Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing concerns 2 applications: i) by the tenants for a monetary order as compensation reflecting the double return of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) 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 all or part of the security deposit and pet damage deposit / and recovery of the filing fee.

Both parties attended 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 tenancy began on May 1, 2011. Monthly rent of $1,000.00 is due and payable in advance on the first day of each month. A security deposit of $500.00 and a pet damage deposit of $500.00 were collected. A move-in condition inspection report was completed with the participation of both parties, however, it is uncertain whether a copy of that report was provided to the tenants.

By letter dated November 18, 2012, the tenants gave notice to end tenancy effective December 31, 2012. Thereafter, the tenants vacated the unit by December 31, 2012.

There is conflicting testimony around the nature of conversations and agreements between the parties in regard to scheduling a move-out condition inspection. In short, the landlord claims it was agreed that the move-out condition inspection would take place at Noon on January 3, 2013. The tenant disputes that any such agreement was reached. In any event, the landlord testified that she hired a person to complete the move-out condition inspection on January 3, 2013, and that person did so in the

absence of the tenants. The date when the move-out condition inspection report was completed is not filled in on the report itself. As well, notations on the report which address the condition of the unit are very limited. Further, the tenant testified that he only recently received a copy of the report when the landlord provided him with her documentary evidence for the purposes of this hearing.

By letter dated January 6, 2013, the tenants gave the landlord their forwarding address.

The tenants filed their application for dispute resolution on February 1, 2013. Later, the landlord filed her application for dispute resolution on April 4, 2013.

The landlord testified that while she has done some advertising for new renters, the unit still presently remains vacant.

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, the attention of the parties is drawn to the following sections of the Act:

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**

Further, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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

TENANTS

$2,000.00 [(2 x $500.00) + (2 x $500.00)]: *double the security and pet damage deposits.*

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 tenants' forwarding address in writing, the landlord must either repay the security / pet damage deposit(s), or file an application for dispute resolution. If the landlord does neither, and the tenants have not given written consent for the landlord to retain the deposit(s), section 38(6) of the Act provides that the landlord may not make a claim against the security / pet damage deposit(s), and must pay the tenants double the amount of the security / pet damage deposit(s).

I find that after the tenants provided the landlord with their forwarding address by letter dated January 6, 2013, the landlord neither repaid the deposits, nor filed an application for dispute resolution within 15 days. Accordingly, I find that the tenants have established entitlement to the full amount claimed.

$50.00: *filing fee.*

As the tenants have succeeded with their application, I find that they have established entitlement to recovery of the filing fee.

Sub-total entitlement: $2,050.00 ($2,000.00 + $50.00).

LANDLORD

$324.00: *miscellaneous cleaning / repairs (material & labour & HST).*

The findings set out in regard to this aspect of the landlord's application are further to the findings set out immediately above, and concern the landlord's claim against the tenants' security and pet damage deposits.

Section 18 of the Regulation addresses **Condition inspection report**, in part:

> 18(1) The landlord must give the tenant a copy of the signed condition inspection report
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> > (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
> >
> > > (i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

I find that the landlord did not give the tenants a copy of the move-out condition inspection report within 15 days after receiving their forwarding address by letter dated January 8, 2013. Rather, I find that a copy was later provided by the landlord along with other documentary evidence for the purposes of this hearing.

Following from the above, section 36 of the Act which speaks to **Consequences for tenant and landlord if report requirements not met**, provides in part as follows:

> 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> > (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the tenants vacated the unit by the end of December 2012 in accordance with their notice to end tenancy by letter dated November 18, 2012. I also find that they provided the landlord with their forwarding address by letter dated January 8, 2013. Irrespective of the dispute around what agreements may or may not have been reached around scheduling a move-out condition inspection, I find that the tenants did not abandon the rental unit.

Additionally, I find that as the landlord did not provide the tenants with a copy of the move-out condition inspection report in compliance with the Regulation, the landlord's right to claim against the security deposit or pet damage deposit is extinguished.

In support of this aspect of the claim, the landlord has submitted photographs and an invoice. However, there are no receipts in evidence for costs specific to replacement of parts such as the "temp dial for rear left element on stove" or the "ext. electrical outlet cover." Further, I find there is insufficient evidence that the repairs were the result of use in excess of reasonable wear and tear.

As to the cost of labour associated with changing "damaged corner trim on fridge to different location," I find there is insufficient evidence that this damage was the result of

use in excess of reasonable wear and tear, and the landlord has not claimed that the fridge was new at the start of tenancy.

In summary, all aspects of this portion of the landlord's application are hereby dismissed with the exception of cost claimed for cleaning the oven. During the hearing the tenant acknowledged that the oven had not been properly cleaned at the end of tenancy. Accordingly, I find that the landlord has established entitlement limited to **$25.00**.

$336.00: *repairs to cabinet.*

Documentary evidence in support of this aspect of the claim includes, but is not limited to, an invoice. However, while the move-out condition inspection report documents a "broken upper cabinet," there is no indication whatsoever on the move-in condition inspection report of the condition of the upper cabinet at the start of tenancy. In the absence of clearly documented comparative results on the two condition inspection reports, this aspect of the application is hereby dismissed.

$448.00: *repairs to lower cabinet.*

The tenant acknowledged during the hearing that some damage resulted from a drinking fountain in place for their pet(s). However, the tenant disputes the cost claimed, arguing that it is excessive. Further, the landlord testified that no repairs have presently been undertaken, and documentary evidence submitted in support of the cost claimed consists only of an estimate. In the result, I find that the landlord has established entitlement limited to **$50.00**.

$636.85 ($383.82 + $184.80 + $68.23): *carpet replacement & installation & tax.*

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the "useful life" of carpet is 10 years.

The landlord testified that the carpet was already in the unit when she purchased it, and while she could not be certain, estimated that it may now be approximately 5 or 6 years old. Further, she testified that she has not replaced the carpet and documentary evidence submitted in support of this aspect of the claim consists only of an estimate. As the carpets were not new at the start of tenancy, as the age of the carpets is uncertain, and as the landlord has in not incurred any cost to replace the carpet, this aspect of the application is hereby dismissed.

$475.00: *share in cost of drain clearing and repair.*

Documentary evidence in support of this aspect of the claim includes 2 receipts issued by Roto-Rooter: one receipt in the amount of $285.60 for, in part, clearing the sewer line, and a second receipt in the amount of $1,663.20 for, in part, installing a new sewer line. While the second receipt notes that the "main problem on line was break at joint (collapsed line)," the receipt also notes "flushable kitty litter found in line when exposed."

The tenant denies flushing anything down the toilet that was not intended for flushing down the toilet. Having considered the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement to compensation limited to **$50.00**.

$50.00: *filing fee.*

As the landlord has achieved only a nominal measure of success with her application, I find that she has established entitlement limited to recovery of **$25.00**.

Sub-total entitlement: $150.00 ($25.00 + $50.00 + $50.00 + $25.00)

Offsetting the respective entitlements, I find that the tenants have established a net entitlement to **$1,900.00** ($2,050.00 - $150.00) and I grant the tenants a **monetary order** under section 67 for that amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$1,900.00**. 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: April 29, 2013

Residential Tenancy Branch