Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy started on March 5, 2011 when the Tenant moved into the rental property. The Parties signed a tenancy agreement for a one year fixed term commencing April 1, 2011 and expiring on March 31, 2012. The tenancy ended on May 31, 2012 pursuant to a Mutual Agreement to End Tenancy. Rent was $1,500.00 per month at the beginning of the tenancy but increased to $1,550.00 per month as of April 1, 2012. The Tenant paid a security deposit of $750.00 at the beginning of the tenancy.

The Landlord's Claim:

The Landlord's agent said the rental unit was new at the beginning of the tenancy and that the Tenant was the first occupant. The Landlord's agent said he completed a move in condition inspection report with the Tenant at the beginning of the tenancy and no condition issues were noted. The Landlord's agent said he conducted a routine inspection approximately 5 months after the tenancy started and expressed some concerns to the Tenant in an e-mail about some condition issues. The Landlord's agent said he did another inspection approximately 3 months later and had the same concerns. The Landlord's agent said due to his concerns about damage to the rental

unit, he did another inspection on April 11th, 2012 with the owner of the rental unit and took some photographs.

As a result of the April 11th inspection, the Landlord's agent said he was concerned about the extent of wear after only one year and advised the Tenant that he would serve her with a One Month Notice to End Tenancy for Cause if she did not sign a Mutual Agreement to End the Tenancy. The Tenant signed this document on April 26, 2012 which was to take effect on May 31, 2012. The Landlord's agent said he gave the Tenant and her spouse a list of deficiencies to try to remedy before the move out inspection scheduled for May 31, 2012. During the move out inspection, the Landlord's agent said he noted the following damages:

- Iron burn mark on a bedroom carpet;
- A bedroom and dining room cubby door were punctured;
- The front door and door frame was damaged;
- All walls were dirty and scuffed and needed to be re-painted;
- A hole in the upstairs wall;
- All bathrooms were dirty;
- The garburator was plugged.

The Landlord's agent said the Tenant and her spouse wanted more time to address these issues and the owner agreed to give them until June 11, 2012 to do so. The Landlord's agent said that during an inspection on June 11th with the Tenant and her spouse, he noticed the following:

- The Tenant and her spouse had repainted the interior walls but had not painted the trim which was still noticeably scuffed and he obtained a verbal estimate that it would cost $500.00 to repaint it;
- The Tenant's spouse tried to repair a hole in a bedroom door but the repairs were noticeable and had to be sanded and re-painted at an estimated cost of $200.00;
- The Tenant's spouse repaired the damaged section of the carpet (and as a result he withdrew that part of his claim);
- The Tenant had done further cleaning however more needed to be done in the bathrooms and kitchen drawers which he estimated would cost $80.00;
- The front door and frame were still damaged and he received a verbal estimate that it would cost $500.00 to replace them. The Landlord's agent said he believed the Tenant's spouse caused the damage but in any event he argued that the Tenant was still responsible for repairing the damage because a term of the tenancy agreement required her to have insurance to cover property damage;
- The kitchen cabinet doors were damaged and would have to be replaced at a an estimated cost of $380.00 because the scuffs on the finish could not be repaired;
- There were scuffs on the outside of the refrigerator and he received a verbal estimate that it would cost $150.00 to repair it;

- A closet door or custom made closet door at the top of the stairs was missing and he received a verbal estimate that it would cost $100.00 to replace it; and
- There were 4 halogen light bulbs missing which he estimated would cost $20.00 to replace.

The Landlord's agent argued that the rental unit could not be shown in the condition in which it was left on May 31, 2012. The Landlord's agent said he began advertising the rental unit on Craig's List as of June 6, 2012 and began showing it once the Tenant and her spouse finished their repairs. The Landlord's agent said he was unable to re-rent the rental unit until July 1, 2012 with the result that he lost rental income of $1,550.00 for the month of June, 2012.

The Tenant argued that the trim was not in bad condition as alleged by the Landlord. The Tenant also denied that the repair to the master bedroom door was noticeable. The Tenant said the front door was damaged during a break in on December 12, 2012 during which only a jacket was stolen. The Tenant said the term regarding insurance was only added to the tenancy agreement by the Landlord 3 months after the break in. The Tenant denied that there was any damage to the refrigerator or kitchen cabinets and claimed that if there were any, it was reasonable wear and tear. The Tenant denied that a closet door was missing at the top of the stairs and argued that there never was one and that the Landlord had provided no evidence that there was one. The Tenant claimed that the marks in the wall were not from a closet door but rather from where she had installed a baby gate. The Tenant claimed that the rental unit was reasonably clean at the end of the tenancy.

The Tenant argued that the Landlord's photographs were not reliable evidence of the condition of the rental unit at the end of the tenancy because they were all taken on April 11, 2012 prior to any repairs or cleaning having been done (which the Landlord's agent admitted). The Tenant claimed that she took photographs of the rental unit on June 11, 2012 that shows the condition of the rental unit after all the cleaning and repairs were done. The Tenant also argued that the Landlord provided no evidence of the cost or estimated cost of the alleged repairs but instead relied only on a verbal estimate of his handyman.

