Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MND, MNDC, MNSD, FF
Tenants: MNSD, FF

Introduction

This matter dealt with an application by the Landlord, D.T., for a Monetary Order for compensation for a loss of rental income, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit and pet damage deposit and to recover the filing fee for this proceeding.

The Landlord, D.T., said he sent his evidence package to the Tenants by registered mail on March 21, 2012 and the Tenants admitted they received it. The Tenants said they served the Landlords with their evidence package containing photographs and a witness statement by regular mail on April 6, 2012. The Landlords claim they have not received the Tenants' evidence package. The Tenants have the burden of proving that their evidence package was delivered to the Landlords, however given the contradictory evidence of the Landlords that they did not receive it, and given that the Tenants had no corroborating evidence that they sent it to the Landlords' address for service, I find that there is insufficient evidence to conclude that the Landlords were served with the Tenants' evidence. Consequently, the Tenants' documentary evidence is excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Are the Tenants entitled to the return of a security deposit and pet damage deposit and if so, how much?

Background and Evidence

This tenancy started on August 15, 2009 as a fixed term tenancy that expired on September 1, 2010 and continued on a month-to-month basis until February 1, 2012 when the Tenants moved out. Rent was $1,200.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $600.00 and a pet damage deposit of $300.00 at the beginning of the tenancy.

The Landlord's Claim:

The Landlord, D.T., said he completed a move in condition inspection report with the Tenants at the beginning of the tenancy which shows that the rental unit was clean and in a good state of repair. The Tenant, P.W., admitted that she signed the move in condition inspection report but claimed that she did not do an inspection with the Landlords because everything looked fine, she did not want to spend the time to do a thorough inspection and it was her practice to repair any minor problems in any event. The Landlord, D.T., admitted that he did not attempt to arrange a move out inspection with the Tenants because he claimed they were being unreasonable and he was concerned that the male Tenant, S.W., might become violent. Consequently, the Landlord, D.T., said he completed the condition inspection report and took photographs of the rental unit on or about February 1, 2012 (after the Tenants had vacated) and sent the Tenants a copy of the report and photographs in his evidence package on March 21, 2012..

The Landlord claims that the Tenants did not leave the rental unit reasonably clean and that he the new tenants spent 12 hours cleaning it. In particular, the Landlord claimed that the inside of the oven and refrigerator had to be cleaned as well as behind the refrigerator, the washing machine and the bathroom. The Landlord also said all of the walls (with the exception of the living room), floors and windows had to be washed as did a patio and the back deck.

The Landlord also claimed that two bedrooms had to be repainted because there were white dots and damaged paint from stickers and they also had stains on them. The Landlord further claimed that there were other damages as follows:

- a patio door screen was damaged beyond repair and the rollers broken;
- one bi-fold closet door was missing and 2 others were broken beyond repair;
- three kitchen bi-fold closet doors were broken beyond repair;
- a section of wood flooring in a bedroom was damaged;
- approximately seven ceramic floor tiles were broken;
- ten feet of mouldings was missing; and
- the blinds in all of the rooms were damaged with three having to be replaced.

The Landlord also claimed that he lost one week of rental income in February 2012. The Parties agree that the Tenants gave notice on January 15, 2012 that they were vacating at the end of the month. The Landlord said new tenants took possession on February 5, 2012 and he gave them credit for 2 days rent in return for doing cleaning.

The Tenants claim that they cleaned everything thoroughly with the exception of the oven. The Tenants admitted that there were white spots on the bedroom walls where

some stickers had been mounted but argued that the rental unit had not been painted prior to the tenancy and that the Landlords would have been responsible for painting it prior to the next tenancy in any event.

The Tenants also claimed that the patio door would not close properly at the beginning of the tenancy and that they brought this to the Landlord's attention however he told them to repair it themselves. The Tenants said the screen on the patio door was also broken at the beginning of the tenancy and kept jamming so they removed it at that time. The Tenants further claimed that they replaced all of the blinds in the rental unit at the end of the tenancy (which the Landlord denied).

The Tenants said the bedroom bi-fold doors were broken at the beginning of the tenancy in that the pins kept falling out. However, the Tenants claim that none of the doors were missing at the end of the tenancy and all had been repaired. Similarly, the Tenants claim that all of the kitchen bi-fold doors were fine with the exception of one for which the pin kept falling out. The Tenants said all mouldings that had come off were left on a countertop in the rental unit at the end of the tenancy (which the Landlord denied).

The Tenants denied damaging any ceramic tiles. The Tenants said 3 or 4 tiles in the kitchen were broken at the beginning of the tenancy and the same number was broken at the end of the tenancy. The Tenants said the Landlords have replacement tiles stored on the rental property. The Tenants admitted that a wood floor in a bedroom was scratched during the tenancy but claimed that the damage was isolated to 2 boards and therefore did not require the repairs to a 20 square foot area as the Landlords claimed.

