Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord's agent (the landlord) attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy was due to start on July 02, 2015. Rent was agreed at $1,500.00 per month due on the 1st of each month. The tenants paid a security deposit of $750.25 0n June 12, 2015.

Security deposit -The tenants testified that the landlord failed to return all their security deposit within 15 days of receiving the tenants' forwarding address in writing. The tenant MS testified that this forwarding address was written as an email but was then printed off and given to an administrator working in the landlord's company on December 18, 2015. The tenants agreed they did receive $560.49 on December 14, 2015 but did not give the landlord written permission to keep the balance of $189.51. The balance was returned to the tenants until January 19, 2016.

The tenants testified that they attended the scheduled move out inspection with the landlord and the landlord walked around the unit and made comments that there was some more cleaning to be done. The tenant testified that the unit was left in the same condition they received it in. MS testified that she did return to the unit and do some more cleaning. The landlord asked the tenants to attend a second inspection and sent the tenants a notice for final opportunity for inspection but as an inspection had already been done and the tenants did not agree to the findings on the report they refused to sign the report or attend the second inspection.

The tenants seek to recover the doubling provision under the *Act* for their security deposit as it was not returned in full within the 15 allowable days.

The landlord disputed the tenants' claim to recover double the security deposit. The landlord testified that they did not receive the tenants' forwarding address in writing until they received their application for dispute resolution. The first cheque that was given to the tenants was not posted to the tenants but rather the tenants came into the office to pick this up. If the tenants had brought in their forwarding address then it would have been given to the landlord to deal with. The landlord testified that they had initially deducted $78.75 for cleaning and $110.76 for a water bill from the security deposit; however, when they received the tenants' application they decided to return the withheld portion of the security deposit to the tenants. The additional amount charged on the security deposit of $0.25 is a processing charge made for any payments made.

Compensation – The tenants testified that the landlord had advertised the unit for rent and the tenants walked around it and at that time it appeared to be suitable for their use. They signed a tenancy agreement and paid a security deposit. A few days before they were due to move into the unit the landlord informed them that the unit was not ready and needed some work done to it before they could move in. The landlord did not want to make the repairs but as they had already entered into a tenancy agreement the landlord gave the tenants a town house as temporary rental until the other house was ready for the tenants to move into. An agreement was reached that this was a temporary solution and did not void the first tenancy agreement they had entered into

for the other house. This town house was not a good fit for the tenants as it had no driveway or yard which the other rental did have. The tenants paid rent for the town house of $1,250.25 plus water usage of $50.00. The tenants lived in the town house until August 04, 2015.

The tenants testified that on August 04, 2015 they attended the move in inspection of the first rental unit and found the landlord had not done any work on the house in the month the tenants lived elsewhere and for the duration of the tenancy the landlord did not do any remedial work with the exception of cleaning the carpets. The tenants testified that the house was not fit to live in there were rotten stairs and railing, a sagging ceiling, the carpets smelt and the linoleum flooring was peeling. At the time the tenants had viewed the unit they had only noticed the carpets smelt of carpet cleaner but later they smelt badly of animal urine.

The tenants testified that they continued to live in the unit and had filed for dispute resolution for the landlord to make repairs to the unit. A hearing was held on September 03, 2015. At that hearing the landlord was ordered to make the following repairs:
Repair or replace the kitchen floor;
Investigate and replace carpeting where required in order to ensure that no odors exist;
Repair or replace the ceiling above the stove;
Repair of replace the transition strip between the carpet and linoleum in the entry;
Repair or paint the water stains on the ceiling;
Repair or replace the front steps;
Provide a dishwasher to the rental unit; and
Clean the rental unit or have it cleaned after the repairs are completed.

The tenants testified that none of these repairs were made as ordered by October 15, 2015. The tenants testified that they lived in the town house for a month and lived in the rental unit for three months. The landlord served them with a Two Month Notice to End Tenancy for landlord's use of the property and stated on that Notice that the landlord has all necessary permits or approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. This Notice was served to the tenants on September 08, 2015 and had an effective date of November 30, 2015; the tenants received their last month's rent as compensation for the Notice and vacated the unit on November 30, 2015.

The tenants seek compensation to recover the rent paid of $1,300.25 for the town house for July, 2015; $1,550.25 for the rental unit for August, 2015; $1,550.25 for September, 2015; and $1,512.17 for rent for October, 2015. The tenants testified that

had the landlord done the repairs then the tenants would not have had to move three times in five months.

The tenants testified that they did not receive a copy of the move in report until they got the landlords evidence package for this hearing. The landlord is responsible for to provide a rental unit fit for occupation. The tenants are not responsible to gauge a condition of a rental unit. The tenants testified that they did not force the landlord to rent this unit to them. If they knew of the deficiencies after the previous tenants vacated then the repairs should have been made while the tenants were living in the temporary accommodation.

The landlord disputed the tenants' claims. The landlord testified that when the tenants first viewed the unit they were satisfied with the condition of the unit; however, when the previous tenants moved out the landlord found the unit was not suitable for occupation because the carpets smelled of animal urine. The landlord contacted the tenants and offered to find them alternative accommodation. It was the tenants who insisted they wanted to live in that unit. The landlord had to get approval from the owners of the unit before they could put any money into the unit. The tenants then served the landlord with dispute papers stating they had signed a tenancy agreement, paid a security deposit and were denied occupation. A hearing took place on September 03, 2015. The landlord had wanted to get repairs done but they could not get hold of the owners to get permission to replace the ceiling and flooring. On July 07, 2015 the carpets were professionally cleaned and the landlord had the unit cleaned. The tenants looked at the unit and were satisfied. It was not until after they moved into the unit that they complained about the carpets smelling.

