Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On August 17, 2016 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that the Tenants' Application for Dispute Resolution, the Notice of Hearing, and 22 pages of evidence submitted to the Residential Tenancy Branch by the Tenants were sent to the Landlords, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On September 01, 2016 the Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for damage and to keep all or part of the security deposit.

The female Landlord stated that the Landlords' Application for Dispute Resolution, the Notice of Hearing, and 41 pages of evidence submitted to the Residential Tenancy Branch by the Landlords were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. On several occasions each party was prevented from presenting testimony that was not directly relevant to the issues in dispute at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Should the security/pet damage deposit be retained by the Landlords or returned to the Tenants?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on September 01, 2011;
- the tenancy ended on May 01, 2016;
- the Tenant paid a security deposit of $700.00;
- the Tenant paid a pet damage deposit of $300.00;

- a condition inspection report was completed at the beginning of the tenancy;
- the Landlords contacted the Tenants on three occasions during the middle of May of 2016, via email, in an attempt to schedule a final condition inspection report of the rental unit;
- the parties were not able to agree on a time/date to complete a final condition inspection report;
- the Landlords did not serve the Tenants with a Notice of Final Opportunity to Schedule a Condition Inspection;
- the Landlords did not complete a final condition inspection report in the absence of the Tenants;
- the Tenants provided the Landlords with a forwarding address, in writing, on May 05, 2016;
- the Tenants did not give the Landlords written authority to retain the security or pet damage deposit; and
- the Landlords have not repaid any portion of the security or pet damage deposit.

The Landlords are seeking compensation, in the amount of $992.00, for replacing the glass stove top. The Landlords and the Tenants agree that the stove top was newly installed during the tenancy and that it was damaged by the Tenants during the tenancy. The female Tenant stated that the stove top was damaged when a pepper shaker was accidentally dropped on the stove top.

The Landlords submitted an invoice to show that the Landlords paid $392.00 to install the stove top in 2012. She stated that she was unable to locate a receipt for the stove top but she estimates they paid approximately $600.00 for the stove. The female Tenant stated that she was able to find prices for stove tops that are less than $600.00: however she did not submit documentary evidence that supports this testimony.

The Landlords submitted the first page of a contract of purchase and sale, dated January 15, 2016. In this document it is clear that the Landlords and the purchaser are negotiating a price reduction of $5,000.00 for repairs, which included a repair for a broken stove top. The amount if the final settlement is redacted but it appears that they “settled in the middle”, which I interpret to mean that the selling price was reduced by $2,500.00 for repairs.

The Landlords claimed compensation, in the amount of $40.00, for repairing screen doors; however the female Landlord withdrew that claim at the hearing.

Analysis

Section 35(1) of the *Residential Tenancy Act (Act*) stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. On the basis of the undisputed evidence I find that the rental unit was not jointly inspected at the end of this tenancy.

Section 35(1) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates, in part, that a landlord must propose a second time for an inspection, in the approved

form. Section 10(1) of the *Act* stipulates that the director may approve forms for the purposes of this *Act.* RTB-22 (Notice of Final Opportunity to Schedule a Condition Inspection) is the form the director has created for the purposes of scheduling a final inspection.

Section 10(2) of the *Act* stipulates that deviations from an approved form that does not affect its substance and is not intended to mislead does not invalidate the form used. In these circumstances, where the parties regularly communicated by email, I would accept that an email informing the Tenant of the time and date of the final inspection would constitute proper written notice of a second opportunity for an inspection, provided the inspection was scheduled at a time and date that complies with the legislation. In these circumstances, however, I have no evidence that the Landlords specified a specific time and date for a final inspection in any of the emails sent in mid-May. I therefore find that the Landlords failed to comply with section 35(2) of the *Act.*

Section 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 section 35(2) of the *Act.* As I have concluded that the Landlords failed to comply with section 35(2) of the *Act*, I find that the Landlords' right to claim against the security deposit and pet damage deposit for damage is extinguished.

Residential Tenancy Branch Policy Guideline #17, with which I concur, stipulates that a landlord who has lost the right to claim against the security deposit for damage to the rental unit, retains the right to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit. I therefore find it appropriate to consider the Landlords' claim for compensation for damages.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the glass stove top that was damaged during the tenancy. Typically a landlord is entitled to compensation for the cost for repairing the damage to the unit.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlords failed to establish the total cost of replacing the damaged stove top. On the basis of the invoice from 2012, I find that it would cost approximately $392.00 to install a new stove top.

I find, however, that the Landlords submitted insufficient evidence to establish the true cost of purchasing a replacement stove top. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates the female Landlord's testimony that the original stove top cost approximately $600.00. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlords have not established the true cost of a new stove top, I dismiss their claim for $600.00 for the stove top.

On the basis of the first page of the contract of purchase and sale, dated January 15, 2016, I find that the purchase price of this rental unit was reduced by approximately $2,500.00 as a result of the need for repairs, including the need to repair a broken stove top. Although it is not entirely clear how much the property was devalued as a result of the broken stove top, I find it reasonable to conclude that the value was reduced by at least $392.00, which is the approximate cost of replacing the stove top. I therefore find that the Landlords are entitled to compensation of $392.00 for the damaged stove top.

On the basis of the undisputed evidence, I find that the Landlords received a forwarding address for the Tenants, via email, on May 05, 2016, which constitutes receiving the forwarding address in writing. In determining that the Landlords received the Tenants' forwarding address in writing, via email, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act,* must be served. Service by email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlords acknowledged receiving the email in text message in which the Tenants provided their forwarding address, I find that the Landlords were sufficiently served with the Tenants' forwarding address on May 05, 2016.

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 or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit/pet damage deposit and they did not file an Application for Dispute Resolution until more than 15 days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant 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(1) of the *Act,* I find that the Landlords must pay the Tenants double the security deposit and pet damage deposit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion

The Landlords have established a monetary claim, in the amount of $392.00, in compensation for the damaged stove top.

The Tenants have established a monetary claim, in the amount of $2,100.00, which includes double the security/pet damage deposit and $100.00 for the fee paid to file an Application for Dispute Resolution.

After offsetting the two awards I find that the Landlords owe the Tenants $1,708.00 and I grant the Tenants a monetary Order in this amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia 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 *Act*.

Dated: February 22, 2017

Residential Tenancy Branch