Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested return of double the security deposit, compensation for damage or loss, and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting compensation for damage to the rental unit, to retain the security deposit in partial satisfaction of the claim, compensation for damage or loss under the Act and to recover the filing fee from the tenants.

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.

Preliminary Matters

The tenant and landlord each requested return of the deposit; there was no claim for compensation for damage or loss submitted by either party.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit paid?

Is the landlord entitled to compensation for a damaged floor in the sum of $1,853.66?

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

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that this was the 2nd fixed-term tenancy they had signed. The tenancy commenced on July 1, 2011 and was to end on June 31, 2012.

The $700.00 pet deposit and $700.00 security deposit paid at the time of the initial tenancy, June 1, 2012; were transferred to the current tenancy.

The tenancy ended on March 31, 2012. A copy of a mutual agreement ending the tenancy, signed by the parties, was submitted as evidence, as was the tenancy agreement.

A copy of the move-in condition inspection completed in June 2012, was supplied as evidence. This report indicated that there was a ¼ inch cut to the flooring, in front the fridge.

On March 31, 2012, the parties signed a move out inspection report, which provided the tenants written forwarding address. A copy of this document was supplied as evidence. It was a separate document from the move-in report.

The parties agreed that the tenants had signed allowing the landlord to retain the following from the deposits:

- 70.00 bathroom;
- 20.00 cat damage (from pet deposit;)
- 75.00 carpet damage, wall damage basement; and
- 50.00 damage to flooring in kitchen.

The landlord confirmed that the copy of the move out inspection report sent to the tenants was altered to include costs not agreed to when the document was signed on March 31, 2012. The amount for the kitchen flooring had been changed to $150.00 and the landlord had added an additional $25.00 deduction for garbage cans.

The landlord returned the security deposit, less the agreed-upon amounts plus the additional costs added to the report by the landlord. A cheque in the sum of $380.00, rather than $505.00 was sent to the tenants on April 10, 2012.

The tenants confirmed receipt of the pet deposit within 15 days of March 31, 2012, less the agreed-upon $20.00 deduction. There is no dispute in relation to the pet deposit.

The tenants are seeking return of double the security deposit, less the amounts they had agreed could be deducted from the security deposit.

When the move out inspection took place the fridge was moved out from the wall. The parties established that a small amount of damage had been caused; resulting in agreement to a $50.00 deduction from the security deposit.

After the tenants left the unit and the landlord began to complete some cleaning, the fridge was moved and further damage to the floor was discovered. The landlord had not moved the fridge during the inspection. Copies of photographs of the flooring in front the fridge were supplied as evidence; they show approximately 7 small holes that have been made in the linoleum.

The landlord attempted to immediately contact the tenants and did speak with the female tenant on April 2, 2012. The tenants said she as too busy to come to the unit to look at the floor. On April 4, 2012, the female tenant left a voice mail message stating they could not recall any other damage to the floor.

The landlord provided a copy of the original invoice for the kitchen flooring, installed on June 14, 2010, at a cost of $1,632.46. On April 25, 2012, an estimate was obtained from the same flooring company for the cost of floor replacement, in the sum of $1,853.66. A copy of the estimate was submitted.

The tenants' stated that they had agreed only to compensate the landlord for the small amount of damage they discovered during the inspection of the unit. Both tenants stated that there was no other damage to the floor and that the landlord has made this claim in retaliation to their request for return of double the security deposit.

The tenants believe that the floor does not need to be replaced but that it could be repaired. The estimate supplied by the landlord indicated that the flooring colour cannot be matched as the original colour is from 2012.

Analysis

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.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections.

The tenants received a portion of the security deposit, which was reduced by an additional $115.00, deducted without their written agreement or an Order providing the landlord with the authority to do so. Therefore, I find that the landlord breached the Act, by failing to return the deposit, in the sum of $505.00; the amount agreed to in writing by the tenants at the end of the tenancy.

The landlord did not have the right to make additional deductions from the deposit and if they wished further compensation they were required to submit an application claiming against the deposit within 15 days of March 31, 2012. They submitted their application on April 27, 2012.

Therefore, I find that the tenants are entitled to return of double the balance of the security deposit that was agreed remained on March 31, 2012; $505.00; less $380.00 that has been returned; for a balance of $630.00.

In relation to the landlord's claim for damage to the flooring; I find, on the balance of probabilities, that the damage was not revealed during the inspection as the fridge had been left sitting over the majority of the holes made in the floor. The landlord immediately attempted to have the tenants return to the unit to look at the floor; the tenants did not wish to accommodate the landlord and deny that they caused the damage.

In relation to the additional damage caused to the kitchen floor; the landlord did attempt to contact the tenants almost immediately after they had completed the final inspection. The Act requires tenants to make repairs that are caused by the actions or neglect of a tenant; beyond reasonable wear and tear. Initially there was agreement to deduct $50.00 for the damage to the floor that could be seen next to the fridge; then the landlord discovered additional damage and believed that another $100.00 would suffice as compensation. Then, several weeks later, the landlord established that the whole floor should be replaced at a cost of over $1,800.00.

I find, on the balance of probabilities, that there was additional damage to the floor. The landlord called the tenants very quickly, after the inspection report had been completed, to inform them of the discovery of the damage that had been covered by the fridge. I have rejected the tenant's submission that they did not cause more than the small amount of damage viewed during the inspection. I have based this finding on the photographs supplied by the landlord and the actions of the landlord immediately following the inspection. This caused me to question the credibility of the tenant's submission.

Also of concern is the credibility of the landlord's submission; that the cost escalated from what was initially determined to be an additional $100.00, to then more than $1,800.00. Further, the landlord altered the move out condition inspection report; which leads me to find that any additional damage should be valued at the initial estimated amount.

Therefore, I find that the landlord is entitled to compensation in the sum of $100.00 for the additional damage caused to the flooring. This amount will be deducted from the amount owed to the tenants.

The balance of each claim is dismissed.

As each applicaiotn has some merit I decline filing fee costs to either party.

Therefore, the tenants are entitled to return of double the $505.00 deposit; less $380.00 previously returned, less the $100.00 owed to the landlord; for a balance in the sum of $530.00.

Conclusion

I find that the tenants have established a monetary claim, in the amount of $1,010.00; less the sum of $380.00, previously paid by the landlord, and the $100.00 owed to the landlord; for a balance of $530.00.

The landlord has established a claim in the sum of $100.00.

Based on these determinations I grant the tenants a monetary Order for $530.00**.** 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: June 18, 2012.

Residential Tenancy Branch