Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: **MND, MNSD, FF**

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit and to retain all or part of the security deposit.

The tenant applied requesting return of the double the deposit plus filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

I have considered all of the evidence and testimony provided.

The parties confirmed receipt of the respective applications and evidence submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit, in the sum of $5,381.00?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the tenant entitled to return of double the deposit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The initial one year fixed-term tenancy commenced on July 20, 2007, the tenant took possession at 1 p.m. and was to provide vacant possession by 1 p.m. at the end of the tenancy. A copy of the original agreement was submitted as evidence. After the first

year the tenant did not vacate and the tenancy continued; a copy of any further written tenancy agreement was not supplied.

The landlord purchased the newly constructed unit in 2005 and stated the unit was painted just prior to the start of the tenancy.

As the result of a flood the tenant had vacated the unit in 2008; the landlord then agreed to compensate the tenant with 2 weeks rent credit at the end of the tenancy.

The tenant paid a deposit in the sum of $1,750.00 on July 17, 2007.

The tenant vacated the rental unit on August 14, 2011 by mutual agreement.

Move-in and move-out condition inspection reports were not completed. The parties confirmed that they did walk through the unit together on August 14, 2011, and that the tenant's cleaners had to remain in the unit beyond 1 p.m. The landlord stated the cleaners departed at 10 p.m.

In 2008 the flooring and all the baseboards in the unit were replaced, as part of the remediation required due to the flood.

The landlord submitted the following claim:

Painting and touch-up	1500.00
Baseboards, door repair, paint	250.00
Carpet clean-up	100.00
General cleanup	150.00
Flooring repair	1800.00
Main bathroom tub repair	400.00
Microwave dish	45.00
Extra day over-holding	129.00
Return of appliance repair costs that were not pre-approved	337.00
Dishwasher door repair	90.00
Stove surface	250.00
Appliance manual replacement	150.00
TOTAL	5351.00

E-mail was a common form of communication between the parties; copies of a number of emails were submitted as evidence.

Deposit

The landlord stated that on August 24, 2011, the tenant emailed his forwarding address and they received it that day. The landlord stated that the emails show that the tenant had agreed the landlord could retain the deposit until the tenant had paid the utilities. The landlord testified that this agreement supersedes the provision of the Act; which requires return of the deposit or an application claiming against the deposit within 15 days.

The email sent by the landlord dated August 10, 2011, indicated that the deposit would be retained to pay for utilities and noted that the landlord was allowed to retain the deposit for up to 3 weeks and that a cheque would be sent for the balance owed. On August 24, 2011, the tenant responded saying he hoped the landlord was satisfied with the professional cleaning the tenant had arranged and that once the tenant confirmed the final utility payment he would confirm and forward the information to the landlord.

The landlord replied on August 28, 2011, indicating he would await the result of the utilities and "take it from there." On September 14, 2011, the tenant sent a message, enquiring on the status of his deposit; the landlord replied, asking about the utilities and on the same date the tenant informed the landlord the utilities had been cancelled and that he was not aware of any outstanding charges.

On September 29, 2011, the landlord submitted the application requesting compensation, claiming against the deposit paid for damage to the unit.

Damages Claim

An August 10, 2011 email was sent to the landlord indicating the tenant was boxing furniture on Thursday, having the carpets cleaned at noon on Saturday and cleaning on Sunday. The tenant would then vacate at 10 a.m. on Monday, the 15th. The tenant suggested meeting on Saturday to discuss wear and tear items such as the closet door handle, blinds in the master bedroom, the bathroom cabinet door and minor touch-up painting.

The landlord responded that the tenant should vacate by 1 p.m. on Sunday and asked that the tenant arrange to have someone do the touch-up painting as the landlords' painter was busy.

The landlord provided a number of black and white photographs that showed several marks on the baseboards. A claim has been submitted for painting of the unit and the baseboards damaged by the tenant.

The tenant confirmed he removed a cabinet door in the bathroom as the cabinet is particle board and the door hinge was loose and damaging the wood. The landlord testified that the door had to be repaired and that this was due to the negligence of the tenant.

The landlord provided a photograph of a door which he believed had been painted by the tenant. The tenant stated that he had washed the lower portion of the door and that the mark on the door may have been the result of his having wiped only a portion of the door. The tenant stated he never painted anything in the unit.

The landlord stated that the tenant failed to clean the carpets; he had allowed a guest to have a cat in the unit, contrary to the tenancy agreement. The tenant stated that he had the carpets professionally cleaned prior to vacating the unit.

The landlord submitted the tenant's cleaners did not arrive until 1 p.m. on the 14th of August and that the tenancy agreement required vacant possession by 1 p.m. The tenant stated his professional cleaners cancelled their service only 2 hours before they were to come to the unit. It was a Sunday and the tenant managed to find new cleaners, who remained in the unit until 10 p.m. The landlord has claimed a loss for over-holding beyond 1 p.m.

The landlord provided a photograph of the microwave plate that had a chip in one side. The tenant stated that he never examined the microwave plate and it could well have been like that at the start of the tenancy.

The landlord stated that tenant had been rough with items in the unit; the spring on the door of the dishwasher required replacement, the faucets in the bathtub were loose which requires removal of the tub so they faucets may be accessed.

The landlord provided 8 black and white photographs of the flooring in the unit. Some photos show fading on the floor, scuff marks and several scratches. The landlord has claimed costs for re-polishing of the floors due to damage caused by the tenant. The tenant testified that the original floors were high quality and as a result of the flood were replaced with a product that did not appear to be equal. The tenant agreed that the floor faded in any area where furniture had been placed. The tenant denied causing damage to the floor, beyond normal wear and tear. The tenant also denied having any discussion with the landlord in relation to this alleged damage.