The Tenant disputed that she should be responsible for a loss of rental income as the Landlord only advised her to repaint them on May 31, 2012. The Tenant argued that had the Landlord instructed her earlier to paint, it could have been done by May 31, 2012. The Tenant also argued that the other repairs alleged by the Landlord to have been required would not have taken a full month to complete and that there was no evidence that the Landlord completed any repairs before re-renting the rental unit. Consequently, the Tenant disputed that the need to make repairs contributed to the Landlord's loss of rental income. The Tenant claimed that based on her research, the Landlord did not take any steps to advertise the rental unit until June 18, 2012.

The Tenant's Claim:

The Tenant claimed that in January, 2012, the Landlord's agent entered the rental unit illegally (ie. without notice to her or her consent) and startled her husband who was taking a shower at that time. The Tenant also claimed that the Landlord's agent entered the rental unit illegally on April 19, 2012 when she was at work, took photographs and e-mailed them to her the next day. Consequently, the Tenant sought a rent rebate for the period April 19 – 30, 2012 as compensation for the Landlord "invading her privacy" or a loss of quiet enjoyment.

The Tenant also sought a rent rebate for the month of May 2012. The Tenant claimed that the Landlord's agent made her to sign a Mutual Agreement to End Tenancy under duress because he threatened that if she did not do so, he would evict her. The Tenant argued that there was no damage or risk of damage to the rental unit as alleged by the Landlord but instead the Landlord sought to end the tenancy because the level of cleanliness did not meet with his standards. The Tenant also claimed that the Landlord's agent forced her to repaint the rental unit walls (by threatening to take her to dispute resolution) even though she believed they were in good condition. Consequently, the Tenant also sought compensation equal to the cost of supplies and her spouse's labour.

The Tenant said she gave the Landlord her forwarding address in writing on May 31, 2012 during the move out inspection. The Parties agree that the security deposit has not been returned to the Tenant and that the Tenant did not give the Landlord *written authorization* to keep any of the security deposit.

Analysis

The Landlord's Claim:

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*."

During the hearing, the Landlord's agent withdrew his claim for compensation of $810.00 for carpet damage and $500.00 for the front door damage. The Tenant did not dispute the Landlord's claim for **$20.00** to replace some halogen light bulbs and as a result, I find that the Landlord is entitled to recover that amount.

Based on the condition inspection report the Parties completed at the beginning of the tenancy, I find that the rental unit was clean and in good condition at that time. Based on some photographs taken of the rental unit on April 19, 2012, I find that there was

some significant wear and tear to the walls of the rental unit, a damaged front door and some cleanliness issues at that time. However the condition of the rental unit after this date is unclear.

The Tenant said she refused to sign the condition inspection report that was completed on May 31, 2012 because she did not agree that it represented the condition of the rental unit and the Landlord provided no other evidence (such as photographs) to corroborate the allegations contained in that report. The Parties agree that the Tenant made some repairs to a carpet and bedroom door prior to May 31, 2012 and repainted the walls following May 31, 2012. The Landlord relied on an e-mail he sent to the Tenant on June 14, 2012 in which he advised her of repairs and cleaning that he believed were still required. The Tenant disputed these allegations and relied on photographs she said she took of the rental unit on May 31, 2012 and June 11, 2012 that show it to be reasonably clean and in good condition.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant caused damage to the rental unit that was beyond reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof. I find that the photographs taken by the Landlord on April 19, 2012 are unhelpful as far as being evidence of the condition of the rental unit on June 11, 2012 because in the intervening period, the Tenant had completed further repairs and cleaning. Consequently, I find that the Tenant's photographs taken on May 31, 2012 and June 11, 2012 are the best evidence of the condition of the rental unit at the end of the tenancy.

Based on the Tenant's photographs, I find that the rental unit was reasonably clean at the end of the tenancy and as a result, the Landlord's claim for cleaning expenses of $80.00 is dismissed without leave to reapply. I find that there is no evidence that the trim or baseboards were scuffed or otherwise required painting. I also find that there is no evidence of a closet door at the top of the stairs having existed at the beginning of the tenancy. I further find that there is no evidence of scratches or scuffs to the exterior of the refrigerator or scratches and cuts to the kitchen cupboard doors. Consequently, these parts of the Landlord's claim are dismissed without leave to reapply. The Tenant's photos do show that the repair made to the master bedroom door by the Tenant's spouse was not done correctly in that the repair is noticeable. However, the Landlord provided no reliable evidence to support the cost of any repairs and claimed that the amounts he sought were based on a verbal estimate he had received from an employee of the Landlord. In the circumstances, I find that $200.00 to sand and repaint a small section of a door is excessive and instead I award the Landlord **$75.00**.

