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 requested compensation for damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of double the deposit paid and 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 submissions were reviewed. 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.

Preliminary Matters

On August 2, 2012, the landlord submitted additional evidence, which provided a copy of handwritten notes made by the landlord on July 5, 2012. The tenant confirmed that sometime around August 2 he received this evidence and that he understood the claim being made by the landlord. As the tenant confirmed understanding of the claim, I proceeded to consider the landlord's application.

The landlord's application did not include a detailed calculation of the claim made against the tenant. The tenant confirmed receipt of an evidence package which included a detailed calculation of the claim made by the landlord. The detailed calculation exceeded the amount claimed on the application; I did not amend the amount of the claim. The landlord was required to amend her application and to serve a copy of that amendment to the tenant. Therefore, at the start of the hearing the landlord eliminated several items that were listed in her August 2, 2012, evidence submission, to ensure that the claim did not exceed that indicated on the application.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of $3,058.86?

Is the tenant entitled to return of double the $1,600.00 deposit paid?

May the landlord retain the deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenant lived in the rental unit for the month of June, 2011. On July 2011, a 1 year fixed-term tenancy commenced. The tenant signed the agreement which listed his spouse and children as occupants. A copy of the tenancy agreement was submitted as evidence.

Rent was $3,200.00 per month, due on the first day of each month. A deposit in the sum of $1,600.00 was paid.

Condition inspection reports were not completed for the 1 month tenancy that commenced on June 1, 2012. The tenant's family moved into the unit on July 1, 2011 and on July 5, 2011, the landlord walked through the unit with the tenant's spouse at which time she took some notes recording the condition of the home.

A copy of the landlord's notes taken on July 5, 2012, was not given to the tenants at the start of the tenancy. A move-out condition inspection report was not completed at the end of the tenancy.

The relationship between the landlord, who lived in a separate unit of the home, and the tenant, soured. On May 15, 2012, the landlord's son met with the tenant and an "Agreement to Dissolve the Tenancy" was signed. A copy of this agreement was submitted as evidence.

The mutual agreement required the tenant to vacate by 6 p.m. on May 21, 2012. An inspection was to take place at that time. A notation initialled by each party, indicated:

> *"No further payment to anything other than damage deposit which will be discussed."*

The tenant said he had paid rent to the end of May, 2012, and that the landlord would be retaining the balance of rent owed. The landlord's son had acknowledged, when he signed the May 15, 2012 agreement, that the tenant would not be required to make any

further payments for propane or hydro costs, as the amount owed would be roughly equivalent to the rent paid from May 22 to 31, 2012.

The landlord said her son was not authorized to make this additional agreement with the tenant and that she does not accept that the document signed on May 15, 2012, relieved the tenants of responsibility for other costs.

The parties did meet at the rental unit on May 21, 2012, but an inspection report was not completed by the landlord. The landlord confirmed receipt of the tenant's forwarding address on May 21, 2012. The landlord applied claiming against the deposit on June 7, 2012.

The landlord has made the following claim:

Window replacement	1,400.00
Carpet cleaning	268.80
Interior window cleaning	182.00
Hydro	580.46
Stone mason – repair	300.00
TOTAL	3,058.86

The tenant's children used a window to exit their bedroom and over time they damaged the seal in the approximately 20 year old unit. The landlord provided a picture of the window frame, which showed a heavy coat of frost that had formed, as a result of damage to the sealed unit.

The tenant stated that the photographs used by the landord to demonstrate the frost build-up was evidence he had submitted for the May 15, 2012, hearing. The tenant said he spoke to the people who replaced the window and they told him the window was old and required replacement. The window company also said that climbing through the window would not have ruined the seal. The tenant's children only used the window for egress on several occasions.

The landlord expected the tenant to fill up the propane tank at the end of the tenancy. A copy of an invoice issued in May was supplied as evidence of the tank having been filled prior to the tenant moving into the unit. The landlord provided a copy of the invoice issued on June 6, 2012, which topped up the tank after the tenant vacated. The landlord's notes taken on June 5, 2012, indicated that the propane tank was full.

The tenant did not have the carpets cleaned at the end of the tenancy. The landlord hired a carpet cleaning company and submitted evidence verifying the amount claimed.

The landlord submitted photographs of the unit, one of which showed sliding glass windows that appeared to have smudges on them. The landlord had the interior and

exterior windows cleaned and submitted the invoice for this service. The landlord has claimed one-half of the window cleaning costs, for the interior portion.

A copy of a BC Hydro bill issued on June 19, 2012, showed the amount owed from April 20 to June 19, 2012. The landlord pro-rated the amount owed by the tenant to the end of May, 2012. The tenancy agreement required the tenant pay 75% of the hydro costs.

The tenant left a leaking hose in a snow bank all winter which caused the stone steps to cave in, resulting in the need for repair. A photograph of the step was supplied as evidence. An invoice for this repair was supplied as evidence.

The tenant confirmed that the carpets were vacuumed at the end of the tenancy; they were not steam cleaned. The carpets were stained at the start of the tenancy and after 11 months, they were in good condition with no further stains.

