Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, MND, FF

Introduction

In the first application the tenants apply for recovery of a security deposit, doubled pursuant to s.38 of the *Residential Tenancy Act* (the "*Act*"). They also seek the equivalent of one month's rent due under s. 51 of the *Act* following issuance of a two month Notice to End Tenancy, or a rent rebate provided for in s.50 of the *Act*. By amendment the tenants seek out of pocket expensed incurred in proceeding with their application, like mailing costs.

In the second application the landlord seeks compensation for cleaning and damage to the premises.

The tenants have named the landlord as Mr. J.S.J.C. The landlord has brought his application under the name S.J.C. but he has spelt it differently from the name in the tenancy agreement. For better certainty I have listed all three names in the style of cause.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord owe the tenants the security deposit? Doubled? Are the tenants owed a rent rebate or a month's rent under s.51? Did the tenants leave the premises reasonably clean and free of damage but for reasonable wear and tear as they are required to do under the *Act*?

Background and Evidence

The rental unit is a two bedroom “plus den” apartment in a condominium apartment building. There is a written tenancy agreement. It shows that the tenants are the applicant Ms. C. C. and her mother Catherine C. The applicant Ms. A.C. another daughter, is not shown on tenancy agreement. It is my understanding that both applicants were teenagers at the time the tenancy agreement was drawn. The landlord took no issue with the two applicants claiming to both be his tenants.

The tenancy started in November 2008. At first it was for a year fixed term but then carried on as a month to month tenancy until the applicants, the two remaining occupants, vacated the rental unit on April 17, 2017.

The rent was initially $1500.00 per month and has always been due on the 15th of each month, in advance.

The tenants paid a $1500.00 security deposit at the start of the tenancy. At the end they discovered that the *Act* limits the amount of a security deposit to a maximum of one-half month’s rent and that a tenant may reclaim the overpayment from rent. As the tenancy has ended, it is of no consequence at this stage..

The rent stayed at $1500.00 for about six years but eventually increased to $1600.00 in August 2015. It appears the increase was by agreement between the parties. There is no evidence of the landlord unilaterally imposing the rent increase. The tenants’ have filed a Monetary Order Worksheet that refers to a claim for money back because the rent increase was too much.

In December 2016 or perhaps January 2017, the landlord expressed his intention to move back to British Columbia, he or perhaps his mother, who intended to join him, began discussions about ending the tenancy in July 2017. A fixed term tenancy agreement was drafted and presented to the tenants. It would have caused the tenancy to end in July but the tenants did not agree to it.

Ultimately, the landlord issued a two month Notice to End Tenancy effective June 14, 2017. The Notice was dated February 1, 2017 and the tenants received it about that time.

The tenants found another place earlier than the June 14 effective date of the Notice and so they gave the landlord their own notice in writing on March 15, that they would be vacating the rental unit on April 17, 2017, not June 14. In the notice the tenants provided a forwarding address.

The tenants moved out on April 17. The landlord arranged for two men to attend and act as his agents to conduct a walk through inspection with the tenant Ms. A.C. It lasted over an hour.

She says the inspection was very thorough. The men tested all the appliances, including the garburator and the hot water, to ensure they worked.

The landlord's agents did not prepare a move-out condition report. The landlord had not prepared a move-in condition report at the start of the tenancy either, however the apartment building was constructed in 2007 and the rental unit had been rented to another tenant for about one year before the start of this tenancy. So it may be assumed that the rental unit was in relatively new condition when this tenancy started.

After the tenants moved out there was some discussion about special carpet cleaning. The tenants had pets, notably dogs, during the tenancy and one of the tenant's children is allergic to dogs. Though the tenants say they rented a carpet cleaner and cleaned the carpets before moving out, they concede the amount of $240.00 for special cleaning. The landlord seeks $370.00.

Mr. C. testifies that he has been very generous to the tenants and their mother over the years and feels that they are being ungrateful. In his view he gave them plenty of notice that he wanted to return to live in the apartment and they should have accommodated him by staying the full notice period and paying rent.

Regarding the state of the premises he says the walls were dirty and damaged. He says there was a fire in the kitchen in December 2016 and restoration work has not yet been done. The entire unit needs repainting. He says the garburator is not working and that the tenants broke it. As well, a cabinet has had to be repaired and the vertical blinds in almost every room are either broken or dirty.

