Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amion Construction
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting return of double the security deposit paid, return of personal property and to recover the filing fee cost from the landlord.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested compensation for damage or loss under the Act, to retain the security deposit 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 and to make submissions during the hearing.

Preliminary Matters

The landlord supplied a detailed calculation of the claim made; that calculation included a claim for loss of rent revenue, unpaid rent and damage to the rental unit. Therefore, the application has been amended to reflect the detailed calculation of the claim that was served to the tenant with the application.

Both parties supplied multiple pages of unnumbered evidence submissions, many of them hand-written. The parties were told I would consider only that evidence that was identified and referenced during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for damage or loss under the Act?

Is the landlord entitled to compensation for unpaid January 2013 rent?

May the landlord retain the security deposit in partial satisfaction of the claim or is the tenant entitled to return of double the deposit?

Must the landlord be Ordered to return the tenant's personal property and to compensate the tenant for personal property?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 1, 2011. Rent was $880.00 per month, and increased in January 1, 2013.

A copy of a notice of rent increase issued on September 28, 2012 was supplied as evidence, increasing rent to $913.44 effective January 1, 2013. The tenant said the notice had been altered as the copy he had originally been given did not include the landlord's address; so after a telephone conversation they had agreed on rent of $910.00 which the tenant paid until the tenancy ended. The landlord claimed a loss of July 2013 rent in the sum of $910.00, not $913.44.

Rent was due on the 1st day of each month. A security deposit in the sum of $480.00 was paid.

The tenant signed an application for rent of suite document; a tenancy agreement was not signed. The landlord supplied a copy of a "Condition of Tenancy" document, setting out terms of a tenancy; this document was not signed or dated.

A copy of a "Check List" used for an initial inspection of the unit was supplied as evidence; the landlord confirmed this was not given to the tenant until evidence for this hearing was served. The list indicated damage to the bedroom and living room carpet; burns were indicated. The report was completed on December 30, 2010.

The landlord confirmed that a move-out condition inspection was not scheduled.

The parties agreed that the tenant gave appropriate notice to end the tenancy effective the end of June 2013. June rent was paid in full. The tenant supplied a copy of his written notice ending the tenancy; that notice included the tenant's forwarding address. The landlord said he did not receive that notice until July 18 or 19, 2013. The landlord applied claiming against the deposit on August 19, 2013.

The landlord has made the following claim:

Cleaning	$60.00
Replace light fixture	35.00
Tenant's share of carpet replacement	300.00
Loss of July 2013 rent	910.00
Unpaid January 2913 rent	20.64
Painting	125.00
Paint	50.00
Carpet cleaning	84.00
TOTAL	$1584.64

The tenant has requested return of double the $480.00 security deposit plus $50.00 for personal property that the landlord damaged.

The landlord said that after the tenant vacated, the landlord had to clean the bathroom; the landlord said it smelled. A cabinet had to be repaired and all kitchen cabinets needed cleaning.

The tenant supplied signed statements; 1 from his witness and a 2nd from C.M. Both letters indicated that the unit was clean and not damaged; C.M. said it was left in the same state as when the tenant had moved into the unit.

The tenant supplied 3 photographs of the bathroom, taken at the end of the tenancy to show that he had cleaned the unit. The photographs showed the sink, toilet and bathtub. The landlord said he could see some dark lines in the grout above the tub. The landlord said the tiles were thirty years old and had been re-grouted 2 years ago so should not have shown dark lines, which the landlord believes was dirt.

The tenant submitted 3 photographs of the kitchen area; the sinks, stove top and oven. The landlord said the oven was not dirty as the tenant had never used it. The photographs showed the areas to be clean.

The tenant replaced a kitchen light fixture with an 8 inch cover; the landlord installed a twelve inch cover. The landlord said he purchases light fixtures in bulk and did not have an invoice for the cost. The tenant supplied a photograph of the fixture he had replaced and a copy of a June 12, 2013 receipt for the light fixture cover, in the sum of $15.99 plus tax. The tenant said the fixture he installed was sufficient and that the cost was reasonable.

