Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF / MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on June 1, 2011. Monthly rent of $1,295.00 is due and payable in advance “on or before the last day of the preceding month,” and a security deposit of $647.50 was collected. A move-in condition inspection report was not completed.

The tenants vacated the unit on July 31, 2012. A move-out condition inspection report was not completed. By way of e-mail dated on or about August 11, 2012, the tenants provided the landlord with their forwarding address, but they have not presently received repayment of their security deposit. The tenants’ application for dispute resolution was filed on September 12, 2012. The landlord’s application for dispute resolution, which included an application to retain the security deposit, was filed on September 20, 2012.

The landlord testified that following the end of this tenancy, the unit was advertised for sale in approximately mid to late September, and sold on or about November 16, 2012.

During the hearing the parties exchanged views around the various aspects of their dispute, and undertook to achieve at least a partial settlement.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

For information and reference, below, the attention of the parties is drawn to particular sections of the Act which are relevant to the circumstances of this dispute.

Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, as follows:

> 72(1) The director may order payment or repayment of a fee under section 59(2)(c) *[starting proceedings]* or 79(3)(b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
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> (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
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> (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
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> (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Section 63 of the Act speaks to the **Opportunity to settle dispute**. Pursuant to this provision, discussion between the parties during the hearing led to limited settlement, as follows:

RECORD OF SETTLEMENT

- that the landlord owes the tenants $92.54 with respect to hydro

Based on the documentary evidence and testimony, the various remaining aspects of the respective claims and my findings around each are set out below.

TENANTS:

$92.54: *reimbursement of hydro.* Pursuant to the agreement reached between the parties in this regard, I find that the tenants have established entitlement to the full amount claimed.

$1,295.00: *double return of security deposit (2 x $647.50).* Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that as the landlord neither repaid the security deposit, nor filed an application to retain it within 15 days of being informed of the tenants' forwarding address (after the end of tenancy), the tenants have established entitlement to the full amount claimed.

Total entitlement: **$1,387.54**.

LANDLORD:

$630.11: *carpet replacement.* Residential Tenancy Policy Guideline # 40 addresses the "Useful Life of Building Elements." In regard to carpet, the "useful life in years" is limited to 10. In the absence of the comparative results of move-in and move-out condition inspection reports, and in view of the age of the carpet which was said to be in excess of 10 years, this aspect of the application is hereby dismissed.

$243.03: *subfloor* + **$483.17**: *subfloor* + **$32.21**: *subfloor.* Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides as follows:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
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> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
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> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
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> (4) A tenant is not required to make repairs for reasonable wear and tear.
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> (5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further to the absence of the comparative results of move-in and move-out condition inspection reports, there is conflicting testimony around the cause / source of the moisture giving rise to the need to replace portions of the subfloor. In summary, I find that the landlord has failed to meet the burden of proving on a balance of probabilities that damage was the result of the actions or neglect of the tenants. This aspect of the application is therefore dismissed.

$577.65: *vinyl floor.* For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

$273.99: *paint.* In view of the related testimony and photographs submitted in evidence, but in the absence of the comparative results of move-in and move-out condition inspection reports, and in light of the landlord's motivation to enhance the unit's readiness for sale, I find that the landlord has established entitlement limited to **$50.00**.

$125.37: *replacement of blinds.* Again, there was conflicting testimony around the comparative condition and status of certain blinds and blind parts at the start and end of tenancy. In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

$101.60: *dump runs ($51.60 + $50.00 [5 trips x $10.00 per trip for gas]).* The landlord testified that this cost arises principally out of removal of discarded carpet and subfloor materials. For reasons directly related to reasons set out above under "carpet replacement" and "subfloor," this aspect of the application is hereby dismissed.

$118.00: *carpet cleaning.* The tenants testified that they did not have the carpets cleaned at the end of tenancy. They further claimed that the carpets had not been properly cleaned at the time when their tenancy began. Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading – CARPETS, provides in part as follows:

> 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

In the absence of a move-in condition inspection report which might include reference to the condition of the carpet at the start of tenancy, based on the testimony of the parties and following from the above Guideline, I find that the landlord has established entitlement to the full amount claimed.

$50.00: *freezer.* The landlord testified that this aspect of the claim mainly reflects labour required to remove food in a freezer which, because it had previously thawed before being re-frozen, had to be discarded. There is conflicting testimony around whether or not the tenants were responsible for disconnecting the power to the freezer which led to thawing in the first place. In the absence of sufficient evidence that the tenants were responsible for this problem, this aspect of the application is hereby dismissed.
$219.00: *yard labour.* As to the tenants' responsibility for yard maintenance, the written tenancy agreement provides, in part, as follows:

> The tenant agrees to mow and water the lawn and to keep the lawn, flower beds, and shrubbery in good order and condition, and to keep the sidewalk surrounding the premises free and clear of all obstructions;

Residential Tenancy Policy Guideline # 1, as above, speaks to "Property Maintenance" in part, as follows:

> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

In view of the broad provisions above, and having considered the related testimony of both parties, I find on a balance of probabilities that the landlord has established entitlement limited to **$50.00**.

$232.00: *miscellaneous family labour.* This aspect of the application arises out of other aspects of the claim which have been dismissed above. It is further noted that the landlord appears to have undertaken to mitigate his loss by designating / billing some of these costs as business expenses. In the result, this aspect of the application is also hereby dismissed.

Total entitlement: **$218.00**.

The respective applications to recover the filing fee(s) are hereby dismissed.

Offsetting the above entitlements, I find that the tenants have established a net entitlement of **$1,169.54** ($1,387.54 - $218.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$1,169.54**. Should it be necessary, this order may be served on the landlord, filed in the 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: December 4, 2012.

Residential Tenancy Branch