Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act ("Act")* to recover her security deposit.

The owner of the rental unit property, D.R., is a vulnerable adult (the "Owner"); the "landlord", L.L., identified on the tenancy agreement is a co-committee of the person and estate of the Owner (the "Landlord").

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Landlord said she only received the Notice of Dispute Resolution Proceeding from the Tenant, who did not dispute this statement, so I will not consider the Tenant's other documentary evidence submitted to the Residential Tenancy Branch system portal; it would not be administratively fair for the Landlord to have to defend her position without having advance notice of what the Tenant was presenting at the hearing.

The Tenant said she received copies of the Landlord's documentary evidence and had time to review it.

The first issue that I must decide in order to proceed with the Application is whether the

Act has jurisdiction over the Parties. The evidence before me is that on June 1, 2017, the Parties signed a tenancy agreement that started that day for a month to month tenancy; the monthly rent was $600.00, which was due on the first of each month. The Tenant paid the Landlord a security deposit of $300.00 and a pet deposit of $300.00. The tenancy ended on May 31, 2018 when the Tenant moved out.

The Landlord said the Owner of the home lives upstairs from the Tenant's downstairs suite. The Landlord said the Owner sometimes uses the bathroom upstairs for extended periods of time, so his case workers need to go downstairs to use the bathroom that is assigned to the Tenant, as well as the downstairs kitchen, at times.

The Tenant said that prior to her tenancy, she had been a staff worker for the Owner and that she and the other workers only ever used the downstairs bathroom or kitchen when the rental unit was not subject to a tenancy agreement. The Tenant agreed that the upstairs case workers were allowed to use the laundry facilities in the basement at pre-scheduled times.

The Tenant said there was a lock on the door between the upstairs and downstairs quarters and that no one ever used the kitchen or bathroom in the rental unit while she was there. The Tenant said she cannot comment on what happened when she was not in attendance at the rental unit, but her experience as a staff worker upstairs told her that it is not likely that anyone from upstairs used the downstairs facilities, other than the laundry room.

The Landlord argued that the agreement between the Parties does not fall under the *Act*, because the Tenant does not have exclusive use of the bathroom and kitchen in the rental unit. The Landlord pointed to an addendum to the tenancy agreement that was signed on May 24, 2017 by the Landlord and May 27, 2017 by the Tenant (the "Addendum"). The Addendum includes the following paragraphs:

1. The Tenant has agreed to allow the Owner of the residence access to the laundry room as mutually arranged between the Owner's Caregivers and the Tenant.

2. The Tenant will be renting two rooms and will have free access to all common areas including the kitchen, bathroom, laundry room and front room.

The wording of the first paragraph indicates that the laundry facilities downstairs are used by the staff upstairs at the discretion of the Tenant; however, the Addendum does

not have a statement indicating that such permission is given to the upstairs staff for the bathroom and kitchen downstairs. This inconsistency raises questions in my mind about the Landlord's version of events in this regard.

Section 4(c) of the Act states:

> **4** This Act does not apply to
>
> **. . .**
>
> (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

There is no persuasive evidence before me that the Tenant shared the kitchen and bathroom with the Owner,

I prefer the Tenant's testimony that she was familiar with the arrangement for the Owner's staff from her previous experience as a caregiver to that of the Landlord. I find the Tenant's experience working for the Owner gives credence to her submissions regarding the use of the downstairs facilities occurring only when the rental unit was untenanted.

I find the Landlord has provided insufficient evidence, including the internally inconsistent Addendum to the tenancy agreement, to accept her version of events regarding use of the downstairs kitchen and bathroom by the Owner`s caregivers during this tenancy. Based on all the evidence before me, overall, I find on a balance of probabilities that it is more likely than not that the Owner, the Owner's staff and the Landlord did not share the kitchen and bathroom of the rental unit with the Tenant within the meaning of section 4(c) of the *Act*. I, therefore, find that the *Act* does apply to this rental unit and I have jurisdiction to consider the Tenant's Application.

Issues to be Decided

- Is the Tenant entitled to the return of the security and pet deposits from the Landlord, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

As noted above, the Parties agree that the Tenant paid the Landlord a $300.00 security deposit and a $300.00 pet deposit (the "Deposits") at the start of the tenancy. The testimonial evidence before me is that the Landlord gave the Tenant a cheque for

$600.00 for the Deposits after completing a walk-through of the rental unit at the end of the tenancy.

However, the Parties agree that the Landlord cancelled this cheque after she later discovered damage to the living room floor, once the Tenant had removed the last piece of furniture from the rental unit. The Landlord said the damage to the floor was covered by the love seat that the Tenant had not yet removed from the rental unit when they reviewed the condition of the rental unit.

The Landlord presented four photos of damage to the floor, which indicate nicks and scratches to the flooring.

The Parties said they did not complete condition inspection reports ("CIR") before the start or at the end of the tenancy. The Landlord submitted an undated statement of a witness, LM, regarding the condition of the rental unit before and after the tenancy. The Tenant did not sign or agree to this statement, as she could have a CIR.

The Landlord also submitted a statement and a flooring cost estimate from the owner of a local flooring installation company dated November 15, 2018. However, the Landlord did not apply for a monetary claim against the Tenant regarding any damage done to the rental unit.

The Tenant's testimony was that she gave the Landlord her forwarding address after she and the Landlord had done a walk-through of the rental unit.

Analysis

A landlord must complete a CIR at both the start and end of a tenancy, in order for a landlord to establish that the damage occurred as a result of the tenancy, pursuant to sections 23, and 35 of the *Act*. If the landlord fails to complete a move in or move out CIR they extinguish their right to claim against either deposit for damage to the rental unit, in accordance with sections 24 and 36 of the *Act*.

There is no evidence before me that the Parties completed CIRs for this tenancy. Pursuant to section 36(2)(c) of the *Act*, the Landlord has, therefore, extinguished her right to claim against the security deposit. Further, the Landlord did not apply for a monetary order for damages and to have the security deposit applied to such a claim.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

. . .

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant **double** the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the legislation and all the evidence before me, overall, I find that the Tenant has established a monetary claim of $1,200.00 comprised of double the security deposit of $300.00 and double the pet deposit of $300.00. I grant the Tenant a monetary order pursuant to section 67 of the *Act*.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the *Act*, I grant a Monetary Order of $1,200.00 to the Tenant. The Order must be served on the Landlord and is enforceable through the Provincial Court of British Columbia (Small Claims Division) as an Order of that Court, should the Landlord fail to comply with the order.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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 7, 2019

Residential Tenancy Branch