The landlord testified that they got hold of the owner on September 01, 2015 and the owner said they wanted to do a full renovation of the unit. The tenants were then served with the Two Month Notice to End Tenancy on September 08, 2015. The landlord testified that the tenants were aware that there was no way the landlord could repair the ceiling before they moved in and were made aware that the landlord was trying to contact the owners about the repairs. The landlord testified that it is their company's normal practise to advertise a unit for rent as soon as a tenant gives notice to end their tenancy. If work is then found to be needed in a unit it is taken off the market. The tenants viewed the unit and found it was livable and these issues only came up later. The landlord testified that they did not comply with the previous Order to make repairs as the repairs required vacant possession of the unit and that is why the tenants were served the Two Month Notice. The owners did then replace the flooring in the kitchen, carpets were replaced and the ceilings were replaced or repaired in the kitchen and bathroom.

The tenants asked the landlord if the landlord had done a move out inspection with the previous tenants. The landlord responded that yes they had done one and then they saw the house was not ready for occupation because of the smell in the carpets. The tenant referred to the landlord's cleaning receipt provided in evidence and asked how was nine hours of cleaning relevant if the house needed so many repairs. The landlord responded that the cleaning was done, the carpets were also steam cleaned and it was the tenants who were insistent that they moved into the unit, the repairs required did not make the unit unlivable.

The landlord declined the opportunity to cross examine the tenants.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:
Double security deposit – In this matter the tenants have the burden of proof to show they provided the landlord with their forward address in writing. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.
The tenants testified that their forwarding address was provided to the landlord's office on December 18, 2015 the landlord testified that no forwarding address was provided until they received the tenants' application. Without further corroborating evidence from the tenants to prove they provided their forwarding address to the landlord I find this is one person's word against that of the other and the burden of proof has not been met. Consequently, as the landlord has now returned the tenants; security deposit in full the *Act* does not allow me to award the tenant the doubling provision of the security deposit and this section of the tenants' claim to recover $750.0 is dismissed.

Compensation – the tenants seek compensation of four months' rent; I have considered both arguments in this matter. I refer the parties to s. 32 (1) of the Act which states:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

S. 32(5) of the Act states:

> *(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

The landlord testified that after the previous tenants vacated the unit the landlord determined at that time that the carpets needed cleaning and so offered the tenants temporary housing. The landlord testified that the tenants insisted that they wanted to live in the unit. When a tenancy agreement has been signed by both parties and a security deposit paid then the parties have entered into a tenancy and as such the landlord is obligated to fulfill their obligations under the tenancy agreement and the *Act*. If it was only a matter of cleaning the carpets then this work could have been carried out before the tenants took possession of the rental unit. Instead I find the landlord provided temporary accommodation to the tenants. I am not persuaded by the landlord's arguments that the unit was livable as clearly there were sufficient delicences to warrant a previous order for repairs to be made to the unit and for a Two Month Notice to be issued to the tenants for renovations that required the rental unit to be vacant.

While I am not convinced that the replacement of carpets, flooring and the repair or replacement of two ceilings would warrant vacant possession, I find it is likely that in issuing the Two Month Notice the landlord found this was a way to not comply with the previous Order made at the September 03, 2015 hearing.

Consequently, I find the tenants are entitled to some compensation for the inconvenience of having to move three times in a few months and for the non-compliance of s. 32(1) of the *Act* and the previous order made. However, I find the tenants did reside in the town house for one month and therefore must pay rent and utilities at that unit. The tenants' claim for $1,300.00 is therefore dismissed. With regard to the tenants' claim for the rent for August, September and October, I find the tenants' application to recover the full rent paid for these months is extreme. The tenants did continue to reside in the unit and therefore I must limit their claim to half a month's rent. As some of the amounts claimed as rent were in fact utilities each month then I limit the tenants' claim to $750.00 for August, September and October, 2015 to a total amount of **$2,250.00.**

Further to this i find the landlord has charged the tenants a processing fee of $0.25 for processing payments made for the security deposit and rent. There is no mention in the tenancy agreement that a fee will be charged for processing any payments made by the tenants and therefore these fees may not be charged. The tenants are therefore entitled to recover the amount of $0.25 for the payment made on June 12, 2015, $0.25 for the

payment made on July 03, 2015; $0.25 for the payment made on August 04, 2015; and $0.25 for the payment made on August 31, 2015 to a total amount of **$1.00**.

As the tenants' claim has some merit, the tenants are entitled to recover their filing fee of **100.00** pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenants pursuant to s. 67 and 7291) of the *Act* for the following amounts:

Rent for August, 2015	$750.00
Rent for September, 2015	$750.00
Rent for October, 2015	$750.00
Additional unauthorised charges made	$1.00
Filing fee	$100.00
Total amount for the tenants	**$2,351.00**

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$2,351.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 26, 2016

Residential Tenancy Branch