Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-SC, MNDCT, MNSD, FFL, FFT

Introduction

This hearing was convened in response to the cross applications.

The Landlords filed an Application for Dispute Resolution in which the Landlords applied for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. It is readily apparent from information contained on the Application for Dispute Resolution that the Landlords are seeking to recover utilities and that matter will, therefore, be considered at these proceedings.

The Landlord stated that in December of 2017 the Application for Dispute Resolution, the Notice of Hearing, and 15 pages of evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenants, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution in which they applied for a monetary Order for money owed or loss, for the return of their security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on June 27, 2018 the Application for Dispute Resolution, the Notice of Hearing, and 15 pages of evidence the Tenants submitted to the Residential Tenancy Branch were posted on the door to the Landlord's residence. As the Landlord acknowledged receiving these documents, 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. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit and unpaid utilities?
Should the security 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, 2013;
- there was a written tenancy agreement;
- the Tenants paid a security deposit of $900.00;
- the Tenants paid a pet damage deposit of $300.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- the tenancy ended on November 30, 2017;
- the Tenants provided a forwarding address, via email, on November 30, 2017;
- a condition inspection report was not completed at the end of the tenancy; and
- on December 07, 2017 the Landlords returned $184.28 of the security/pet damage deposit.

The Landlords are seeking compensation, in the amount of $370.72, for unpaid utilities. The Landlords submitted one hydro bill and two gas bills, which total $307.96. The parties agree that the Tenants have not paid any portion of these three bills.

The Landlord stated that they have a verbal agreement with the Tenants that require the Tenants to pay 70% of the gas and hydro bills when the lower portion of the residential property is occupied and that they will pay 100% of the gas and hydro bills when the lower portion of the residential property is not occupied. He stated that the three bills he submitted were for periods when the lower portion of the residential property was not occupied so he believes the Tenants must pay 100% of the bills.

The male Tenant stated that they verbally agreed to pay 70% of the gas and hydro bills regardless of whether the lower portion of the residential property is occupied. He stated that they never agreed to pay 100% of the gas and hydro bills. He stated that

because this agreement was not written in the tenancy agreement he believes the agreement is separate from the tenancy agreement.

The Landlords' claim for unpaid utilities includes estimates for amounts due for the latter portion of November of 2017. The Landlords did not submit copies of the utility bills that support these estimates.

The Landlords are seeking compensation, in the amount of $165.00, for repairing a screen door. The Landlord stated that the screen was in good condition at the start of the tenancy and that the bottom portion of the screen had separated from the frame at the end of the tenancy.

The male Tenant stated that this door was not inspected at the end of the tenancy; that it was never used during the tenancy; and that it could not have been damaged during the tenancy since it was never used.

The Landlords are seeking compensation, in the amount of $80.00, for repairing the walls in the rental unit. The Landlord stated that there were 7 or 8 holes in the wall that needed to be repaired at the end of the tenancy, which ranged from approximately 4" to 8" in diameter. He stated that some corners of the walls were damaged during the tenancy.

The male Tenant stated that there was some minor damage to the walls, which he considers to be normal wear and tear. He said there were not holes in the walls that were larger than a nail hole.

The Landlords submitted several photographs, which the Landlord stated represents the damage to the walls after the Landlords initiated repairs to the walls. The male Tenant stated that he does not recognize the damage depicted in the photographs and he cannot be certain that the photographs are of the rental unit.

The Landlords are seeking compensation, in the amount of $300.00, for repairing the front door which the parties agree was damaged during the tenancy. The parties agree that on December 07, 2017 the Tenants authorized the Landlords, via email, that the Landlords could retain $300.00 from the security deposit in compensation for the damaged front door.

The Tenants are seeking double the return of the security/pet damage deposit. The male Tenant stated that he believes the Tenant are entitled to double the return of the

full security/pet damage deposit because the Landlord did not return the deposits, less the $300.00 the Tenants authorized the Landlord to retain.

The male Tenant stated that he believes the Tenants are entitled to the return of double the security deposit even though the Landlords filed an Application for Dispute Resolution claiming against the deposit within fifteen days of the tenancy ending and the date they received the forwarding address because the Landlords' did not have the right retain any portion of the security deposit.

Analysis

Section 1 of the *Residential Tenancy Act (Act*) defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. (Emphasis added)

On the basis of the undisputed evidence I find that the Landlords and the Tenants entered into a written tenancy agreement, which outlined many of the terms of their tenancy, including that electricity and heat were not included with the tenancy.

On the basis of the undisputed evidence I find that the Landlords and the Tenants verbally agreed that the Tenants were responsible for paying at least 70% of the hydro and gas bills. As this was a verbal agreement for services that were directly related to services used at the rental unit during the tenancy, I find that this verbal agreement formed part of the tenancy agreement. I therefore find that the Tenants are obligated to pay 70% of the hydro and gas charges that were incurred during their tenancy.

As the Tenants acknowledge that they have not paid any portion the utility bills submitted in evidence, which total $370.72, I find that they must pay $259.50 to the Landlord for utilities, which is 70% of these bills.