Mr. A.C. lists four months since July 2015 where the tenants repaid themselves alleged repair costs by paying less than the full rent.

In reply the tenant Ms. A.C. denies that she left any damage or that the rental unit needed cleaning. She says that at the move-out inspection the landlord's agents said the unit's condition was "good." She notes that the 2008 tenancy agreement notes that the carpet is "damaged and stained."

Ms. C.C. testifies that the tenants puttied and painted over any nail holes at the end of the tenancy and repainted back to original colours any rooms they had painted during the tenancy. She denies there was any fire in the kitchen. The incident in question was a smoking pot on the stove. It was minor enough that no alarm went off. She says there was no damage, only a little smoke smell that dissipated after the tenants opened the windows and washed the walls. She says there was no comment about smell during the move-out inspection. She says the garburator was working when she left. The landlord's agents checked it. She denies any damage to or loss of vertical blinds.

In regard to rent deductions she says the landlord's mother, who acted on his behalf at times, agreed to the deductions.

Analysis

The Landlord's Claim

Carpet Cleaning

I find the tenants have agreed to the special cleaning. It has not been shown why the landlord's $370.00 quote should be preferred over the tenants' $240.00 quote and so I allow $240.00 under this head.

Painting

In regard to this item of the claim the landlord has put himself a serious disadvantage by not preparing move-in and move-out reports. The *Act* mandates that he do so in order to avoid disputes such as this one. Had the parties prepared a report together at the end of the tenancy, then any dispute about the repair or cleanliness of a particular area would have likely become apparent at that time. The tenants are put at a significant disadvantage by having to respond to claims about the condition of the premises not raised at the move-out inspection. They have loss the opportunity not only to have settled matters back then but also to acquired evidence, such as photographs, about the areas in dispute.

The landlord has failed to demonstrate with adequate evidence that the premises required painting over and above what would normally be expected after a tenancy of over eight years.

I dismiss this item of the claim.

Stove/Cooker Fire Damage

Again, the move-out inspection would have been the proper time to raise any complaint about the stove. The landlord has failed to prove on a balance of probabilities that this item was in need of repair or that the rental unit required any restoration work because if it.

I dismiss this item of the claim.

Garburator

I accept the tenants' evidence that the landlord's agents ran the garburator during the move-out inspection and that it was operating satisfactorily. Had it been otherwise it is likely the landlord

would have raised it in his correspondence with the tenants about the carpet cleaning. He did not.

I dismiss this item of the claim.

Vertical Blinds

In the face of the tenants' denial, the landlord has failed to provide evidence sufficient to prove that any vertical blinds were broken, dirty or missing. Again, proper inspection and reporting would have corroborated at least what blinds were there at move-in.

I dismiss this item of the claim.

Deficient Rent Payments

I am satisfied that the landlord's records are correct and that on at least four occasions since July 2015, the tenants reduced the monthly rent payment to cover costs they had incurred. Section 26(1) of the *Act* makes it clear that a tenant must pay rent even though the tenant may have a claim against the landlord for a repair expense.

However, in this case, though the tenants may not have had the landlord's prior authorization to offset an expense against rent, there was no discussion about it until well after this tenancy ended. I find that the expense was ultimately agreed to by the landlord, or his mother, during the tenancy, as claiimed by the tenants. The landlord cannot undo that agreement simply because the tenants have made a claim against him that he considers unjust.

I dismiss this item of the claim.

Loss of Rent

The landlord and his family could not move back to BC until June or July. By the tenants moving earlier he was left with a vacant apartment that he could not reasonably rent for the brief period April to June or July. As a result, he lost the $1600.00 a month rental income he would have received had the tenants stayed until the effective date of the Notice.

The fact of the matter is that the tenants were not obliged to agree to the landlord's proposal to mutually end the tenancy in July 2017. The landlord may rightly feel that the tenants should have cooperated with his plan to move back. However, the tenants were entitled to rely on the law. The *Act* is intended to provide tenants in the province with a form of security. It attempts to limit the grounds on which a landlord can end a tenancy. If a tenant has paid rent and has not displayed conduct warranting eviction, a landlord can only end a periodic tenancy such as this one for reasons set out in s.49; such as in this case the landlord wishing to occupy the rental unit himself.