The landlord supplied a copy of a July 2, 2013 carpet cleaning invoice for the unit; it had been double cleaned. The landlord said that the stains would not come out of the carpet so he had them replaced. A July 9, 2013 invoice for flooring installation at the rental unit address, in the sum of $1,100.00, was supplied as evidence. The landlord submits the tenant should be responsible for $300.00 of this cost. The landlord did not supply evidence showing the date the carpets had originally been installed. The landlord

said that the tenant stained the 6 year old carpet and that he did not have it cleaned when he vacated.

The tenant said that the carpets were stained and burned when he moved into the unit. In May 2013 the tenant had written the landlord a letter; a copy was supplied as evidence. The letter was given to the landlord with the May 2013 rent payment. The letter indicated that the carpets should be thrown in the garbage, that the kitchen floor needed to be replaced and that the bathroom needed remodeling. The tenant questioned the age of the carpets and thought they could be at least 10 years old.

The landlord said that he had replaced the carpet in unit 205 and the tenant thought that his carpet should then be replaced.

The landlord testified that since the unit was not fully cleaned and that flooring needed replacing and painting and repair was required he could not rent the unit for July 1, 2013. The landlord has claimed loss of July rent revenue. The landlord said he advertised the unit in a major newspaper but could not recall the date the advertisement was placed. The landlord also placed a sign in the window, but the unit was too dirty and prospective occupants were not interested. The landlord rented the unit effective August 1, 2013.

When the rent was increased effective January 2013 the tenant paid $910.00; the landlord stated that the tenant did not pay $20.64 of the rent increase that took effect that month. The tenant said the landlord had told him it was fine to pay only $910.00 which he did; leaving $3.44 unpaid, with the landlord's permission.

The landlord stated that the rental unit was last painted in 2010; when the tenant vacated the landlord painted the unit and charged the cost though his company. A copy of a July 3, 2013 invoice issued by the landlord was supplied as evidence. The tenant submitted that he had painted and repaired a wall prior to moving out of the unit and that when he moved in the unit did not appear to have been painted recently.

The landlord charged for the cost of paint, which he purchases in bulk; an invoice was not supplied as evidence.

The tenant's written submission indicated the tenant believes the landlord is attempting to renovate the unit at his expense. The tenant had made complaints during the tenancy, asking for new carpets and flooring. The carpets had burns, stains and the bathroom flooring had been cut. The bathroom vanity had fallen apart and the kitchen floor had also been cut.

A copy of a December 1, 2012 letter given to the landlord was supplied as evidence. The tenant reported mould in the ceiling and that the bathroom vanity was falling apart.

On July 6, 2013 the tenant called the landlord to say that he had left 1 box behind; the landlord agreed during the hearing that he had thrown that box in the garbage. The

tenant immediately went to the unit to retrieve the box. Some items of sentimental value were missing; a set of glasses were broken and a porcelain cup and saucer that had belonged to his mother was broken, and her scissors were gone along with several other items.

The tenant's witness said that the unit was clean and that the carpets had suffered from normal wear and tear. He described wear and tear as including marks and stains. The witness had been at the unit several times during the tenancy and on June 29, 2013. He believed the unit was "OK," that there was no damage or holes in the walls.

The tenant supplied a copy of an invoice for vacuum cleaner bags he purchased in September 2013; the relevance of this evidence was not explained.

Toward the end of the hearing the landlord indicated that he wished to make submissions in relation to bed bugs. The landlord had submitted some evidence in relation to bed bugs, but the application was not amended to include any claim relate to bed bugs. Therefore; testimony was not taken in relation to bed bugs.

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.

Section 37 of the Act requires a tenant to leave a unit reasonably clean, absent of any damage outside of normal wear and tear.

From the evidence before me I find, on the balance of probabilities that the landlord has failed to show that the repairs, carpet replacement painting and carpet cleaning were anything but regular maintenance and repair that was required and that the claim for these items is dismissed.

The tenant supplied photographs which showed the unit to be in what I find was a reasonably clean state. The landlord did not supply any evidence of the need for cleaning and a move-out inspection was not arranged where the parties could have reviewed the state of the unit and any need for cleaning. Therefore, I find, on the balance of probabilities, that the unit was left reasonably clean.