I find that the Landlords submitted insufficient evidence to establish that the Tenants agreed to pay 100% of the hydro and gas bills when the lower portion of the residential property was not occupied. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenants agreed to this term or that refutes the male Tenant's testimony that the Tenants did not agree to this term. As the Landlord has failed to establish that the Tenants agreed to pay 100% of the hydro and gas bills when the lower portion of the residential property

was not occupied, I find that the Landlords are not entitled to recover 100% of any of the hydro and gas bills.

The Landlords' claim for unpaid utilities is based on estimates for amounts due for the latter portion of November of 2017. When utility bills can, with reasonable diligence, be provided to support a claim for utility charges, I find that a landlord is obligated to submit those bills. As the Landlords have not submitted any utility bills to support these estimates, I find that the Landlords have failed to establish the true cost utility charges from the latter portion of November of 2017 and that portion of the Landlords claim is, therefore, dismissed.

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.

Section 37(2)(a) of the *Act* requires tenants leave a rental unit undamaged at the end of a tenancy, except for reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the screen door was damaged during the tenancy. In reaching this conclusion I was influenced by the undisputed testimony of the male Tenant, who stated that the screen door was never used during the tenancy and could not, therefore, have been damaged by the Tenants. Although the Landlords contend the screen door was in good condition at the start of the tenancy I find there is no documentary evidence, such as a condition inspection report, that corroborates this testimony.

As the Landlords failed to comply with their legal obligation, pursuant to section 23(1) of the *Act*, to complete a condition inspection report at the start of the tenancy, I find that it would be difficult, if not impossible, for the Tenants to establish that the screen door was undamaged at the start of the tenancy. I find it unreasonable for the Tenants to be disadvantaged by the Landlords' failure to complete this report. I therefore find it reasonable for the Landlords to submit some sort of independent evidence to corroborate their submission that the screen was undamaged at the start of the tenancy.

I find that the Landlords have submitted insufficient evidence to satisfy me that the screen door was undamaged at the start of the tenancy. As the Landlords have failed

to establish that the screen door was undamaged at the start of the tenancy, I find that they have submitted insufficient evidence to establish that the screen door was damaged during the tenancy. As the Landlords have failed to establish that the screen door was damaged during the tenancy, I find that the Tenants are not obligated to repair the screen door and I dismiss this portion of the Landlords' claim.

I find that the Landlord submitted insufficient evidence to establish that the walls in the unit were damaged in a manner that exceeds normal wear and tear. Even if accepted the Landlord's testimony that the photographs submitted by the Landlords depict the walls in the unit, I find they do not depict the damage to the walls. Rather, I find that those photographs depict walls that are partially repaired. In the absence of photographs that clearly depict the nature of the damage to the walls, prior to any attempt at repair, I find that I am unable to conclude that the damage to the walls exceeded normal wear and tear.

As Tenants are not obligated to repair damage that is normal wear and tear and the Landlord has failed to establish that the Tenants damaged the walls beyond what is normal wear and tear, I dismiss the Landlords' claim for repairing the walls.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees, in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As the Tenants gave the Landlord authority, via email, to retain $300.00 from their security deposit to pay for a door that was damaged during the tenancy, I find that the Landlord has the right to retain this amount from the deposit.

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. (Emphasis added).

Residential Tenancy Branch records show that the Landlords filed their Application for Dispute Resolution on December 07, 2017. As this tenancy ended on November 30, 2017; the Landlord received the Tenants' forwarding address on November 30, 2017; and the Landlords filed their Application for Dispute Resolution on December 07, 2017, I find that the Landlords complied with section 38(1) of the *Act.*

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 complied with section 38(1) of the *Act,* I find that the Landlords are not obligated to pay the double the security/pet damage deposit. I therefore dismiss the Tenants' application for double the security/pet damage deposit.

I have placed no weight on the Tenants' submission that they are entitled to the return of double the security/pet damage deposit even though the Landlords filed an Application for Dispute Resolution claiming against the deposit within fifteen days of the tenancy ending and the date they received the forwarding address because the Landlords' did not have the right retain any portion of the deposits. A landlord has the right to file an Application for Dispute Resolution in which the landlord applies to retain all or part of a security/pet damage deposit. It is then left to the Director or the Director's designate to determine whether the landlord has the right to retain any portion of the deposits. There is nothing in the *Act* that requires a landlord to return double the deposits in the event the landlord fails to establish that the landlord has the right to retain all, or part, of the deposits.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants failed to establish the merit of their Application for Dispute Resolution, as they failed to establish they are entitled to the return of double the security/pet damage deposit. I therefore dismiss the Tenants' application to recover the fee for filing an Application for Dispute Resolution.

Although the Landlords are being ordered to return a portion of the Tenants' security/pet damage deposit, I would have ordered the return of this amount even if the Tenants had not filed an Application for Dispute Resolution. As it was not necessary for the Tenants to file an Application for Dispute Resolution, I find that a return of the filing fee is not warranted.

Conclusion

The Landlord has established a monetary claim, in the amount of $659.50, which includes $259.50 for hydro/gas; $300.00 for a damaged door; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain $659.50 from the Tenants' security deposit of $900.00 in full satisfaction of this monetary claim.

As the Landlords have already returned $184.28 of the security/pet damage deposit to the Tenants and they have only established a right to retain $659.50 from those deposits, the Landlords must return the remaining $356.22.

Based on these determinations I grant the Tenants a monetary Order for $356.22. 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: July 25, 2018

Residential Tenancy Branch