The Tenants argued that they should not be responsible for a loss of rental income. The Tenants said when they arrived at the rental property on February 3, 2012 to give their keys to the Landlord's property manager, the new tenants were moving in and the Landlords' agent said everything looked fine. The Landlord claims that his property manager provided him with a witness statement that corroborates his evidence as to the condition of the rental unit at the end of the tenancy.

The Tenants' Claim:

The Landlords admit that they received the Tenants' forwarding address in writing on or about February 15, 2012. The Parties agree that the Tenants did not give the Landlords written authorization to keep the security deposit or pet damage deposit and that neither has been returned to the Tenants. The Tenants also claim that there were no damages caused by their pet.

Analysis

Section 37 of the Act says that at the end of a tenancy, a tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines reasonable wear and tear as "*natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion*." Consequently, as the Landlord has the burden of proof on his application, he must show (on a balance of probabilities) that the Tenants caused damages to the rental unit that were not the result of reasonable wear and tear or of using the property in a reasonable fashion. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within the prescribed time limits). If a landlord fails to do so, the landlord's right to make a claim against the security deposit or pet damage deposit for damages to the rental unit is extinguished and the landlord must return the deposits to the tenant.

I find that the Landlord did not comply with s. 35 of the Act in a number of respects. Firstly, he did not complete a move out condition inspection report with the Tenants. Secondly, the Landlord did not sign the move out condition inspection report and thirdly, he did not give a copy of the report to the Tenants within 15 days as required by the Act. Consequently, I give the move out condition inspection report no evidentiary weight. As a further consequence, I find that the Landlord was not entitled to make a claim against the security deposit and pet damage deposit for alleged damages to the rental unit.

As a result, the only evidence of the rental unit at the end of the tenancy is the Landlord's photographs and a witness statement. However, the deponent of the witness statement did not attend the hearing to be questioned on her statement so that its reliability could be tested and for that reason, I cannot give it a lot of weight.

The Tenants argued that the move in condition inspection report was not reliable because they did not do an inspection. However, I find that the Tenants cannot rely on their own unwillingness to participate in an inspection as grounds to invalidate the report. Section 23 of the Act provides that a Landlord may complete a condition inspection report if the Tenant refuses to participate. Furthermore, s. 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Act is proof of the condition of the rental unit on that day unless there is a preponderance of evidence to the contrary. In other words, I find that unless the Tenants have overwhelming evidence that contradicts the contents move in condition inspection report, the condition inspection report will prevail.

I find that there is little evidence to support the Landlord's claim for cleaning expenses of $240.00 (or for 12 hours). The Landlord's photographs show some minor cleaning being required of such things as the surface of a baseboard heater, a stove element,

the inside of a medicine cabinet, behind the refrigerator and the patio. While one photograph shows dirty windows outside, this is the responsibility of the Landlord and not the Tenants (see RTB policy Guideline #1). Consequently, I award the Landlords **$60.00** for three hours of cleaning.

RTB Policy Guideline #1 says that a Tenant is responsible for repairing any damages to walls including those resulting from nail holes, stickers and so forth. However, it also states that a Landlord is responsible for repainting the interior of a rental unit at reasonable intervals. The Landlord gave no evidence of when the rental unit had previously been painted. However the undisputed evidence was that there was tape or some other mounting medium attached to the walls at the end of the tenancy that had to be removed or had damaged the paint. I find that the Landlord has not shown that the walls had to be repainted solely due to an act of the Tenants. Consequently, I award the Landlord **$40.00** for his additional labour required to removing the spots from the walls only.

The Landlord provided no photographic evidence of the alleged damaged blinds or bi-fold doors and as a result, those parts of his claim are dismissed without leave to reapply. Furthermore, even if the bi-fold doors were damaged as the Landlord claimed, he provided no evidence that the damage in question was the result of an act or neglect of the tenants rather than the result of reasonable wear and tear.

The Landlord also claimed that the Tenants were responsible for damaging the rollers on a patio door. The Tenants claimed these did not work properly at the beginning of the tenancy and they brought it to the Landlord's attention (which he denied). I note that there is nothing on the move in condition inspection report about the door not operating properly. Consequently, I conclude that the door was damaged during the tenancy. However, I also find that the Landlord has not shown that the door was damaged as a result of an act or neglect of the Tenants as opposed to reasonable wear and tear and for this reason, the Landlord's claim for the cost to replace the door rollers is dismissed without leave to reapply.

Similarly, there is no indication on the move in condition inspection report of any damage to the patio door screen however the Tenants claim that it kept jamming at the beginning of the tenancy so they removed it. Consequently, the Tenants argue that the screen was in the same condition at the end of the tenancy that it was in at the beginning of the tenancy. I find that the Tenants' evidence is not sufficient to overcome the information set out in the condition inspection report and therefore I conclude that it was damaged during the tenancy. However, based on the photograph of the door provided by the Landlord, I cannot conclude that it cannot be salvaged and therefore I award the Landlord **$25.00** for repair expenses.