The landlord supplied a photograph of the stainless steel backsplash on the stove which appeared to have several scratches. The tenant stated he was not sure when those marks were made or if they had existed at the start of the tenancy.

The landlord stated that in August 2009 the tenant had made unauthorized repairs to the dishwasher and garburetor and that he forged an invoice in the sum of $134.95, for the repair of the dishwasher, which the landlord had paid. A note from the company alleged to have completed the repair work, indicated that the invoice presented to the landlord had not originated from the company. At the same time, the tenant had repaired an overhead door, corrected a leak and paid a natural gas bill; the landlord reimbursed the tenant for costs, reducing August, 2009 rent to $933.03. The landlord is claiming return of the costs for the repairs. The tenant responded that the repair work

was completed, that the person who repaired the dishwasher gave him the invoice and that the landlord's claim, going back to work that was required in 2009 is not reasonable.

The landlord supplied a copy of an August 18, 2011 invoice for work competed in the unit, totaling $3,300.00. No evidence of payment of the invoice was supplied; the landlord stated they gave cash payment and did not receive a receipt. No supporting verification of material costs in the sum of $250.00 was provided; the balance of the invoice was labour.

The landlord supplied a copy of an August 18, 2011, estimate for flooring repair, the bathtub faucet and bathtub and stove.

The tenant disputed the entire claim made by the landlord, except for the cleaning of the oven, which he suggested would cost no more than $50.00. The landlord stated that the tenant's cleaners did not clean the balcony; the tenant countered that he had swept the balcony and that it was against strata rules to use a hose on the balcony.

The tenant stated that he and the landlord's son had walked through he unit together at the end of the tenancy and no deficiencies were pointed out. The landlord stated they did discuss the flooring and that the tenant had not made any comment on the state of the floor. The tenant believes that he left the unit more than reasonably clean and that the items the landlord had to repair were the result of normal wear and tear after a tenancy of 4 years.

Analysis

Deposit

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

Even if I were to find that the landlord and tenant had made an agreement in relation to the balance of the deposit and deductions for the deposit, the Act must take precedence; as agreements that fail to comply with the legislation are not enforceable. Once the landlord was given the tenant's forwarding address, on August 24, 2011, the landlord had 15 days in which to either return the deposit or submit a claim against the deposit. The landlord emailed the tenant telling him they would retain the deposit for up to 3 weeks. The landlord was correct, in that return of all of the deposit during the 15 day period would have resulted in compliance with the Act. Therefore, in the absence of return of the deposit or a claim made within 15 days of August 24, 2011, pursuant to

section 38(6) of the Act, I find that the tenant is entitled to return of the double the deposit.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord have failed to offer the opportunities for inspection. Therefore, in the absence of a condition inspection at the start of the tenancy, the landlord had also extinguished his right to claim against the deposit for damage to the unit.

Damages Claim

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant agreed to oven cleaning costs and I find that the based on the tenant's acknowledgement, that the landlord is entitled to costs in the sum of $50.00.

Residential Tenancy Branch (RTB) policy suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. A dispute resolution officer may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. I find this to be a reasonable stance.

In relation to the balance of the claim; I find that the evidence supplied by the landlord shows what I find to be normal wear and tear that could be expected in a rental unit after a 4 year tenancy. There was no evidence before me that the tenant had neglected or deliberately damaged the unit. There is no record of the state of the unit at the start of the tenancy, but even if there had been I could not find that the tenant caused damage beyond that expected to occur as the result of wear and tear. Items such as the dishwasher, the faucets in the bathroom, chips on baseboard and some scratches on wood floors are all what can be expected as part of wear and tear. There was no evidence before me that the tenant damaged the bath tub.

The tenant hired cleaners and had the rugs professionally cleaned and I find, on the balance of probabilities, he left the unit in a reasonably clean state, as required by the Act.

The landlord stated that the tenant had made repairs to the appliances that were not approved and that the tenant forged an invoice, which was paid by the landlord. Even if

the tenant had created an invoice, the landlord did not provide any evidence that the appliances had not required repair.

RTB policy suggests that a rental unit be painted once every 4 years and I find this a reasonable standard. As there is no evidence the unit was painted after 2007, I find that the claim for painting is dismissed, as the landlord would have been expected to paint the unit after this 4 year tenancy.

In relation to the claim for loss, as the tenant over-held beyond 1 p.m., there was no evidence before me that the landlord suggested any loss of rent revenue. The tenant was late leaving the unit, but in the absence of a verified loss, I find this portion of the claim is dismissed.

Therefore, I find that the landlord is entitled to compensation the sum of $50.00 for oven cleaning and dismiss the balance of the claim.

The tenant is entitled to double the $1,750 deposit, plus interest in the sum of $41.87.

As the tenant's claim has merit I find the tenant is entitled to the filing fee cost.

The tenant's monetary Order is reduced by $50.00 in favour of the landlord's claim.

Conclusion

I find that the tenant has established a monetary claim, in the amount of $3,591.87, which is comprised of double the $1,750.00 deposit, interest in the sum of $41.87 plus $50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

The monetary order is reduced by $50.00 in favour of the landlords' claim.

The balance of the landlords' claim is dismissed.

Based on these determinations I grant the tenant a monetary Order for the balance of $3,541.87**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 *Residential Tenancy Act*.

Dated: December 16, 2011.

Residential Tenancy Branch