Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

At the beginning of the hearing, the Landlord sought to have a recording of her made by the Tenants excluded from evidence as she claimed it was made without her knowledge and consent. The Tenants argued that the recording of themselves and the Landlord made during a move out inspection was admissible but they provided no authority (ie. case law) for that proposition. Even if I accept the Tenants' argument that the recording would be admissible under the common law rules of evidence (given that they were also parties to the conversation on the recording), I find that it should be excluded because I have concerns about the reliability and doubt the necessity of that evidence. In particular, I find that the recording was made under the sole control of the Tenants and therefore I cannot be certain if all of the Parties' conversation was recorded. Furthermore, I find that this evidence is unnecessary given that the each of the Parties had witnesses present during the move out inspection and those witnesses were available to give oral evidence at the hearing.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This one year fixed term tenancy started on July 1, 2010 and continued on a month to month basis after it expired. The tenancy ended on May 2, 2012 when the Tenants moved out. Rent was $1,500.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $750.00 and a pet deposit of $750.00 at the beginning of the tenancy. The Tenants gave the Landlord their forwarding address in writing on May 2, 2012 (via e-mail) and the Landlord returned the Tenants' pet deposit to them on May 10, 2012.

The Parties completed a move in condition inspection report on July 26, 2010 however the Tenants claim that the Landlord did not provide them with a copy of it until after the tenancy ended. The Parties met at the rental unit on May 2, 2012 to complete a move out condition inspection report. The Landlord claimed that due to an oversight, the move out condition inspection report was not signed by the Parties. The Tenants claim that they did not sign the condition inspection report because the Landlord wanted them to agree to a deduction from their security deposit for over-holding (or one day's rent). The Tenants provided copies of photographs of the rental unit they said they took on May 2, 2012 and the Landlord provided copies of photographs that she said she took on or about May 6, 2012.

Claim for Painting & Repairs:

The Landlord said the rental unit (with the exception of a part of a wall in one bedroom) was freshly painted at the beginning of the tenancy. The Landlord said at the end of the tenancy, the Tenants tried to repair an excessive number of nail holes with spackle but had not done so properly with the result that the spackle had to be sanded down and the walls repainted. The Landlord's witness gave evidence that she repainted the living room, kitchen, master bedroom, a 2nd bedroom on the main floor, the stairway walls, the upstairs ceiling and one door prior to the start of the tenancy. The Landlord sought compensation of $2,025.00 (plus HST) for repairing and fully repainting the walls and ceilings of the entrance, kitchen, living room, master bedroom, a second bedroom and touching up another bedroom and office.

The Tenants denied that the entire rental unit was freshly painted at the beginning of the tenancy and in particular claimed that the front entrance way had nail holes that had not been repaired nor repainted and that the walls of an upstairs bedroom had not been repainted. The Tenants denied that there were as many holes in the walls as alleged by the Landlord. The Tenants said at the end of the tenancy they advised the Landlord that they would fill picture holes so that she could repaint if she wished and the Landlord replied, "no worries." The Tenants also said that during the move out inspection, the Landlord told them that the upstairs area was fine because it had few holes and that she was only concerned with areas where the condition had gone from "good" to "poor." The Tenants argued that there were only 4 rooms were identified as being in issue on the move out condition inspection report, yet the Landlord was still seeking to be compensated for painting 7 rooms, inside a closet, and ceilings in four rooms.

The Landlord also claimed that during the move out inspection she noticed discolouration in the linoleum flooring of a bathroom and was advised by one of the Tenants that the toilet was loose. The Landlord claimed that the discoloration was the result of water damage from the toilet leaking during the tenancy. The Landlord argued that the damage to the flooring could have been avoided had the Tenants reported the loose toilet. The Landlord said the flooring had been installed during the prior tenancy but had to be replaced at a cost to her of $425.00 (plus HST).

The Tenants denied that there was any evidence of the toilet leaking and argued that they would have advised the Landlord had they noticed it. The Tenants said they believe the discoloration had been there since the beginning of the tenancy and the Landlord never said anything about it during her periodic inspections over the term of the tenancy. The Tenants said the bathroom was formerly a mud room and that it was never properly insulated. Consequently, the Tenants argued that any moisture causing the discolouration of the linoleum was not coming from the toilet but rather from the area below the flooring of the bathroom. The Tenants claimed that mould and moisture in that room had also been an issue prior to their tenancy and that was the reason why the flooring had to be replaced previously.

Claim for Cleaning Expenses:

The Landlord said that during the move out inspection she was so overwhelmed by the number of patches that Tenants had made to the walls that she overlooked some areas that had not been cleaned by the Tenants. In particular, the Landlord said a few days later, she discovered that the oven was not fully cleaned nor was the area behind and beside the stove. The Landlord also claimed that a kitchen and living room window sill were dirty, that there was dirt around door knobs, and debris under the washing machine, in a living room vent and in the stripping of the refrigerator. The Landlord said the rental unit would have to be re-cleaned at a cost to her of $500.00.