The Landlord claimed that the Tenants damaged several ceramic floor tiles however the Tenants claim these were damaged at the beginning of the tenancy. In the absence of any additional evidence to corroborate the Tenants' oral evidence, I find that the condition inspection report is the best evidence of the tile flooring at the beginning of the tenancy. The Tenants claim that only 3 or 4 of the tiles were damaged. The Landlord

claims that approximately 7 of the tiles were damaged but provided photographs of only 4. Consequently, I conclude that 4 of the tiles were damaged during the tenancy. The Landlord sought compensation of $275.00 for labour to replace 7 tiles and as a result, I award him a pro-rated amount of **$150.00** for the cost to replace four.

The Landlord sought compensation of $400.00 to replace a 20 square foot section of wood flooring in a bedroom. The Tenants claim that only 2 boards were damaged during the tenancy however the Landlord claims that many more were damaged as shown in his photographs. While the Landlord's photographs show that approximately 10 boards are scratched, I note that they are all located adjacent to a wall by a corner of the room and therefore I cannot conclude that this repair would require the replacement of a 20 square foot section of flooring. Consequently, I award the Landlord **$125.00** for this repair.

The Landlord also claimed that approximately 10 feet of mouldings were missing at the end of the tenancy and he sought compensation of $55.00 to replace them. The Tenants denied this and claim that they fell off during the tenancy and they left them on the counter top which the Landlord denied. Given the contradictory evidence of the Parties on this part of the Landlord's claim and in the absence of any corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants are responsible for it and for that reason, this part of the Landlord's claim is dismissed without leave to reapply.

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give one full, calendar month's notice in writing that they are ending a tenancy. If a tenant fails to do so they may be responsible for any loss of rental income the Landlord suffers up to the earliest time the Tenant could have legally ended the tenancy. I find that the Tenants gave their notice to end the tenancy on January 15, 2012 and therefore the earliest that notice could have taken effect was February 29, 2012. However, the Landlords were able to re-rent the rental unit for part of February. The Landlords claim the new tenancy started on March 5, 2012 and they gave the new tenants a rebate of rent for 2 days to compensate them for cleaning. The Tenants claim the new tenants moved in on February 3, 2012.

I find that the Landlords have provided no reliable evidence (such as a copy of the new tenancy agreement) to substantiate when the new tenancy started or to substantiate that they lost rental income. For this reason, the Landlord's claim for a loss of rental income is dismissed without leave to reapply. Furthermore, I find that the Landlords are seeking to be compensated twice for the same thing; that is, the Landlords sought to recover a loss of rental income for 2 days (or compensation to their new tenants for cleaning) as well as cleaning expenses of $240.00.

The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the tenant's forwarding address in writing (whichever is later) to either return the tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the landlord does not do either one of these things and does not have the tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the landlord must return double the amount of the security deposit and pet damage deposit.

Sections 24(2) and 36(2) of the Act say that if a landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the landlord's right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. In other words, the landlord may still bring an application for compensation for other damages (eg. for rent) however he or she may not offset those damages from the security deposit or pet damage deposit.

I find that the Landlords received the Tenants' forwarding address in writing on February 16, 2012 and filed an application for dispute resolution on February 20, 2012 making a claim against the Tenants' security deposit and pet damage deposit for damages to the rental unit and a loss of rental income. However, I find that the Landlords breached s.35 of the Act in failing to complete a move out condition inspection report (and to sign and return it within the time limits required by the Act) and therefore their right to make a claim against the security deposit or pet deposit for damages to the rental unit was extinguished under s. 36(2) of the Act. In other words, the Landlords were only entitled to retain $300.00 of the security deposit pending the hearing of a claim for a loss of rental income for $300.00 and were required to return the balance of the security deposit of $300.00 and pet deposit of $300.00 to the Tenants by March 2, 2012.

I find that the Landlords did not have the Tenants' written authorization to keep any of the security deposit or pet damage deposit and that neither has been returned to the Tenants. Consequently, I find pursuant to s. 38(6) of the Act that the Tenants are entitled to recover $1,500.00 as follows:

Security deposit:	$600.00
Compensation payable under s. 38(6):	$300.00
Pet damage deposit:	$300.00
Compensation payable under s. 38(6):	$300.00
Total:	$1,500.00

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenants applied to recover only the original amount of the security deposit, I find that they did not waive reliance on s. 38(6) of the Act.

I make no award regarding reimbursement of the filing fee to either of the Parties as they would be offsetting in any event. In summary, I find that the Landlord has made out a monetary award of $400.00 and the Tenants have made out a monetary award of $1,500.00. I Order pursuant to s. 62(3) and s. 72 of the Act that the awards be offset with the result that the Tenants will receive a Monetary Order for $1,100.00.

Conclusion

A Monetary Order in the amount of **$1,100.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: April 26, 2012.

Dispute Resolution Officer