Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD O FF
MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed on March 9, 2013, seeking a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security and pet deposit; for other reasons; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on March 12, 2013, seeking a Monetary Order for: the return of their security and pet deposits; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Tenants be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a statement from S. J.; receipts; an e-mail from the Tenants providing their forwarding address; and 25 photos of the rental unit.

The Tenants submitted documentary evidence which included, among other things, copies of: their written submission; two statements from C.D. one signed and one unsigned; an estimate for painting; and a statement from K.C.

The parties confirmed they entered into a fixed term tenancy agreement that began on October 19, 2011 and switched to a month to month tenancy after six months. Rent was payable on the first of each month in the amount of $875.00 and on October 13, 2011 the Tenants paid $437.50 as the security deposit plus $437.50 as the pet deposit. The parties attended a move in inspection and signed the condition inspection report form on October 13, 2011.

The Landlord testified that the rental unit was a newly constructed basement suite in an existing home. These Tenants were the first to occupy the rental unit. On approximately January 7, 2013, the Tenants had told him that they had looked at a friend's place and asked if they could move out by the end of the month. He said he told the Tenants that they could move out if he could find a new tenant to rent it as of February 1, 2013. He began advertising the unit right away and told the Tenants that if he could not re-rent the unit they would be responsible for February rent. He did not hear anything more from the Tenants regarding their move.

The Landlord said that on February 6, 2013, when he was leaving the driveway, the Tenants pulled up and requested that he come inside the rental unit to walk through and take a look with them. He refused to go inside as he did not have time and he told the Tenant(s) he would look at it later. The Landlord confirmed that he did not reschedule a time to do a walk through with the Tenants. He did the walk through by himself the next day.

The Landlord argued that the Tenants were very vague about whether they were actually moving out. It was not evident to him that they were moving until February 6, 2013, when they approached him. The Tenants never returned the keys to the rental unit.

When the Landlord entered the unit February 7, 2013, he said he found the unit a complete mess. The Tenants had left a lot of miscellaneous items behind that needed to be hauled to the dump. He pointed to the pictures that he took on February 7, 2013, that were provided in evidence which support the condition the rental unit was left in. He had already had a painter for the upstairs area so he decided to have him paint the rental suite.

The Landlord is seeking to recover $1,392.58 in damages as follows:

$65.00	Waste/debris removal which was supported by a $10.00 landfill receipt dated February 7, 2013
$160.00	Cleaning, as per the statement of the cleaner dated February 9, 2013 which indicates the amount was for six hours of work
$700.00	Painting as supported by a receipt dated February 20, 2013
$55.00	Broken/damaged sidewalk lighting
$40.00	To clean out gravel in the flower beds from snow/gravel being shovelled into them
$65.00	Carpet cleaning as per invoice # 24101 dated February 11, 2013 for $83.95
$50.00	A new lock for door as Tenants removed previous handle. The Landlord did not use the lock that is shown on the receipt as he had one in his stock.
$10.00	The Tenants did not dispute this claim for the screw driver and bit they took
$50.00	Miscellaneous lumber that the Tenant used to build a recycling container
$197.58	7 days rent for February 1 – 7, 2013

The Tenants testified that they did not serve the Landlord written notice to end their tenancy. They were of the opinion that they told him they were moving by the beginning of February 2013 and later told him they would be out by February 15, 2013. They vacated earlier and on February 6, 2013 they attended the unit to finish the cleaning which is when they saw the Landlord in the driveway and asked him to do the inspection. After the Landlord refused to come into the unit the male Tenant spent about six hours cleaning the unit. They did not return the keys to the Landlord.

The Tenants are seeking the return of double their security and both pet deposits. They said that they were required to pay a second deposit because they were considering getting a dog. They paid the second deposit in cash some time near the beginning of the tenancy; however, they did not get a receipt for that payment. They never did get a dog but they puppy sat for friends on different occasions.

The Tenants dispute all items claimed by the Landlord except for the $10.00 for the screw driver and bit. They refute the Landlord's claims as follows:

They had piled all the garbage by the driveway and had arranged to have their father to take it to the dump the following week. Therefore, they should not have to pay for the Landlord to remove it.