The Tenants claimed that they cleaned out the rental unit at the end of the tenancy and argued that the Landlord never brought up any issues regarding cleaning until 4 days after the move out inspection. The Tenants argued that an area identified as dirt on the refrigerator by the Landlord was rust and that areas alleged to be dirt around door handles was worn paint. The Tenants also argued that the quote provided by the Landlord for cleaning was vague in that it stated it was based on “information provided by the Landlord” over the telephone. The Tenants claimed that the Landlord had been doing renovations to the property and that they should not be responsible for the cost of construction clean up.

The Landlord admitted that she had a new countertop installed in the kitchen and linoleum flooring in the bathroom but claimed that all other renovations were only to the exterior of the house.

Claim for Yard Clean Up:

The Landlord claimed that she agreed the Tenants could make garden beds on the property provided that they were responsible for weeding them and keeping the grass mowed. The Landlord and her witness claimed that during inspections they noticed that the garden beds were being neglected and the grass was long. The Landlord claimed that on one occasion she advised the Tenants that it they were not going to maintain the gardens and lawn she would hire someone to so do. The Landlord said at the end of

the tenancy, the grass was long and the flower beds were full of weeds. The Landlord said the Tenants had also left behind some branches near a shed, a broken planter box and bricks and a tarp. The Landlord said the Tenants agreed to remove the branches at the beginning of the tenancy but failed to do so or to advise her that they had not done so. The Landlord said she incurred expenses of $500.00 to clean up the yard and garden beds.

The Tenants admitted that they agreed to be responsible for maintaining the yard and flower beds during the tenancy and claimed that they did so and they provided witness statements from neighbours of the rental unit to that effect. The Tenants said the lawn needed to be mowed approximately every 7 days and that they mowed it 4-5 days before the tenancy ended. The Tenants said they also regularly weeded the garden beds and did so approximately 5 days before the tenancy ended. The Tenants said that one of them was a gardener by trade and that it was in his best interests to maintain a tidy yard in order to attract the business from his neighbours. The Tenants denied that the Landlords advised them during inspections that the garden beds or lawn were being neglected and claimed that only during one inspection did the Landlord ask the Tenants to ensure that bamboo was kept away from the house and ivy trimmed back.

The Tenants claimed that a broken planter box and wheel barrow were already on the property at the beginning of the tenancy. The Tenants admitted that they agreed to remove some branches with some debris of their own and did remove some of it however they claim that the Landlord agreed to compensate them for the removal but never got back to them about it. The Tenants claimed that the branches were neatly stacked behind a shed and could be used for fire wood for the fireplace. The Tenants also claimed that some bricks were also on the rental property at the beginning of the tenancy and that they used them to build a compost area with the Landlord's consent and she never asked them to remove it. The Tenants claimed that the Landlord never mentioned any issues with the condition of the yard during the move out inspection.

Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible 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.

Claim for Painting & Repairs:

The Tenants argued that they were not responsible under the Act for repairing holes in the walls they made to hang pictures and shelves because the Landlord was responsible for re-painting between tenancies. The Tenants also argued that they told the Landlord that they would fill holes but not repaint and the Landlord agreed to that

arrangement. The Landlord claimed that the rental unit would not have had to be repainted but for the excessive number of holes and the improper way in which they were filled.

RTB Policy Guideline #1 at p. 4 states that,

> "*if a tenant follows a Landlord's reasonable instructions for hanging or removing pictures, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes*. [However,] *a tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. A tenant is (also) responsible for all deliberate or negligent damage to walls*."

I find that prior to the move out inspection, the Landlord agreed that the Tenants could refill nail holes and would not be responsible for repainting ***provided*** that the repaired nail holes could be touched up with paint. In other words, I find that the Landlord did not agree to repaint the entire rental unit given that it had (for the most part) already been repainted at the beginning of the tenancy. However, I find that the Tenants did not correctly repair the nail holes but instead used an excessive amount of spackle material which resulted in the Landlord having to sand each area repair down to the surface of the paint which further resulted in the removal of paint in those areas and the Landlord's need to repaint the entire surrounding wall area. I also find that many of the walls in question had an unreasonable number of nail holes and note, for example, from both parties' photographs that the kitchen had 15 on one wall near the stove and refrigerator and 4 above the sink area. The office, master bedroom and living room walls also had many, many holes. However a second bedroom and spare room on the upper level had fewer but still had large blotches of spackle to remove.

Due to the unreasonable number of holes and improper repair of the nail holes, I find that the Tenants are responsible for some (but not all) of the repair and repainting expenses sought by the Landlord. In particular, I find that the Landlord is not entitled to expenses for the entrance way as there was little change in the condition of that area and insufficient evidence that the Tenants were responsible for any damages in that area. I find that the Landlord is entitled to her expenses of $400.00 to repaint the kitchen walls and trim and to $175.00 to repair the window area and trim in an another bedroom. I find that there is insufficient evidence to conclude that the Tenants are responsible for repainting ceilings in any of the rooms and therefore reduce the amount sought by $75.00 for each room. Consequently, I find that the Landlord is entitled to $325.00 for the living room, $225.00 for the master bedroom, $225.00 for a second upstairs bedroom and $175.00 for the office for a total of $1,525.00.

