Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The landlord and tenants attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed, and even though the landlord did not file his documentary evidence with his application for dispute resolution as required by the Dispute Resolution Rules of Procedure 3.4, or in a timely manner as required by section 3.5, the tenants raised no issue regarding service of the documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The landlord contended that he dropped off 11 photographs at a government agent's office on November 12; however the photographs were not in the hearing file or notated in the Residential Tenancy Branch ("RTB") system as having been delivered.

As noted above, the Rules state that any evidence must be filed as soon as the evidence becomes available; I therefore accept that the landlord's photographic evidence was not filed in accordance with the Rules, I did not allow the landlord time to submit the photographs again and they were not considered.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation and to recover the filing fee?

Background and Evidence

I heard undisputed evidence from the parties that this tenancy started on March 1, 2013, ended on August 1, 2013, when the tenants vacated the rental unit, monthly rent was $995, and the tenants paid a security deposit of $500, which is in excess of the amount allowed to be charged under section 19 of the Act.

The landlord is seeking a monetary award in the amount of $1531, comprised of the following:

Cleaning, 4 hours	$100
Yard cleaning, 10 hours	$250
Dump fees/Labour	$100
Carpet cleaning	$80
Drywall repair/Painting	$150
Front door and jam	$300
Chip out of bathtub	$350
Travel mileage	$169.40
Late move-out fee	$32
Total	**$1531**

The landlord's relevant documentary evidence included:

- A written tenancy agreement, listing tenant AL as the tenant and signed only by AL for the tenants
- A 2 page document entitled "Damage Report," dated February 24, 2013
- A 3 page document entitled "Damage Inspection," dated August 1, 2013 and unsigned by the tenants
- Copies of an extensive amount of text message communication
- Copies of registered mail receipts indicating that both tenants were served with the landlord's application for dispute resolution and Notice of Hearing letter

As to the many pages of text message, I note that the landlord failed to number the pages and it was not made clear who the recipients and senders were. Apparently the landlord supplied communication between these tenants and the subsequent tenants.

In response to my question, tenant GJ acknowledged that he was a co-tenant for this tenancy, even though his name does not appear on the written tenancy agreement and he has not signed the document.

The parties made the following oral submissions:

Cleaning of the rental unit-

The landlord submitted that he and his wife spent 4 hours cleaning the rental unit, as he expected the rental unit to be "move-in ready" for the next tenants, as this was the condition in which the tenants received the rental unit.

The tenants submitted that the rental unit was clean when they vacated, that the stove was cleaned and that the freezer was dirty when they moved in.

Yard cleaning-

The landlord submitted that the tenants were required to keep the grass cut before it reached 2 inches, and to maintain the gardens and pond space; however when the tenants left, the grass was knee length and the gardens and pond were untouched. The landlord submitted that the grass cutting, weeding, garden and pond cleanup required 10 hours by the landlord.

Tenant GJ asked the landlord to prove when he cleaned and mowed the grass, as he went back by the property after they vacated and the condition was the same. The tenant referred to the landlord's text messages.

The tenant also submitted that he asked the landlord if he could cut the grass himself, and was denied and the tenant submitted that the landlord failed to provide the tenants with a working lawnmower.

The landlord responded by stating that the pond was fixed on April 30, and heard no further complaints.

The tenant further responded by saying that the landlord knew at the beginning of the tenancy the pond was broken.

Dump fee/Labour-

The landlord submitted that this charge was for his labour in traveling to the dump, and did not have a bill for the same.

The tenant testified that there was some garbage left in the trash bin, and that dump fees were $10.

Carpet cleaning-

The landlord stated that he owns his own machine and that his labour was for $45 per hour and the machine use was $45. The landlord further submitted that the carpet was

new and that the tenants did not clean the carpets prior to departure. The landlord submitted that this item was mentioned on the move-out form.

In response, the tenant testified that they did vacuum and clean the carpet, and that there was dirt and "dust bunnies" on the stairs when they moved in.

The tenant said that there was no signature on the move-out form and that the landlord's girlfriend filled out the forms, not the landlord.

Drywall repair/painting-

The landlord stated that the tenants glued white board to the walls, which could not be removed, which will need to be repaired. The landlord estimated that the time involved will be 4 hours at $25 per hour, plus materials.

In response to my question, the landlord stated that he did not know the age of the drywall.