The Landlord also sought a loss of rental income for June 2012. I find that the Landlord is not entitled to a loss of rental income for the whole month but rather to pro-rated rent for 11 days due to the Tenant over-holding to make repairs and do further cleaning. In other words, I find that there was a significant amount of wear and tear to the walls in the rental unit that was unreasonable given that the Tenant had occupied the rental unit

for only a year. Consequently, I find that the Tenant was responsible for painting the walls. I find that the Landlord advised the Tenant as early as April 2012 that he wanted the walls to be repainted. As a result, the Tenant could have repainted but took the position that she was not responsible for doing so. I find that it was not until May 31, 2012 when the Landlord advised the Tenant that he would be seeking compensation for re-painting that the Tenant agreed to paint the rental unit and the Landlord agreed to allow her to do so. However, I find that there is no evidence that the need to do any further repairs delayed the Landlord's ability to secure a new tenant. Furthermore, I find that there is no evidence to conclude that the Landlord took steps to advertise for a new tenant until June 18, 2012. As a result, I award the Landlord compensation for 11 days of rent or **$568.33 (**ie. $1,550.00 x 11/30 days).

In summary, I find that the Landlord is entitled to a total monetary award of $663.33 (not including the filing fee for this proceeding).

The Tenant's Claim:

The Tenant withdrew her claims for compensation of $100.00 for the Landlord's allegation that a door was missing and the cost to order a police report.

For the reasons set out above, I find that there was damage to the walls in the rental unit that required it to be re-painted either by the Tenant or at the Tenant's expense. Consequently, I find that the Tenant is not entitled to recover the cost of supplies or to be compensated for her spouse's labour and that part of her claim is dismissed without leave to reapply.

Section 28 of the Act says (in part) that a Tenant has a right to quiet enjoyment including but not limited to reasonable privacy and exclusive use of the rental unit subject only to the Landlord's right to enter under s. 29 of the Act. Section 29 of the Act says that unless a Tenant has abandoned a rental unit or there is an emergency or the Landlord has an Order from the Director, a Landlord must not enter a rental unit without the Tenant's permission at the time of the entry or the Landlord provides written notice of the entry to the Tenant at least 24 hours prior to the entry.

I find on a balance of probabilities that the Landlord or its agents breached s. 29 of the Act on two occasions when they entered into the rental unit without first obtaining the Tenant's consent or providing her with written notice. In particular, I find that in January of 2012, the Landlord's agent entered the rental unit to do an inspection and surprised the Tenant's spouse who was taking a shower at the time. I also find that on April 19, 2012, the Landlord's agent entered the rental unit while the Tenant was at work and took photographs not only of the rental unit but also of some very personal items (eg. condoms). The Landlord's witness claimed that she inspected the rental property on one occasion with the Landlord's caretaker and that the Tenant was given a Notice of Entry. The Landlord's witness however could not recall when this inspection took place.

Based on the Parties' e-mail correspondence, I find that this entry likely occurred in February 2012 as alleged by the Tenant and is not one of the unauthorized entries alleged to by the Tenant. I find that the unauthorized entries in January 2012 and April 19, 2012 were material breach of the Tenant's right to privacy under s. 28 of the Act and accordingly, I award the Tenant compensation of **$500.00**.

I find that there is insufficient evidence to conclude that the Landlord coerced the Tenant into ending the tenancy. The Tenant argued that she was unfamiliar with the Residential Tenancy Branch and therefore was coerced into signing a Mutual Agreement to End the Tenancy. The Tenant also argued that it was unreasonable for the Landlord to seek to end the tenancy due to the rental unit being messy. I find that the Landlord advised the Tenant that if she did not sign the Mutual Agreement that he would serve her with a Notice to End Tenancy. I note that the Mutual Agreement to End Tenancy is on the Residential Tenancy approved form and includes contact information for the Residential Tenancy Branch in order to get further information. Consequently, I find that the Tenant would have been aware of the Residential Tenancy Branch before signing the Mutual Agreement. Furthermore, I find that the Tenant sent the Landlord an e-mail on April 26, 2012 in which she stated that "*we are happy to move as we have not been happy with the management and the way you treat tenants*" and that she "*would be making a report to the proper authorities*." Consequently, the Tenant's application for a rent rebate for May 2012 is dismissed without leave to reapply.

The Parties agree that the Tenant gave the Landlord her forwarding address in writing on May 31, 2012 and that the Landlord has not returned the security deposit of **$750.00**. Consequently, I find that the Tenant is entitled pursuant to s. 38(1) of the Act to the return of the security deposit. In summary, I find that the Tenant is entitled to a total monetary award of $1,250.00. As an award to each of the Parties for their respective filing fees would be offsetting, I make no award in that regard and dismiss (without leave to reapply) that part of each of the Parties' applications. I Order pursuant to s. 72(2) of the Act that the Parties respective monetary awards be set off with the result that the Tenant will receive a Monetary Order for the balance owing of $586.67.

Conclusion

A Monetary Order in the amount of $586.67 has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: October 15, 2012.

Residential Tenancy Branch