Although the Landlord claimed that the water damage to the bathroom floor was the result of a leaking toilet, she provided no corroborating evidence of that. The Tenants claimed that the water damage was the result of condensation from a poorly insulated floor and that this condition pre-dated the tenancy. Given the contradictory evidence

of the Parties on this issue, I find that there is insufficient evidence to conclude that the Tenants were responsible for damage to the linoleum flooring in the bathroom and this part of the Landlord's claim is dismissed without leave to reapply.

Claim for Cleaning Expenses:

Section 37 of the Act says at the end of a tenancy, a tenant must leave a rental unit reasonably clean. The Parties agree that the Landlord did not point out any deficiencies with the cleanliness of the rental unit until 4 days after the move out inspection. However, the Landlord claimed that this was simply an oversight and she relied on photographs taken subsequently that show some minor things such as bits of dust and debris in an air vent and some other areas. In the circumstances, I cannot conclude that these few deficiencies required the Landlord to incur cleaning expenses of $500.00. Furthermore, I find that the Landlord's quote for cleaning is extremely vague in that it does not indicate what it is for.

For all of these reasons I find that there is insufficient evidence to conclude that the Tenants did not leave the rental unit unreasonably clean or that the Landlord stood to incur cleaning expenses as alleged due to the Tenants' neglect. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

Claim for Yard Clean Up:

The Landlord also claimed that the Tenants failed to maintain the lawn and flower beds during and at the end of the tenancy and failed to remove debris and broken articles from the yard. The Parties agree that the Landlord did not point out any deficiencies with the state of the yard until 4 days after the move out inspection. The Landlord provided photographs of a few cigarette butts, some pieces of a broken planter pot, some cement blocks, 2 discarded plastic plant pots, the compost area and some branches and a broken wheel barrow beside a shed.

The Parties agree that the branches were already on the property at the beginning of the tenancy. Although the Landlord claimed that Tenants agreed to remove it and therefore should be responsible for it, I disagree. In particular, I find that part of the Parties' agreement was that the Landlord would compensate the Tenants for removing the wood but did not do so. Consequently, I find that the Landlord cannot hold the Tenants to an agreement that she too has not upheld. The Tenants also claimed that a broken planter and a wheel barrow were also on the property at the beginning of the tenancy. The Landlord denied that the planter was already there but offered no supporting evidence. Consequently, I cannot conclude that the Tenants were responsible for removing these items.

I find on a balance of probabilities that the Landlord agreed during the tenancy that the Tenants could construct a compost pile in the yard of the property. Although the Tenants claimed that the Landlord did not tell them that they had to remove it at the end of the tenancy, I find that it was their responsibility to do so. RTB Policy Guideline #1 says at p. 8 says that if a tenant leaves ***a fixture*** on the property that the landlord has agreed he could erect and the landlord no longer wishes it to remain, the landlord is responsible for the cost of removal. However, I find that the compost area was not a fixture as defined by RTB Policy Guideline #1 but rather ***a chattel*** and therefore it was the Tenants' responsibility to remove it or to return the area to its original condition. Consequently, I award the Landlord $50.00 for the cost to remove the bricks and tarp.

I find that there is insufficient evidence to conclude that the Tenants failed to maintain garden beds and the lawn either during the tenancy or at the end of the tenancy. There is nothing in the condition inspection report and little to no photographic evidence to support the Landlord's claim for lawn mowing and flower bed maintenance. Consequently, the balance of the Landlord's claim for yard clean up is dismissed without leave to reapply.

In summary, I find that the Landlord has made out a total monetary claim for $1,575.00 and is also entitled pursuant to s. 72 of the Act to recover from the Tenants the $50.00 filing fee she paid for this proceeding.

Security 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 and return a copy of it to the Tenants in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however she may not offset those damages from the security deposit but must return it to the Tenants within 15 days from the end of the tenancy or the date she receives the Tenants forwarding address in writing (whichever is later). If the Landlord does not return the security deposit within 15 days, then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Section 17 of the Regulations to the Act says that a Landlord must give a tenant a copy of the signed move in condition inspection report within 7 days after the move in inspection is completed. I find that the Landlord breached s. 23 of the Act by failing to provide the Tenants with a copy of the move in condition inspection report within 7 days of the move in inspection. Consequently, pursuant to s. 24(2)(c) of the Act, the Landlord's right to make a claim against the Tenants' security deposit for damages to the rental unit or property was extinguished and she was required to return it to the Tenants no later than 15 days after they gave her their forwarding address in writing on May 2, 2012. As a result, I find pursuant to s. 38(6) of the Act that the Landlord must return double the amount of the Tenants' security deposit or $1,500.00.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the parties' entitlements in this matter be offset with the result that the Landlord will receive a Monetary Order for the balance owing of $125.00.

Conclusion

A Monetary Order in the amount of **$125.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: July 04, 2012.

Residential Tenancy Branch