Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the deposit. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure. Both parties gave affirmed evidence.

Preliminary Issue

At the outset of the hearing the tenant advised that due to an error on their part they filed two identical applications. The tenant is only seeking to pursue file #840318, accordingly I dismiss #840301.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The landlords' testimony is as follows. The tenancy began on April 1, 2014 and ended on August 31, 2015. The tenants were obligated to pay $1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $600.00 security deposit and a pet deposit of $350.00. The landlord stated that the electricity, gas, water and garbage costs were not included in the rent. The landlord stated that a written condition inspection report was conducted at move in but not at move out. The landlord stated that the tenant has not paid any of the $1100.00 for water costs during the tenancy. The landlord stated that the tenants left many holes in the wall. The landlord stated that he

had to fill, patch and paint over all of these holes. The landlord is seeking $100.00 for his time and the materials to do the work. The landlord stated that the tenant gave their forwarding address verbally over the phone during the first week of September. The landlord filed an application for dispute resolution on September 15, 2015.

The tenant gave the following testimony. The tenant stated that the landlord didn't show them any of the water bills until mid-July 2015; after they had given notice that they would be moving out. The tenant stated that the landlord did not advise at any time that the water was a separate bill. The tenant stated that she thought the water was part of the gas bill as it had been her experience in the past. The tenant stated that she would have paid the bills had she been told it was part of their tenancy agreement and that they were responsible for them. The tenant stated that she felt they had withheld her deposits for no good reason and seeks the return of double her security and pet deposit. The tenant stated that she had provided the landlord her forwarding address in writing sometime in July 2015.

Analysis

Firstly, I deal with the landlords' claims and my findings as follows.

1. Water Bill - $1100.00.

A landlord has a duty to inform a tenant at move in, of all of their rights, responsibilities and obligations, the landlord did not do that. The landlord did not specifically advise the tenant that water bill was separate from the electricity and hydro. The landlord stated that he received a bill every three months, yet chose not to present it to the tenant well beyond the three months. The landlord stated that he "slipped them in the mail slot", to which the tenant denies. In addition, the landlord did not give the tenant any formal written demand letter during the tenancy. I find that the landlord was negligent and disorganized in regards to the water bill. He could have clearly addressed the issue after the first bill came but chose to wait until the tenancy was almost over. Furthermore, the landlords' calculation for unpaid utilities is in direct contradiction to the documents submitted by him for this hearing, the numbers don't match.

Section 67 of the Act addresses this issue as follows:

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has failed to meet all four grounds as required, especially grounds #3 and #4, accordingly; I dismiss this portion of the landlords' application.

2. Wall holes - $100.00.

The landlord stated that he patched the holes in the wall that the tenants caused at a cost of $100.00.

The tenant stated that they had patched all the holes and painted where necessary before move out.

Residential Tenancy Policy Guideline 1 addresses this issue as follows

Nail Holes:
1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

I find that the tenants have gone beyond their obligation by filling and painting the "thumb tack holes" as stated by the tenant. In addition, the landlord did not provide a condition inspection report to provide a snapshot of the change of condition of the unit from move in versus move out, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords' application.

The landlords have not been successful in their application.

I address the tenants claim and my findings as follows.

1. Return of double the security and pet deposit - $1900.00.

Each party had a different version of when the tenant provided their forwarding address in writing. However, both parties agreed that the tenancy ended on August 31, 2015.

The landlord filed for an application for dispute resolution on September 15, 2015. Section 38 of the Act addresses this issue as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Regardless of when the address was exchanged, the landlord filed within 15 days of the tenancy ending as is required and noted above, therefore the doubling provision is not applicable. The tenant is not entitled to the return of double the security and pet deposit, but is entitled to the return of the original amount as posted of $600.00 for the security deposit and $350.00 pet deposit = $950.00.

Conclusion

The tenant has established a claim for $950.00. I grant the tenant an order under section 67 for the balance due of $950.00. This order may be filed 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: March 23, 2016

Residential Tenancy Branch