Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Horizon Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNDC, MNSD, OPC, 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, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The hearing was set to begin at the scheduled time of 1:30 p.m. The landlord called into the conference call hearing at 1:30 p.m. After waiting until 1:32 the hearing proceeded in the absence of the tenants. The landlord had proven service to tenant T.S.; not tenant M.O.

At 1:46 p.m. both tenants signed into the hearing on separate telephone lines. Each of the tenants confirmed that on November 8, 2013 they had received 1 registered mail package that contained a copy of the application and notices of hearing for each tenant.

The tenants confirmed receipt of the landlord's evidence package on November 22, 2013. I determined that the evidence was given to the tenants at least 5 days prior to the hearing.

The landlord confirmed receipt of the tenant's evidence package several weeks prior to the hearing.

I determined that each party had been sufficiently served with Notice of the hearing and served with evidence at least 5 days prior to the hearing.

Preliminary Matters

After the tenants entered the hearing; sixteen minutes late, I provided them with a review of the application and a summary of what had been discussed to that point. The tenants were informed that the landlord had been affirmed; the tenants were then affirmed.

Tenant T.S. stated that he was at a sports event, as a coach, and would like the hearing to be delayed. I determined that the hearing would proceed as scheduled and explained to the tenant that he must come to the hearing prepared to proceed and that his reason for an adjournment was insufficient. Further, co-tenant M.O. was available to participate in the hearing.

The hearing process was then explained 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 to make submissions during the hearing.

At 2:11 p.m. tenant T.S. exited the hearing. I waited until 2:13 before continuing with testimony. Tenant O.M. was informed that as a co-tenant he was jointly and severally liable for any claim and that I would proceed in the absence of T.S. Tenant O.M. acknowledged that he would remain in the hearing. The hearing continued for some time; however, T.S. did not re-enter the hearing.

The parties agreed that the tenancy ended effective October 1, 2013; an Order of possession was not required.

The landlord amended the application reducing the claim for carpeting to $875.70.

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 and loss under the Act?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 1, 2012; rent was $1,800.00 per month, due on the 1st day of each month. A security deposit in the sum of $900.00 was paid.

A move-in and move-out condition inspection report was completed.

There was no dispute that the tenants received a copy of the strata rules.

The landlord received the written forwarding address on October 1, 2013 and applied claiming against the deposit on October 15, 2013.

The tenants said that they did not receive a copy of the move-out condition inspection report until November 16, 2013, after making an enquiry with the landlord on November 15, 2013. The landlord said that immediately following the tenancy he had mailed a copy of the report to the address given by the tenants on that report. The tenants did not receive the mail, but did receive an email copy of the report sent via email on November 16, 2013.

The landlord has made the following claim for compensation:

Strata fine $200.00 X 2	$400.00
Cleaning	189.00
Carpet	875.70
Move out fee	25.00
Damaged parkade door	1,200.00
TOTAL	$2,689.70

The landlord said that the strata counsel of the rental unit building is very attentive to any infraction of rules. There was no dispute that in 2012 the tenants were informed of complaints made as the result of reported disturbances that they and their guests had made.

The landlord supplied a copy of an October 9, 2013 statement of account from the strata counsel, showing fines that were imposed on the owner of the building in the sum of $200.00 on May 28, 2012 and June 25, 2012. Copies of a May 24 and June 20, 2012 letter to the property owner from the strata counsel were supplied as evidence. The letters informed the landlord that multiple disturbances had been caused by the tenants and fines had been imposed.

On June 5, 2013 tenant T.S. wrote a letter to the strata counsel, apologizing for noise complaints made in relation to May 5, 11 and 16, 2012. The tenants acknowledged having guests over on May 11, but were not told they were causing any disturbance. The tenants also had guests over on May 16 and but were in bed by 11:30 p.m. The tenants said they were away on May 5, 2013 and could not have caused any disturbance. The tenants wrote the June 5, 2012 letter of apology, in response to what they believed was a warning. A copy of this letter was supplied as evidence.

The strata counsel wanted to impose 6 fines on the tenants but the landlord was able to reduce that number to 2 fines. The landlord said that at one point during the tenancy, at 3 a.m. tenant T.S. called the landlord, to complain that he could not convince his co-tenant, M.O. to be quiet so the tenant could sleep. O.M. did not respond to this submission. The landlord said he had sent multiple text messages to the tenants, in relation to the disturbances that were being reported.

The tenants supplied a copy of a text message in which the landlord gave the tenant's permission vacate at the end of September; 1 month beyond the end date of the

undisputed Notice ending tenancy. The message indicated that the tenants did need to pay the $400.00 in fines by the end of the next day. The tenant responded “perfect, thank you very much...” Other messages sent on July 27 and 28, 2013 enquired if the tenants would pay the fines. The tenants responded to some content of the landlord’s text messages but did not acknowledge the request for fine payment.

The landlord stated that they had not previously pursued payment of the fines, as in 2012 O.M. had told the landlord he would pay the 2 fines. The landlord recalled giving the tenant information as to where the strata office was, so he could make the payment. The landlord’s partner also spoke with tenant, T.S.; who did not tell her that the fines had remained unpaid.

The property owner, who resided out of province, became ill, so had not noticed the fines had remained unpaid. The owner has since deceased.

The tenant said that they did not receive any documentation, only a note warning them of the disturbances. O.M. said he had never agreed to pay the fines. The tenant said that after such an extended period of time, with no record of the fines, they did not believe they were responsible for fines. T.S. had exited the hearing, so did not supply a response.

