Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: MNSD, FF

Landlord's application: MND, MNDC, MNSD,

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing. The tenants and the landlord submitted and exchanged documentary evidence concerning their respective claims. Each party acknowledged receipt of the submitted documents.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit and pet deposit including double the amount of the deposits?

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenants' deposits?

Background and Evidence

The rental unit is a strata title apartment in Surrey. The tenancy began July 1, 2014 for a one year term and thereafter on a month to month basis. The monthly rent was $1,250.00 payable on the first of each month. The tenants paid a security deposit of $625.00 and a pet deposit of $625.00 at the start of the tenancy.

The tenants sent the landlord a letter dated October 20, 2015 to notify the landlord that they intended to end the tenancy effective November 30, 2015. The tenants enclosed their cheque in payment of November rent and they set out in the letter the forwarding

address to which their deposits could be mailed. The letter was sent to the landlord by registered mail. She acknowledged at the hearing that she received the letter along with the November rent cheque.

The tenants testified that they moved out of the rental unit on November 8th, but spent time cleaning and removing belonging from the rental unit. The tenant R.A. met the landlord at the rental unit on December 1, 2015 he conducted a move-out inspection with the landlord No damages or cleaning requirements were noted on the move-out condition inspection report.

The tenant said that after they moved out they received complaints from the landlord about the condition of the rental unit. The tenant said that new tenants moved into the rental unit on December 1st, but the landlord tried to get the tenants to return to the rental unit to conduct a further inspection. She accused the tenants of damaging the door and the laminate floor in the rental unit. The tenants did not agree with the landlord's claims of damage and did not attend a second inspection with the landlord. When their deposits were not returned the tenants filed their application for dispute resolution to claim the return of their deposits. The application was filed on January 9, 2016. On August 4, 2016 they filed an amendment to their claim to make it clear that they were seeking payment of double the amount of the deposits.

The landlord submitted her application for dispute resolution on June 28, 2016. In her application she claimed payment of the sum of $5,302.85. The landlord said she had difficulty getting access to the rental unit after the tenants returned the keys because she did not have the tenant's alarm codes. She said that she met the tenant R.A. at the rental unit on December 1, 2015. She completed a condition inspection, but because it was completed in a hurry she did not notice damage to the rental unit. The damage included damage to the laminate floor, damage to the front door and damage to a sink. The tenant said she tried to contact the tenants to get them to come back to re-inspect the rental unit, but they would not respond to her. The landlord claimed in her application and testimony that she did not receive the tenant's forwarding address until she received the tenants' application for dispute resolution claiming the return of their deposit. At the hearing, however, she acknowledged that she did receive the tenants' letter dated October 20, 2015 giving notice to end the tenancy, enclosing a rent payment and setting out their forwarding address in the letter.

The landlord submitted four pictures of the laminate flooring inside the rental unit. In two of the pictures several laminate boards are missing showing the black substrate beneath the flooring. The landlord said there was water damage caused by the tenants and the laminate floor was lifting. She testified that the entire laminate floor needs to be

replaced. The landlord said that the door frame was damaged by the tenants and the weather strip at the bottom was torn loose. The landlord said the tenants damaged a sink; she said there was a small hole in the surface that was not noticeable during the condition inspection.

The landlord said that the tenants misled her about having the carpets cleaned. She said the tenants provided a receipt for professional carpet cleaning, but they cleaned the carpets themselves using a rented cleaning machine. The landlord did not submit a copy of the receipt said to have been submitted by he tenants. The tenants submitted a copy of their invoice for the rental of a carpet cleaning machine. The landlord said the new tenants who moved into the rental unit complained about the smell and the landlord had to have the carpets professionally cleaned. The landlord also said she had to have the front entrance door repaired. The landlord did not submit invoices or receipts for carpet cleaning or for any other expenditures. She provided an estimate from a construction company dated March 3, 2016. The estimate quoted a total cost of $4,427.85 to remove and replace approximately 800 square feet of laminate flooring and for a door repair.

The landlord testified that she has not replaced the flooring. She re-rented the unit to new tenants commencing December 1, 2015. The landlord said she was waiting for the outcome of this hearing before performing work to the rental unit. The estimate also included the cost to repair the entrance door. At the hearing the landlord said she had just finished having work done to the door. She did not have an invoice for work performed to the door.

The landlord testified that she submitted a picture of the damaged sink, but there was no such picture in the documentary evidence before me and the tenants said that they did not receive a picture of the sink.

The tenants denied that they caused any of the damage claimed by the landlord. The tenant submitted that the landlord's photos did not disclose evidence of water damage to the floor and there was no indication of any reason why the entire floor needed to be replaced. The tenant also said that the estimate was for a floor area significantly greater than the entire floor are of the rental unit, including the floors that were carpeted or tiled The tenant said that they responded to repeated e-mails from the landlord; they told the landlord that they did not agree with her claims that they had damaged the rental unit. The tenants referred to the condition inspection report that did not disclose any damage to the unit caused by the tenants.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants provided the landlord with their forwarding address in writing; it was set out in the letter dated October 20, 2015 delivered to the landlord by registered mail. The landlord acknowledged at the hearing that she received the letter. I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenancy ended on November 30, 2015. The tenants' security deposit was not refunded within 15 days of that date as required by section 38(1) of the *Residential Tenancy Act.* The landlord did not file an application to make a claim against the deposit until June 28, 2016, long after the expiry of the 15 day period. The landlord did not have the tenants' consent to retain any portion of the deposits and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of $2,500.00

The landlord has claimed the sum of $5,302.85. She did not submit any receipts or invoices for any expenditures paid to repair damage to the rental unit. She provided an estimate for the replacement of the floor and pictures of the floor with missing laminate boards, but I find that neither the estimate nor the photographs constitute sufficient evidence to establish on a balance of probabilities that the tenants caused damage to the floor and that the damage was so extensive that it required the replacement of the entire floor. The landlord has not repaired or replaced the floor. She re-rented the unit to new tenants who have occupied the unit since December 1, 2015. The landlord's evidence as to damage is contradicted by the tenants' testimony and by the condition inspection report prepared by the landlord. The landlord has not provided documents to establish that she performed any repairs or made any expenditures to fix damage to the rental unit; she has the burden of proving on a balance of probabilities that the tenants caused or are responsible for damage to the rental unit and to prove the costs she has

incurred to repair such damage. The landlord has not established her entitlement to an award in any amount and her claim is therefore dismissed without leave to reapply.

The tenants have been awarded the sum of $2,500.00. They are entitled to recover the $100.00 filing fee for their application for a total award of $2,600.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenants' application has been allowed in the amount of $2,600.00. The landlord's application has been dismissed without leave to reapply,

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 24, 2016

Residential Tenancy Branch