They spent over six hours cleaning the unit. After reviewing the Landlord's photos they confirmed that they did not clean the oven. They noted that there were only a couple of pictures which showed a few cupboards that they had missed. They had left some cleaning supplies there just in case they had to clean some more things after they did the inspection, but the inspection never happened because the Landlord moved in.

The Tenants said they were told that the Landlord had to repaint the unit after one year anyway. They were going to paint the unit and had patched all the holes in the walls but when they found he was required to paint it they chose not to. They believe the Landlord's quote is outrageous to paint such as small unit. The unit is approximately 650 sq ft. They provided a quote that was only $224.00 for painting.

The Tenants aid they did not break or damage the sidewalk lighting and they should not have to pay to clean gravel out of the flower beds left from snow melting.

The Tenants confirmed they did not have the carpets professionally cleaned but they did vacuum them before they moved out.

The Tenants testified that the door handle was broken as it constantly jammed which prevented their access to the unit. They asked the Landlord to repair it and all he did was give them a screw driver so they removed it. They locked the door with the deadbolt and continued to reside in the unit without a door handle. They left original handle inside the rental unit. Therefore, they should not have to pay to fix a handle that was broken to begin with.

The Tenants confirmed they used some of the Landlord's lumber after receiving his permission. They built a recycling container to hold recycling and empties and they took it with them when they moved out.

The Tenants argued they were out of the unit by February 6, 2013, which is the date they wanted to do the inspection. They confirmed they did not pay rent for February and they did not return the keys to the Landlord.

In closing, the Landlord submitted that the Tenants did not provide proper notice to end their tenancy and they later agreed to pay rent until February 15, 2013. At no time did the Tenants inform him that someone was coming to take their debris to the dump. The invoice they provided for painting shows only one coat of paint and does not include painting the ceiling. The Tenants had attempted to paint the ceiling with a color that did not match the original paint.

The Tenants denied that they painted the ceiling and argued that they attempted to wash it. The photo of the damage to the door and weather stripping was the result of them moving their oversized couch out and was not caused by a dog. They noted that the Landlord's submissions included incorrect dates.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's Claim

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Upon consideration of the evidence before, I find the Tenants vacated the rental unit by February 6, 2013, without providing 30 days written notice and without cleaning the unit completely. The Tenants left the unit with some damage and a pile of debris and/or garbage that had to be removed. Based on the aforementioned I find the Tenants breached sections 32(3) and 37(2) of the Act, which caused the Landlord to suffer a loss when having the unit repaired and cleaned.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages as follows:

Waste/debris removal – I found the Landlord's claim to be excessive at $55.00 as the receipt shows one load for $10.00 was taken to the landfill. There was no evidence provided to indicate the rest of the claim was for labour. Therefore, in accordance with section 67 of the Act, I award the Landlord $30.00 labour plus $10.00 landfill fees for a total amount of **$40.00.**

I accept the claim for cleaning as per the statement of the cleaner dated February 9, 2013 and award the Landlord **$160.00.**

The rental unit not been painted since before October 2011; therefore there was only 3.5/5 years of useful life of the paint remaining. Policy guidelines provide that nail holes

from pictures are considered normal wear and tear if the Tenants patch and sand the holes. I accept the Tenant's argument that the Landlord's claim for painting is excessive when considering the amount of work that was required. I have also considered that the entire house was painted yet the invoice provided does not stipulate how much was charged specifically for the suite and does not stipulate the areas that were painted. Therefore, I award the Landlord **$280.00** for painting, which is comprised of 3.5/5 of $100.00 paint plus $300.00 labour (3.5/5 x $400.00).

The Landlord did not provide a receipt or written estimate to support the amount claimed for broken/damaged sidewalk lighting. Nor was there evidence provided to indicate the age of these lights or to prove they were replaced. Accordingly, I find there to be insufficient evidence to support the amount claimed, and the claim for sidewalk lighting is dismissed, without leave to reapply.

The tenancy agreement does not indicate the Tenants are responsible for yard maintenance. Therefore, I find there to be insufficient evidence to support the Landlord's claim for cleaning out gravel from the flower beds. Accordingly, his claim of $40.00 for cleaning flowerbeds is dismissed, without leave to reapply.