The landlord provided a copy of an invoice for cleaning completed on October 5, 2013. Six hours were spent cleaning the unit. The condition inspection report indicated that some light fixtures were dirty, there were some bugs in a roller blind and the patio was dirty.

The tenant said that they spent a considerable amount of time cleaning. The tenants provided copies of photographs taken in some areas of the unit at the end of the tenancy. The tenant said the unit was cleaner at the end than at the start of the tenancy.

There was no dispute that the tenants took one-half hour longer than allowed to move out. The tenant said that he would agree, if the rules require payment for an extended moving time; to pay. For each hour over 4 hours allowed, the strata charges $50.00.

There was no dispute that the move-out condition inspection report included notations that the carpet in the master bedroom was “soaked and stained.” The last page of the report indicated the carpets would need to be checked and could require cleaning, drying or replacement.

The landlord stated the carpets were 5 years old and that after the tenants vacated the landlord had the carpet professionally cleaned. The cleaning did not remove the stains from the carpet. It looked like the carpet had either been marked by someone wearing shoes or that something had been spilled. The flooring company said that they could not re-use the underlay, as it was also stained.

The landlord provided photographs of the carpet, taken after the landlord had them professionally cleaned. The landlord said it was difficult to discern the stains but the dark areas could be seen. The landlord had attempted to clean the carpets in the hope of not having to replace them.

The landlord made efforts to find carpet of equal quality and was able to locate replacement at a very good cost.

The tenant said he had cleaned the carpet with a cleaner provided by his mother, who has a cleaning company. The tenant said that he did not damage the carpets; that it was not stained and that he did not wear shoes on the carpet.

During the hearing the tenant stated that he currently has a claim with ICBC, in relation to the damaged parkade door. The tenant provided the landlord with the claim number and the claims adjuster name and contact information. As the tenant appears to be attempting to deal with the parkade door the landlord agreed to withdraw that portion of the application. The parties were told that the landlord has leave to reapply making a claim for damage to the parkade door. All claims related to a tenancy must be made within 2 years beyond the end date of the tenancy.

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.

I have considered the landlords' testimony in relation to the strata fines, against the tenant's submissions that they were not informed of the fines. I have assessed the credibility of the submissions made by each party and have determined that I prefer the testimony of the landlord over that of the tenant. The landlord gave consistent and detailed testimony in relation to his efforts to have the number of fines reduced; his efforts to have the tenant make the payments and his belief that payment had been made.

The tenants had acknowledged the reports of disturbances made, but denied that they should be responsible for paying fines as they were away on 1 of the 6 dates and they did not receive any records of the fines being imposed. The tenants also denied knowing that they owed fines, yet the text message evidence shows that in July 2013 the landlord was making enquiries, which the tenants appeared to ignore; with the exception of the message sent, giving the tenants permission to remain in the unit and that they pay the fines. If the fines had been a surprise to the tenants it would have been reasonable they respond by asking what the landlord was referring to. Instead,

the tenants ignored the payment request, which leads me to find, on the balance of probabilities that the tenants were simply refusing to acknowledge the fines.

I find, on the balance of probabilities, that the tenants did know about the fines and that they chose to ignore requests made by the landlord, once it was discovered the tenants had not paid the fines in 2012. I find that the tenants have now been given a record verifying fines were imposed on the landlord in 2012, as a result of disturbances caused by the tenants. Therefore, I find that the landlord is entitled to compensation in the sum of $400.00 for strata fines.

Section 37 of the Act requires a tenant to leave a rental unit reasonably clean at the end of a tenancy. As the inspection report indicated what I find to be some minor areas that required cleaning. I find, from the evidence before me that the unit was left in a reasonably clean state, with the exception of those minor areas. Therefore, I find that the landlord is entitled to nominal compensation in the sum of $25.00; the balance of the claim for cleaning is dismissed.

From the evidence before me I find that at the end of the tenancy there was damage to the carpet. This was notated on the inspection report completed on October 1, 2013. The landlord made efforts to salvage the carpet, by having it cleaned and incurred that cost before accepting the carpet must be replaced. I find, on the balance of probabilities, that the carpet was replaced as the result of damage, beyond normal wear and tear, and that the landlord is entitled to compensation.

RTB policy suggests that carpet in a rental unit has an expected useful life of 10 years. Therefore, I find that the landlord is entitled to one-half of the sum spent on purchasing the new carpet. The balance of the claim for carpet is dismissed.

The tenants did not dispute the additional time it took to vacate and that the fee would be imposed. Therefore, based on this acknowledgment I find that the landlord is entitled to compensation for the $25.00 moving fee.

	Claimed	Accepted
Strata fine $200.00 X 2	$400.00	$400.00
Cleaning	189.00	25.00
Carpet	875.70	437.85
Move out fee	25.00	25.00
Damaged parkade door	1,200.00	withdrew
TOTAL	$2,689.70	$887.85

I find that the landlord's application has merit and that the landlord is entitled to recover the $50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $900.00**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $37.85**.** In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has leave to reapply in relation to the portion of the claim for damage to the parkade door. The parties are hoping to settle that matter.

Conclusion

The landlord is entitled to compensation in the sum of $887.85. The balance of the claim, with the exception of the parkade damage, is dismissed.

The landlord has leave to reapply in relation to the parkade door.

The landlord may retain the security deposit.

The landlord 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 29, 2013

Residential Tenancy Branch