Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

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 the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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 was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. 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 evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of $150.00?

Is the landlord entitled to compensation for damage or loss under the Act in the sum of $374.13?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to filing fee costs?

Preliminary Matters

On January 24, 2013 the landlord submitted his application for dispute resolution. On April 8, 2013, he made a ten page evidence submission which was served to the tenant via registered mail on the same day. The tenant received this evidence on April 12, 2013. As the evidence was not received 5 days prior to the hearing, as required by the Rules of Procedure and the tenant had not had an opportunity to respond to that evidence, the evidence was set aside. The landlord was at liberty to make oral submissions in relation to the excluded evidence.

All other evidence submitted by each party was received and reviewed. The landlord confirmed receipt of the tenant’s digital evidence and he was able to review that evidence.

Background and Evidence

The tenancy commenced on May 1, 2012, rent was $1,250.00, due on the 1st day of each month. A security deposit in the sum of $625.00 was paid. The landlord confirmed that a move-in condition inspection report was not completed.

Proper notice was given by the tenant and the tenancy ended effective December 31, 2012.

The landlord confirmed that he received the tenant's forwarding address on January 15, 2013; it was left in his mailbox. The landlord confirmed that he does not have a claim for unpaid rent.

The landlord made the following claim:

Cleaning	$150.00
Registered mail	9.13
Key replacement	15.00
Removal of shed	350.00
TOTAL	$524.13

The landlord provided photographs taken at the end of the tenancy that show several areas of the home that required cleaning; he hired a cleaner but did not supply proof of payment for this service.

There was evidence before me that the parties were in the habit of communicating via text message. A text sent on January 15, 2013 to the tenant indicated that the landlord wanted to have the keys returned. The keys were not returned and the landlord has claimed replacement costs. No verification of the amount claimed was provided.

There was no dispute that the tenant erected a metal shed on the property. Text messages indicated that the landlord wished to have the shed removed from the property; the tenant had communicated saying he would leave the shed for the landlord's use and that a cement bench referenced by the landlord did not belong to the tenant.

The landlord supplied a copy of an undated estimate for removal of the shed and cement bench slabs in the sum of $350.00. The landlord has yet to have the shed removed. During the hearing the tenant's agent offered to attend at the property and remove the shed within the next week. The landlord declined this offer; saying he did not want the tenant on the property. The agent said they could remove the shed, in the absence of the tenant, but the landlord again declined the offer to have the shed removed.

A move-out condition inspection report was not arranged by the landlord; although there was 1 text message submitted as evidence that indicated general discussion took place about meeting at the end of the tenancy. The landlord said he had offered the tenant at least 2 times to meet for an inspection but that written notice was not given. No text messages indicated that a specific date and time were sent to the tenant.

The tenant's written submission indicated that on December 1, 2012 he had told the landlord they could complete an inspection any time after December 16, as they would

be moved out by that date; rent had been paid for the complete month. On December 20, 2012 the tenant sent the landlord a text asking when they could meet so he could receive the deposit. On December 24 the landlord was told the unit was empty of all belongings and that the tenant would be available to complete an inspection. The tenant submitted that he and the landlord had agreed the shed could remain on the property.

On January 15 2013 the tenant sent the landord a message that his address had been left in the mail box. At this point the tenant offered to return to the property to remove the shed but he landlord told him he could not come on the property. The tenant left the keys in the mailbox on the same date.

The landlord supplied a written list of costs for photos, registered mail and a dead bolt; no invoices were submitted.

The landlord submitted a February 26, 2013 letter signed by the co-tenant who had also signed the tenancy agreement. The co-tenant was not served with notice of this hearing or named as a respondent. The co-tenant indicated that when he moved into the suite in May 2012 it was clean and in good order.

The agent said that the co-tenant vacated the unit in November 2012 and didn't pay rent that he owed; leaving the co-tenant named by the landlord in his application, responsible for payment.

The tenant supplied a copy of a detailed list of items that he inspected at the start of the tenancy; this report was sent to the landlord via email on April 30, 2012. The tenant's report indicated, among other items, that the unit was not clean; that there was damage to the unit, marked walls, food in the freezer and fridge, nails in the walls, missing blinds dirty floors and walls, holes in walls, mold on window sills and dirt and scum in the bathroom sink and on the counter.

The tenant supplied a number of digital photographs in support of his submission that the unit was not clean. Copies of text messages were also included as digital evidence, in support of the tenant's submission during the hearing.

The landlord supplied photographs of the rental unit showing a dirty window sill, dirty door jamb and baseboard, a dirty portion of a wall and kitchen tiles in front of the dishwasher that required cleaning.

The tenant supplied a copy of a January 30, 2013 letter from a friend of the tenant's. This individual, D.G., indicated he had helped clean the entire suite on December 15, 2012. D.G. indicated that they returned to the suite later in the month and noticed that lights had been turned on the heat turned up; the landlord had not been given permission to enter the unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any verification of the claim for keys and cleaning I find that this portion of the claim is dismissed. No receipts or invoices were supplied to verify the sums claimed. I also considered the letter supplied by the co-tenant who vacated the unit early; leaving the respondent to pay rent for December. I found the co-tenant's submission that the unit was clean at the start of the tenancy had no weight; he did not complete the move-in inspection report, but J.G. had taken the time to examine the unit and to record what I find was a very detailed list of deficiencies.

There was no detailed report completed at the end of the tenancy and I find, on the balance of probabilities that the unit was left in a reasonably clean state by the tenant.

The landlord has claimed the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

I have considered section 7 of the Act in relation to the landlord's claim for the cost of removing the shed from the residential property:

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement* ***must do whatever is reasonable to minimize the damage or loss.***
>
> (Emphasis added)

The landlord has yet to suffer any loss, as he has not had the shed removed. The tenant has offered to remove the shed; yet the landlord has refused to allow the tenant or his family on the property to remove the shed. Therefore, I find that he landlord has not taken steps to mitigate the loss he is claiming. If he allowed the tenants family on the property to remove the shed he would not suffer any loss; however, he has chosen to reject what I find was a completely reasonable offer by the tenant's mother to remove the shed and the need for any expenditure by the landlord. Therefore, in the absence of an attempt to mitigate the claim he has made, I find that the claim for removal of the shed is dismissed.

In relation to the security deposit; Section 23 of the Act provides:

Condition inspection: start of tenancy or new pet

23 *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations*.*

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

(Emphasis added)

If a landlord fails to arrange a move-in inspection section 24 of the Act is then applied and, in accordance with subsection 24(2), the landlord's right to claim against the deposit for damage to the residential property is extinguished.

There was no claim for unpaid rent. Therefore, as the landlord failed to complete a move-in condition inspection report, as required, I find that once the landlord had received the tenant's written forwarding address he had fifteen days to return the deposit to the tenant.

Section 38 of the Act provides:

Return of security deposit and pet damage deposit

38 *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable*.*

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

(Emphasis added)

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

Therefore, as the landlord’s right to claim against the deposit was extinguished and he failed to return the deposit to the tenant within fifteen days of January 15, 2013, I find that the tenant is entitled to return of double the $625.00 deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,250.00**.** 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

Conclusion

The landlord's claim is dismissed.

The tenant is entitled to return of double the security deposit paid.

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 22, 2013

Residential Tenancy Branch