The undisputed testimony supported that the Tenants did not have the carpets professionally cleaned. The tenancy lasted for over a year and a half and the Tenants had pets inside the unit. Residential policy stipulates that a tenant is responsible to clean carpets at the end of a tenancy where pets have been allowed inside the unit. Therefore, I award the Landlord carpet cleaning costs as claimed in the amount of **$65.00.**

The Landlord has claimed $50.00 to replace a door handle that was removed by the Tenants. He did not replace it with a newly purchased one as he used one he had in stock. The Tenants argued that they left the handle in the unit. Therefore, as the Landlord used an existing handle, I find there to be insufficient evidence to prove he did not simply re-install the existing handle. If he did use a different one, there is insufficient evidence to prove the actual cost. Accordingly, I dismiss this claim, without leave to reapply.

The Tenants did not dispute this claim for the screw driver and bit they took. Therefore, I award the Landlord **$10.00** as claimed.

The Landlord confirmed that the Tenant had asked to use some lumber to make the recycling container early on in the tenancy. If the Landlord had a dispute about which wood was used he should have mitigated his loss by dealing with it when the incident occurred and not months or years later. Therefore, I find there to be insufficient evidence to prove the Landlord did what was reasonable to minimize this loss, and I dismiss his claim, without leave to reapply.

The undisputed testimony supports that the Tenants remained in possession of the unit until February 6, 2013 and the Landlord began the process of moving into the unit

himself on February 7, 2013. Accordingly, I find the Tenants are responsible for payment of rent from February 1 - 6, 2013, at a daily rate of $28.77. Accordingly I award the Landlord unpaid rent in the amount of **$172.62** (6 x $28.77).

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee.

The Landlord has been awarded a monetary award as follows:

Waste/debris removal	$ 40.00
Cleaning	160.00
Painting	280.00
Carpet cleaning	65.00
Screwdriver & bit	10.00
Unpaid Rent Feb. 1-6, 2013-06-04	172.62
Filing fee	50.00
Total amount of Landlord's award	**$777.62**

Tenants' Claim

Section 38(7) of the Act stipulates a pet damage deposit may be used only for damage caused by a pet, to the residential property, unless the tenant agrees otherwise.

Section 38 (1) of the Act stipulates that a landlord must return the pet deposit within 15 days of latter: (1) when the tenancy ended; or (2) when the Landlord received the Tenants' forwarding address in writing.

After careful consideration of the evidence before me, I find this tenancy ended February 6, 2013, which is the date the Tenants asked the Landlord to conduct the inspection; pursuant to section 44 of the Act. The Tenants provided the Landlord with their forwarding address by e-mail on February 24, 2013. Therefore, the Landlord was required to return the pet deposit no later than March 11, 2013.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with returning the pet deposit the landlord must pay the tenant double the pet deposit. Accordingly, I award the Tenants double the pet deposit of **$875.00** (2 x $437.50).

Section 35 of the Act stipulates that at the end of a tenancy the landlord must offer the Tenants two opportunities to inspect the rental unit and must complete a condition inspection report form.

Section 36 of the Act provides that 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 does not schedule a move out inspection and does not

complete the condition inspection report form [emphasis added]. This does not prevent a landlord from claiming for unpaid rent against the deposit(s).

In this case the Landlord filed his application for dispute resolution March 9, 2013, within the required fifteen days, and included a claim for unpaid rent. Therefore, the doubling provision does not apply to the Tenants' security deposit. Also, this does not prevent offsetting all claims against the deposit which is provided under section 72 (2)(b) of the Act. Therefore, the amount to be considered will be the original amount paid for the security deposit of **$437.50** plus interest**.**

The Tenants have been partially successful with their application; therefore I award recovery of the **$50.00** filing fee

Monetary Order - I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlord's monetary award	$777.62
LESS: Double pet deposit plus interest of $0.00	- 875.00
Original security deposit plus interest of $0.00	- 437.50
Offset amount due to the TENANTS	**($534.88)**

The Landlord is ordered to return the balance of the deposits of **$534.88** to the Tenants forthwith.

Conclusion

The Tenants have been issued a Monetary Order in the amount of **$534.88.** This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: June 06, 2013

Residential Tenancy Branch