The tenant provided evidence that he replaced the light fixture, at a reasonable cost. The photograph showed a fixture that appeared to be suitable. If the landlord wished to replace the fixture with a model that was 4 inches larger, that was his prerogative, however; I accept that the tenant made a reasonable repair. Further the landlord did

not provide any verification of the cost claimed. Therefore, I find the claim for the fixture is dismissed.

The landlord said that he obtained sufficient notice to end the tenancy effective June 30, 2013. The landlord has claimed the loss of July rent revenue as the unit required repairs and cleaning. I have rejected the claim for cleaning and have determined that the repairs and carpet replacement could have been expected as part of normal maintenance and repair. Therefore, I find that the claim for loss of July 2013 rent revenue is dismissed; the liability for loss of rental income does not fall to the tenant, but to the landlord who chose not to make repairs during the tenancy. If the unit needed attention to make it more appealing to potential occupants any delay in renting the unit cannot be assigned to the tenant.

In relation to the claim for a portion of January 2013 rent; I find that rent was agreed at $910.00 per month. This is supported by the claim the landlord made for loss of July rent revenue in the sum of $910.00; leading me to conclude that rent owed from January 2013 onward was in fact $910.00 each month. The landlord did not dispute the tenant's submission that he paid $910.00 in January 2013 and I find that payment met the terms of the tenancy; by paying the agreed upon rent. The landlord did not dispute that the notice of rent increase issued failed to include his address and he did not dispute the agreement reached for rent in the sum of $910.00.

Residential Tenancy policy suggests that carpets have a life span of 10 years in a rental unit. The parties disagreed on the age of the carpets; the tenant thought they could be 10 years old; the landlord said they were 6. There was an absence of evidence supplied by the landlord establishing the age; however, from the check list completed at the start of the tenancy it is clear the carpets had burn marks. Therefore, I find that the attempt to clean the carpets was a futile effort to bring more life to carpets that were damaged and at the end of their useful life span. I considered the tenant's letter given to the landlord in May 2013, as evidence that the carpets required replacement. Therefore, I find that the claim for carpet cleaning and replacement is dismissed.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit.

Further, section 38 provides, in part:

> ***(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.***

(Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposit and he did not have an Order allowing him to retain the deposit; in accordance with section 38(4) of the Act.

The landlord confirmed that he received the tenant's written forwarding address on July 18 or 19, 2013. It was not until 7 days after the tenant served his August 12, 2013 application requesting return of the deposit that the landlord submitted his own application claiming against the deposit. The landlord was required to return the deposit or submit his claim within fifteen days of July 19, 2013 and he failed to do so. Therefore, in accordance with section 38(6) of the Act, I find that the tenant is entitled to return of double the $480.00 security deposit.

During the hearing I explained that the landlord could be required to pay double the deposit to the tenant. The landlord said that the Act appears to favour tenants. I explained that if the landlord ensured inspection reports were scheduled as required, if he completed the necessary documents as required and if he ensured claims against the deposit were made in accordance with the Act, the landlord would not be faced with the possibility of paying double the deposit. I informed the landlord that forms which comply with the legislation could be obtained from the Residential Tenancy Branch or on the web site.

In relation to the loss or damage of the tenant's property, the landlord took the box that was left behind by the tenant and threw it in the garbage. Residential Tenancy Regulation indicates that if a tenant leaves belongings in a unit for more than a 1 month period of time the landlord can assume the property has been abandoned. The landlord confirmed that within 7 days of the tenancy ending he threw a box of the tenant's property in the garbage.

In the absence of verification of the value of items the tenant submits was broken or missing, I find, on the balance of probabilities, that the glass belongings were broken and that the tenant is entitled to nominal compensation in the sum of $20.00; the balance of the $50.00 claim is dismissed.

I find that the tenant has established a monetary claim, in the amount of $1,030.00, which is comprised of double the $480.00 security deposit plus $20.00 for loss of personal property and $50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,030.00**.** 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.

The tenant is entitled to compensation for loss of personal property.

The tenant is entitled to filing fee costs.

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: November 15, 2013

Residential Tenancy Branch