Section 49(2) sets out the minimum length of notice that the landlord must give. He may, if he wishes, give a longer notice. Contrary to a comment made by the tenants, a two month Notice to End Tenancy may give much more than two month's notice but the effective date of the Notice stays the same.

Section 50(1) gives the tenant who has received that Notice an opportunity to end the tenancy even earlier (minimum ten days written notice).

In this is case the tenants exercised their statutory right under s. 50(1) to end the tenancy on April 17. The landlord cannot now claim loss of rental income for the period after that.

I dismiss this item of the claim.

The Tenants' Claim

Security Deposit

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As the landlord's monetary claim has been unsuccessful, the tenants are entitled to return of the $1500.00 security deposit, less $240.00 agreed for carpet cleaning.

The tenants are entitled to a doubling of the deposit money remaining at the end of the tenancy, because the landlord has failed to comply with s.38 of the *Act.*

Section 38 imposes the penalty of a doubling of a deposit where a landlord fails to either repay deposit money or make an application for dispute resolution within 15 days after, a) the ending of the tenancy, and b) receipt of the tenant's forwarding address in writing. In this case the tenancy ended April 17, 2017 and the landlord then had the tenants' forwarding address, provided in the notice given earlier. The landlord did not comply with the 15 day period requirement. The fact that the parties may still have been negotiating over the carpet cleaning after the fifteen day period does not operate as a delay or stay of the 15 day period..

Though the tenants have agreed to pay $240.00 for carpet cleaning, the amount of deposit money remaining at the end of the tenancy was $1500.00. That is the amount to be doubled. I award the tenants $3000.00, less $240.00 for a remainder of $2760.00.

Rent Increase

I find that the rent increase was an increase agreed to by the tenants after occupying the premises for six years without any increase. It was not a rent increase imposed by the landlord and so the statutory and regulatory rules restricting imposed rent increases did not apply.

I dismiss this item of the tenants' claim.

Recover of Rent

The tenants' have formed their claim as seeking back their "free month" of rental, that is the period April 15 to May 15, less a prorated amount for the three days they stayed April 15, 16, and 17. In their Monetary Order Worksheet they have related this claim to the two month Notice and claimed $1440.00 as their pro-rated rent for period April 18 to May 15, 2017. However, given the amount claimed, the tenants' claim is properly related to a tenant's right to give short notice under s. 50(2) and to receive back rent paid for any period after the end of the tenancy..

The tenants are entitled to receive back rent paid for the period following their lawful ending of the tenancy and I award them $1440.00, as claimed.

Payment due to Two Month Notice

The *Act*, s.51(1) provides that a tenant who receives a two month Notice is entitled to receive from the landlord on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

A tenant is allowed to withhold the last month's rent as a way of collecting this payment; getting a "free month" of tenancy. These tenants did not withhold their last month's rent. Indeed it is undisputed that they paid rent for the period April 15 to May 15 though they had given notice to leave effective on April 17.

This payment from the landlord is payment separate from the recovery of rent paid for the period after the tenancy ended and which this decision has already awarded. The s. 51(1) payment has not been made by the landlord.

The tenant's application and Monetary Order Worksheet do not clearly advance the s. 51(1) claim. The amount claimed by them does not appear to include a calculation for the amount owing under s. 51(1) ($1500.00).

As the claim has not been clearly advanced, I decline to address it. The tenants are fee to reapply in that regard and I grant them any leave required to do so.

Out of Pocket Expenses

The tenants wish to recover their cost for mailings incurred as a result of the dispute resolution process. I must dismiss this claim. An arbitrator's jurisdiction to award costs and disbursements is limited to an award of recovery of the filing fee. As the tenants have been successful, I award recovery of the $100.00 filing fee.

Conclusion

The landlord's application is dismissed.

The tenants are entitled to a monetary award of $4200.00 plus the $100.00 filing fee. They will have a monetary order against the landlord in the amount of $4300.00.

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: January 13, 2018

Residential Tenancy Branch