property, even though they did not occupy half of that property. I find that the term requiring them to pay the landlord's water bill to be unconscionable and I therefore find it unenforceable.

As both parties have enjoyed success, I find they should each bear the cost of their own filing fees.

The tenants have been awarded $1,323.00 while the landlord has been awarded $423.00. Setting off these claims as against each other leaves a balance of $900.00 payable by the landlord to the tenants. I order the landlord to pay this sum to the tenants forthwith and I grant the tenants a monetary order under section 67 for $900.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is ordered to pay $900.00 to the tenants after her award of $423.00 is set off against their award of $1,323.00.

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: November 12, 2015

Residential Tenancy Branch