Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package the submitted documentary evidence via Canada Post Registered Mail on August 25, 2016 then again with additional documentary evidence in person on February 8, 2017. The tenants both confirmed receipt of the packages as claimed by the landlord. The tenants stated that the landlord was served with their notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 27, 2017 then again with additional documentary evidence in person on February 15, 2017. The landlord confirmed service of the tenants' notice of hearing package and the submitted

documentary evidence as claimed. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and all of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security and pet damage deposits?
Are the tenants entitled to a monetary order for return of double the security and pet damage deposits and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy ending on August 1, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 27, 2015. The monthly rent was $1,500.00 payable on the 1st day of each month. A security deposit of $750.00 and a pet damage deposit of $750.00 were paid on August 1, 2015. No condition inspection reports for the move-in or the move-out were completed.

The landlord seeks a monetary claim of $17,000.00 for replacement of the building exterior siding which was damaged beyond repair.

The tenants seek a monetary claim for the double the $750.00 security and the $750.00 pet damage deposits.

The landlord provided affirmed testimony that the tenants damaged multiple areas of the exterior siding of the house. The landlord stated that the tenants damaged the siding sometime between late 2015 to early 2016. The landlord stated that the tenants tried to hide the damaged siding by removing panels from other parts of the house. In support of this claim the landlord has provided a copy of an estimate to replace the siding for $16,500.00 plus tax (GST $825.00). The invoice noted that the existing siding is outdated and not in production any more to be replaced.

The tenants acknowledged that the siding on the rental property was damaged the tenants' son while he was playing hockey. The tenant, C.C. stated that he was advised by the landlord of the damage and that the tenants decided to remove portions of the siding from non-viewable areas of the house and replace them with the damaged portions. The tenant, C.C. stated that he felt it was his responsibility to make the repairs and chose to remove siding from those areas of the house that were not viewable and replace them with the damaged sections from the front of the house. The tenant, C.C. that he has effectively repaired the siding with no viewable issues. The tenant, C.C. stated that the siding was apparently original to the house which is at least 40 years old.

The landlord stated that the tenants failed to comply with section #15 of the signed addendum which states,

> *Alterations and Improvements: Lessee shall make no alterations to the building on the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor…*

The landlord provided undisputed affirmed evidence that the tenants failed to get his permission to make repairs to the siding as stated by the tenant, C.C.

The landlord disputes the claim of the tenants that there were no viewable issues. The landlord refers to photographs #11 and #13 which show a discoloration to the siding. The landlord clarified that the sun has naturally discolored the exposed portions of the house and that these transplanted pieces are easily noticed. The landlord also stated that the tenants in transplanting the siding pieces had them cut to fit the front of the house. The landlord stated that the tenants have not effectively damaged two different sections of the siding.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to

prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find based upon the undisputed affirmed evidence of both parties that the landlord has established that the tenants caused damage to the siding of the rental property. The tenant, C.C. provided affirmed testimony that his son had damaged the siding while playing hockey. In support of the claim the landlord has provided photographs of the damaged siding that clearly shows marks from impacts of something similar to a ball.

Residential Tenancy Branch Policy Guideline #40, Useful life of things states in part that the exterior siding of a rental property has a useful life of 25 years. Based upon this it is clear that the siding has passed its useful life as claimed by the tenant, C.C. that the siding was original to the house which is approximately 40 years old. The landlord is not entitled to the compensation claimed of $17,000.00. However, it is clear that the landlord has suffered a loss in that the tenants have triggered an earlier date of when the siding would have been replaced. Although the useful life of the siding is set at 25 years and the current age of the siding is approximately 40 years the siding still had a functional value. As such, I grant the landlord an arbitrary nominal award of $500.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended on August 1, 2016. The tenants claimed that the landlord was served with their forwarding address in writing on August 4, 2016 by placing it in his mailbox. The landlord disputed this claim stating that he had received it on August 9, 2016. The landlord was adamant that he received it in his mailbox on this date as he claims that he had counted the days and knew that he had 1 day to spare based upon his application filed on August 23, 2016 to meet the 15 day time limit. The tenants reiterated that they had served the landlord with the forwarding address in writing on August 4, 2016, but were unable to provide any supporting evidence. I find that without any supporting evidence of service that the landlord was served with the tenants forwarding address in writing on August 9, 2016. As such, I find that the landlord properly filed his application for dispute within the allowed 15 day period and the tenants claim for return of double the security deposit and the pet damage deposit is dismissed.

As both parties were only partially successful in their applications, I decline to make any orders for recovery of their respective filing fees.

In offsetting these claims, I find that the landlord may retain $500.00 from the currently held $1,500.00 combined security and pet damage deposits. I grant the tenants a monetary order for return of the remaining $1,000.00.

Conclusion

The landlord may retain $500.00 from the combined security and pet damage deposits. The tenants are granted a monetary order for $1,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed for enforcement in the Small Claims Division of the Provincial Court of British Columbia.

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: February 23, 2017

Residential Tenancy Branch