Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNSD, FF

Introduction

Circumstances giving rise to this hearing are summarized in the interim decision dated June 8, 2011. In short, the previous decision and order dated April 26, 2011 have been suspended pending the outcome of this present hearing.

The hearing is convened in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of the security and/or pet deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement entered into on February 24, 2009, the original fixed term of tenancy was from April 1, 2009 to March 31, 2010. Thereafter, tenancy continued on a month-to-month basis until it ended on January 31, 2011. Monthly rent was $2,100.00 and was due and payable in advance on the first day of each month. A security deposit of $1,050.00 and a pet damage deposit of $1,050.00 were both collected on or about February 24, 2009. Both parties participated in a move-in condition inspection and report on March 29, 2009.

At the end of tenancy, there were 2 separate move-out condition inspections undertaken by the parties, one towards the end of January and the other around the beginning of February 2011. The tenant declined to sign the move-out condition inspection report as he disagreed with the landlord's assessment of the condition of the unit. However, e-mails exchanged between the parties after the end of tenancy reflect tentative agreement between them around various cleaning / repair / replacement costs for which the tenant was prepared to accept responsibility. However, with the passage of time after the second condition inspection, the landlord brought additional concerns to

the tenant's attention and, gradually, the ability / willingness of the parties to resolve matters and reach agreement directly between them ended.

New renters took possession of the unit effective on or about February 14, 2011.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve some degree of resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the tenant will be responsible for the full amount claimed by the landlord to "clean carpets" in the amount of $156.69;
- that the tenant will be responsible for $50.64 of the amount claimed by the landlord ($101.28) to "replace mirror panel."

Sub-total #1: $207.33*

Based on the documentary evidence and testimony of the parties, the remaining aspects of the landlord's claim and my findings around each are set out below.

$11,109.00: *replace 2 carpets*.

Residential Tenancy Policy Guideline #37 speaks to the "Useful Life of Work Done or Thing Purchased," and provides that the useful life of carpets is 10 years. The age of the carpets at issue is within the approximate range of from 8 to 10 years. The landlord testified that as she did not replace the carpets following the end of tenancy, no replacement cost has therefore been incurred. Based on the documentary evidence which includes, but is not limited to, the comparative results of the move-in and move-out condition inspection reports, the testimony of the parties, and the above guideline, I find that the landlord has failed to meet the burden of proving entitlement to any portion of the amount claimed. This aspect of the application is, therefore, hereby dismissed.

$201.29: *purchase 2 hall light fixtures*.

Evidence submitted by the landlord suggests that the 2 matching light fixtures were manufactured in January 22, 2004. I find there is no conclusive evidence as to when they were actually installed. Residential Tenancy Policy Guideline #37, as above, provides that the useful life of a light fixture is 15 years. I find that by the end of tenancy the light fixtures were approximately 7 years old. While only 1 fixture was damaged / broken during the tenancy, the landlord replaced both in order to maintain consistency. Based on the documentary evidence, the testimony of the parties and the above guideline, I find that the landlord has established entitlement limited to **$53.68***, which is the replacement cost for 1 hall light fixture calculated as follows:

> $100.65: cost to replace 1 broken fixture ($201.29 ÷ 2)
>
> $53.68: pro-rated value of 8 year balance of useful life ([$100.65 ÷ 15] x 8)

$78.40: *install 2 hall lights*.

Following directly from my findings as set out immediately above, I find that the landlord has established entitlement limited to **$39.20***, or half the amount claimed.

$324.80: *paint 1 wall and touchup.*

Residential Tenancy Policy Guideline #37, as above, provides that the useful life of interior paint is 4 years. At the end of this tenancy, the paint had sustained approximately 2 years worth of normal wear and tear. However, the landlord testified that the cost identified is an estimate, and that as painting was not undertaken following the end of tenancy, no related cost was incurred. Based on the documentary evidence, the testimony of the parties and the above guideline, I find that the landlord has not established entitlement to any portion of the amount claimed. This aspect of the application is, therefore, hereby dismissed.

$190.40: *re-key all locks.*

Section 31 of the Act addresses **Prohibitions on changes to locks and other access**, and provides in part:

> 31(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 37 of the Act speaks to **Leaving the rental unit at the end of tenancy**, and provides in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the documentary evidence and testimony of the parties, I am satisfied that the tenant did not change any locks on the unit during the term of the tenancy. Additionally, I find on a balance of probabilities that all keys in the tenant's possession or control were returned to the landlord at the end of tenancy. I further find that the tenant's failure to return the exact keys ("same make or colour") given to him at the start of tenancy does not, in and of itself, constitute a breach of the Act. Accordingly, this aspect of the application is hereby dismissed.

$100.00: *filing fee.*

As the tenant has achieved some measure of success with her application, I find that she has established entitlement limited to **$50.00***, or half the amount claimed.

$52.31: *cost of notifying the tenant about dispute resolution*. While the landlord has cited this cost in her documentary evidence, it is not clear whether she seeks to recover it. In any event, I note that section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, if the landlord's intent is to apply to recover this cost, pursuant to the foregoing, this aspect of the application is hereby dismissed.

Sub-total #2: $142.88

As for the monetary order, I find that the landlord has established a claim of $350.21. This is comprised of the amount agreed to between the parties of $207.33, and the amount of $142.88 as determined by my findings.

I order that the landlord retain $350.21 from the security & pet damage deposits combined, and I ORDER the landlord to repay the remaining balance of $1,749.79 to the tenant ($2,100.00 - $350.21).

Conclusion

I ORDER that the landlord may withhold **$350.21** from the security & pet damage deposits combined.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **$1,749.79**. Should it be necessary, this order may be served on the landlord, filed in the 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 *Residential Tenancy Act*.

DATE: July 19, 2011

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Residential Tenancy Branch