The tenant supplied a copy of an invoice for cleaning that was issued on May 20, 2012, the day prior to the end of the tenancy. The tenant paid $130.00 cash for cleaning in the kitchen, the floors, windows, fridge, all surfaces and walls. The landlord was in the unit the following day and deficiencies were not pointed out.

The tenant said he did not leave the hose in a snow bank and that it was just as likely the landlord had left it there. The landlord walked by the hose every day and did not check the hose. The tenant denied any responsibility for the hose and the subsequent sinking of the stone steps.

The tenant provided a copy of a decision issued on May 15, 2012, which resulted in an Order of possession to the landlord and a monetary Order in the sum of $202.66 to the tenant. The tenant had disputed a Notice to end tenancy but withdrew that portion of his application as he wished to vacant the unit. The tenant stated that this decision related to window damage referenced during this hearing.

The tenant submitted a copy of the cheque in the sum of $202.66 (the amount Ordered to the tenant, plus the filing fee cost) issued by the landlord as Ordered on May 15, 2012. The landlord confirmed that the tenant had not yet cashed that cheque. The tenant said he did not plan on cashing the cheque, as be believed this was in the spirit of the mutual agreement signed ending the tenancy.

The landlord believes that the tenancy ended on May 31, 2012; the tenant stated that the tenancy ended on May 21, 2012, as indicated on the mutual agreement. The tenant said he returned to the unit as they had taken some shelves that belonged to the landlord and to return a mail key; he did not enter the unit after May 21, 2012.

Analysis

Based on the evidence before me I find that the tenancy ended on the date mutually agreed to, in writing, on May 15, 2012. I find that the landlord's son was sent to act as her agent and that he signed the mutual agreement as her representative. Therefore, pursuant to section 44(c) of the Act, as contained in the agreement signed on May 15, 2012, I find that the parties agreed the tenancy ended on May 21, 2012.

Residential Tenancy Branch policy provides a statement of the intent of the legislation, and has been developed in the context of the common law and the rules of statutory interpretation. Policy suggests that windows have a useful lifespan of 15 years for wood frames and 20 years for metal. I find this to be a reasonable stance.

As the landlord estimated that the window was approximately 20 years old, I find that the window was at the end of its useful lifespan and that the claim for replacement is dismissed.

I find, on the balance of probabilities that the May 15, 2012, agreement ending the tenancy acknowledged that all financial payments, outside of the deposit, that might have been due were now satisfied. The landlord was paid $3,200.00 rent for the month of May, 2012; the tenant vacated the unit 11 days early; the equivalent of $1,157.26 of rent was retained by the landlord. I find, pursuant to section 62(3) of the Act, that the landlord's agent and the tenant agreed to end the tenancy and to forgive payment of anything further, outside of the deposit, which was to be discussed further.

Therefore, it reasonable to accept the tenant's submission that propane and hydro costs were covered by the rent paid for the portion of time the tenant was not in the home; the equivalent of $908.06.

I find that the cost of carpet cleaning was not contemplated at the time the May 15, 2012, agreement was signed. Clause 17(2)(b) of the tenancy agreement required the tenant to have the carpets professionally cleaned at the end of the tenancy. As the tenant did not have the carpets cleaned I find that the landlord is entitled to compensation, as verified by the invoice supplied as evidence.

There was no evidence before me that the tenant or his occupants were the only people authorized to use the hose. The landlord lived on the same property and I have accepted the tenant's submission that the landlord has not shown, on the balance of probabilities, that the tenant was responsible for leaving the hose running,in a snow bank. Further, there was no evidence before me of the state of the sidewalk at the start of the tenancy. Therefore, I find that this portion of the claim is dismissed.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Propane	327.60	0
Carpet cleaning	268.80	268.60
Interior window cleaning	182.00	0
Hydro	580.46	0
Stone mason – repair	300.00	0
TOTAL	3,058.86	268.60

The landlord was given the tenant's written forwarding address on May 21, 2012. The landlord applied claiming against the deposit on June 7, 2012; seventeen days later.

Section 38(1) of the Act determines that the landlord must, within fifteen 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.

I have found that the tenancy ended on May 21, 2012, the date the landlord received the tenant's forwarding address. The landord then had fifteen days to submit the claim or return the deposit. Further, when the landlord failed to complete a proper move-in condition inspection report and provide the tenants with a copy of that report within 7 days, as provided by section 18 of the Regulation, the right to claim against the deposit for damage to the unit was extinguished.

Therefore, I find that the tenant is entitled to return of double the $1,600.00 deposit paid.

As both applications have some merit I find that the filing fee costs are set off against the other.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $268.60, which is comprised of carpet cleaning costs. The balance of the landlord's claim is dismissed.

The tenant is entitled to return of double the $1,600.00 deposit; less the amount owed to the landlord.

Based on these determinations I grant the tenant a monetary Order for the balance of **$2,931.40.** 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 final and binding on the parties, unless otherwise provided under the Act, and 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: August 08, 2012.

Residential Tenancy Branch