Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for other issues relating to the condition of the rental unit at the end of the tenancy, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of their security deposit.

The parties appeared at the teleconference hearing; acknowledged receipt of evidence submitted by the other; confirmed service and receipt of applications for dispute resolution and hearing documents; and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord extinguished their right to claim against the security deposit for damage to the unit, site or property?
2. Is the Landlord entitled to a Monetary Order for damage to the unit, site or property?
3. Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

Each party submitted a copy of the month to month tenancy agreement which began on August 15, 2011. Rent was payable on the first of each month in the amount of $650.00 and on August 15, 2011 the Tenants paid $325.00 as the security deposit.

The male Tenant affirmed that they had been allowed to move into the rental unit prior to the original start date of September 1, 2011 and that the Landlord agreed with the early occupation if the Tenants would clean the unit themselves, which they did.

The male Tenant advised that he served the Landlord his notice to end tenancy on the first Thursday of November 2011 to end his tenancy effective December 1, 2011 as supported by the copy of the notice provided in his evidence. He said that he had moved out of the unit by November 25, 2011 and that he went to see the Landlord to request he conduct the move out inspection and make arrangements to return his deposit. However, the Landlord refused to conduct the inspection because he said he could not get his deposit back because he gave late notice to end the tenancy.

The Tenants sought assistance from a legal advocate who sent a letter to the Landlord January 20, 2012 providing him with the Tenants' forwarding address and requesting their deposit.

The Landlord confirmed the Tenants were allowed to move into the unit earlier than planned but that he had the unit ready for them when they took possession on August 17, 2011. He point out the move in condition inspection report provided in their evidence which was signed by the female Tenant and which indicates the unit was in clean and satisfactory condition as of August 17, 2011.

The female Tenant confirmed that her signature is on the move in condition report however she does not remember signing it and both Tenants stated there was no inspection conducted by the Landlord at the beginning or at the end of the tenancy.

The Landlord acknowledged receipt of the Tenants' written notice to end their tenancy on about November 3, 2011. He said that he did not have any other communication with the Tenants until the male Tenant arrived at his door November 25, 2011 to tell him they had moved out. I asked if he had any written or text communications with the Tenants between November 3rd and November 25, 2011 about scheduling a move out inspection to which the Landlord said no. He said the male Tenant seemed to be somewhat uncertain with his intent to move so the Landlord took no action to finalize the move out inspection. He noted that he posted a final notice of inspection to the Tenant's door on December 1, 2011, after the Tenant had vacated the unit and entered the unit to conduct the inspection on December 7, 2011.

The Landlord advised that the Tenants had changed the locks and when he met with the male Tenant on November 25, 2011 he asked for the keys and the Tenant said he

did not have them. The Landlord stated that he had to wait until December 7th to enter the unit because that is when his friend was available to assist him break into the unit.

Both Tenants said they had left the rental unit unlocked at the end of their tenancy.

The Landlord and Agent referenced the photos of the unit taken December 7, 2011 and copies of invoices which were provided in their evidence as support of their claim for damages to the unit. They noted that pieces of cupboards were missing and that the Tenants had removed the deadbolt on the front door and replaced it with another locking door handle. The bathroom door handle was also missing. They said that the unit had pet urine and feces on the carpet and the Tenants did not clean the unit or have the carpets cleaned.

The Tenants acknowledged that they had taken the stove apart to clean and left the pieces in the sink and that the pieces to the bathroom cupboard had been missing from the beginning of their tenancy. They also confirmed removing the deadbolt after they lost the keys and the Landlord told them it was keyed to a master key so they installed another locking handle. The Tenants questioned if some of these photos were of a different rental unit as it did not look like their unit.

Upon review of the invoices the Landlord confirmed they were issued by him as his company is separate from the corporate Landlord's business (the named applicant/respondent to these disputes) and his company is hired to conduct the work on behalf of the Landlord.

The Agent confirmed this building has been owned by the corporate Landlord for approximately nine years and it was constructed near the early 1970's. I asked questions about the age of the items being repaired or replaced and the amounts being claimed. The Agent said she could not confirm the age of the previous items and that their claim is exactly what is listed on the invoices as follows:

Replace blinds, switch plates, doorknobs light bulbs	$310.91
Replace locks and keys	91.84
Clean unit, shampoo carpets, revoke garbage & junk	750.00
Provide a used Matag washer and dryer	280.00
Repaint Baseboards in Kitchen and Halls	239.01
Replace Carpet with Laminate Flooring	1,102.08

I asked the Landlord what evidence was provided to support the cost of the items purchased and to prove when they were purchased. In response he said that he

manages several buildings in this city for this Landlord as well as his own buildings so he keeps most items in stock, including several used washers and dryers. He confirmed he did most of the work himself and then stated he hires someone to perform the cleaning and had a friend assist him with breaking into the unit and changing the locks when the Tenant failed to return the keys.

The Tenant's Witness said she assisted the Tenants with the cleaning a few days before they moved out and that she knows that the unit was not cleaned at the beginning of their tenancy.

In closing the Agent said she has all her managers take photos of the units on the day of the inspections and that they are instructed to ensure the date and time on their cameras are set properly to prove the condition of the units.

The male Tenant said there were no curtains or blinds provided except for in the kitchen, there were pieces missing off of the washer from the beginning, the carpet was bad and dirty to begin with, the bathtub had black mould which could not be cleaned, cupboards were missing at the move in, and it was flooring glue on the linoleum and not urine. He confirmed leaving the stove parts in the sink and that they did not return the keys so he was okay with that charge coming off of his security deposit but disagreed with the remainder of the claim.

The female Tenant had nothing further to add to her testimony. The Legal Advocate questioned why the Landlords said they did not receive the Tenant's forwarding address when she sent the letter, via Canada Post, to the Landlord's address.

The male Landlord said that it was his job to receive all the paper work and pass it onto the Agent so he does not read or remember every piece of paper that gets sent to him. He is in the business of managing several units so he has used materials in stock and owns his own carpet cleaning machine which he rents out to this Landlord when used. When I asked why the carpet was cleaned and then removed he was not sure what I was speaking about. He then confirmed the unit has been re-rented for what he recalls to be a one month tenancy occurring in approximately April 2012.

Analysis

I have carefully considered the aforementioned and the documentary evidence and on a balance of probabilities I make the following findings:

I favor the evidence of the Tenants, who stated they were allowed to occupy the unit early if they agreed to complete the cleaning of the unit, that the female Tenant signed the move in condition report but no walk through was conducted, and that they requested the Landlord to conduct the move out inspection and he refused; over the evidence of the Landlord who stated the unit was cleaned and ready for the Tenants to occupy early and that it was the Tenants who refused to conduct the move out inspection.

I favored the evidence of the Tenants over the Landlord, in part, because the Tenants' evidence was forthright and credible. The Tenants readily acknowledged that they left parts of the oven in the sink because they did not finish cleaning it and that they changed locks and did not give the Landlord the keys. In my view the Tenants willingness to admit fault when they could easily have stated they did clean the entire unit in full and gave the Landlord the keys to the unit lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Given that the Tenants provided the Landlord with written notice to end the tenancy, I find the Landlord's explanation of why he did not make an effort to contact the Tenants prior to November 25, 2011, to schedule a move out inspection to be improbable. Issuing a final notice of inspection when no previous requests for inspection have been made and then posting it to the rental unit door six days after the Tenants vacated the property does not meet service requirements of the Act, not to mention does not meet the requirement under section 35 of the Act and Part 3 of the regulations for requirements at the end of the tenancy. Rather, I find the Tenants' explanation that the Landlord refused to conduct the inspection because the Tenant would not be entitled to

the security deposit because late notice to end the tenancy was provided to be plausible given the circumstances presented to me during the hearing.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Landlord's Application

The Tenants accepted responsibility for changing the locks and agreed to have the charges deducted from their security deposit claim in the amount of **$91.84.**

In considering the evidence provided by the Landlord I give very little weight to the move in and move out condition inspection report form as I have favoured the Tenants' evidence that no inspection was conducted at move in and they were required to sign the form which was pre-completed by the Landlord; plus the move out inspection was not conducted in accordance with the Act.

The evidence supports the unit has been maintained with used materials and items kept in storage by the Landlord. Neither the Landlord nor the Agent were able to provide the age of items being claimed and did not provide proof of the exact purchase price or value of the losses being claim. The Agent relies on invoices generated by the Landlord with no supporting documentation; these invoices do not list the unit number and could be related to any one of the numerous suites the Landlord manages. I note the invoice

for removal of the carpet and installation of laminate flooring is dated July 20, 2012, a date that has not yet occurred, not to mention the Landlord did not know what I was talking about when I mentioned this invoice as he said he removed pieces of carpet because he was patching the carpet.

I have carefully reviewed the photos provided by the Landlord and note the decor, fixtures, and flooring appear to be of an age (early 1970's) which far exceeds their useful life and therefore I find the depreciated value of items being claimed by the Landlord to be nil.

Based on the aforementioned, I find there to be insufficient evidence to meet the test for damage or loss with respect to damage to the unit. I did however find that the photos displayed a rental unit that was not cleaned at the end of the tenancy.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord is entitled to a nominal amount of **$240.00** for cleaning (16 hours x $15.00). The balance of the Landlord's claim is dismissed.

The Landlord has been partially successful with their claim; therefore I award partial recovery of the filing fee in the amount of **$20.00**.

Tenants' Application

When a landlord fails to properly schedule a condition inspection, the landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out the move-out inspection as required under section 17 of the Regulation and Section 35 of the Act, they lost their right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing.

I find the Landlord was provided the Tenants' forwarding address from the letter issued from their Legal Advocate which was mailed January 20, 2012. The letter is deemed to have been received by the Landlord on January 25, 2012, pursuant to section 90 of the Act.

Because the Landlord's right to claim against the security deposit for damage to the property was extinguished, and they failed to return the Tenants' security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the Landlord pay the Tenants double the amount of the deposit. Accordingly I award the Tenants **$650.00** (2 x $325.00 + $0.00 interest).

OFF SET MONETARY AWARDS:

Tenant's Monetary award	$650.00
LESS Landlord's award ($240.00 + 91.84 + 20.00)	$351.84
TOTAL AMOUNT DUE THE TENANTS	**$298.16**

Conclusion

The Tenants will be issued a Monetary Order in the amount of **$298.16** which is an offset of monetary awards granted to both the Landlord and Tenants. This Order is legally binding and must be served upon the Landlord.

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: May 18, 2012.

Residential Tenancy Branch