In response, the tenants submitted that tack board is $1 at the stores, and that they just left the board on the walls when they left. The tenants denied damage to the walls and that the space was ½" x ½'. The tenants further submitted that there are inexpensive kits for a repair such as this.

Front door and jam-

The landlord contended that the tenants damaged the front door and jam, which will cost about $200 for material and $100 in labour. The landlord confirmed that the work has not yet been done.

In response, the tenants said there were gouges on the front door due to people trying to break into the rental unit, and that they themselves had asked the landlord to make the repairs. The tenants said the illegal activities caused them to put a security video camera in at the residential property.

The landlord acknowledged that the tenants did ask for a repair, but that he was not allowed back into the rental unit.

Chip out of bathtub-

The landlord submitted that the tenants chipped the bathtub, and that he received a quote for repair of $350 from an out-of-town company.

The tenant testified that there was a very small chip, which was reasonable wear and tear, and that there were local companies who could make the repair for a lot less than the landlord's quote.

Travel mileage-

The landlord submitted that the tenants were to be moved out of the rental unit by 1:00 p.m. on the last day of the tenancy, scheduled to be July 31, but that they the parties made an appointment for a final "damage" inspection for 7:00 p.m.; however the tenants' belongings were still in the rental unit at that time. The landlord said that as they live out of town, they could not stay later, and left to go home as he had to go to work the next day.

In response the tenants submitted that they have moved out by 9:00 and that the landlord was still in town, as shown by the text messages.

Late fee for moving out-

The landlord submitted that due to the tenants moving out late, he incurred a cost for the delayed move by the next tenants, which was 1 day off the their first month's rent.

In response the tenant contended that they had the home ready by midnight and that the next tenants were waiting outside on August 1, ready to move in their belongings.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Cleaning of the rental unit; Yard cleaning; Dump fee/Labour; Carpet cleaning; Drywall repair/painting; Front door and jam; Chip out of bathtub-

A key component in establishing a claim for damage or cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Residential Tenancy Regulation #20 lists the requirements a condition inspection report must contain, including, but not limited to, the correct legal name of the landlord and tenant, the address for service for the landlord, the date the tenant is

entitled to possession of the rental unit, and a statement on the general condition and repair of each room of the rental unit.

In the case before me, I find the document supplied by the landlord, the "damage report," is deficient and does not meet the requirements of section #20 of the Regulations as the documents did not contain the above listed items. I therefore find I could not rely on the document to give an accurate assessment of the condition of the rental unit at the beginning of the tenancy, and I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. I therefore could not determine whether any alleged damage or repair by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repair at all by the tenants. I also considered that I did not have photographic evidence of the state of the rental unit either from the beginning of the rental unit or the end of the rental unit to make a proper evaluation of the claims and statements by the landlord.

As I could not rely on the documentary evidence of the landlord, the other evidence submitted was the disputed verbal testimony of the parties, which I find does not satisfy the landlord's burden of proof, as I did not find one party more credible than the other.

I also considered that the landlord's standard of a tenant at the end of the tenancy to be beyond the requirements of vacating tenants. At the end of a tenancy, the tenant is required to leave the rental unit reasonably clean, not move-in ready for the next tenant, pursuant to section 37(2) of the Act. I would expect that a landlord would have some amount of cleaning for the next tenant, and the claim here of the landlord, $100, suggests such a small amount of cleaning.

I was also persuaded that there was not sufficient proof that if the tenants were to be responsible for the yard mowing, that the landlord supplied a properly functioning lawnmower.

I also took into account that the landlord supplied no proof that he has incurred any expenses, such as with invoices, receipts, or cancelled cheques, with is the third step of his burden of proof.

Due to the lack of a compliant condition inspection report taken at the beginning of the tenancy, or other evidence, including photographs and the disputed verbal evidence of the parties, I find the landlord submitted insufficient evidence to support his claim for cleaning, yard cleaning, carpet cleaning, dump fees and labour, drywall repair and painting, the front door jam and chip in the bathtub and I therefore dismiss the landlord's monetary claim for each of these items, without leave to reapply.

Travel mileage-

As to the landlord's request for travel expenses, I find that the landlord has chosen to incur costs that cannot be assumed by the tenants. I do not find the tenants to be responsible for the landlord choosing to rent a property in another town apart from

where the landlord resides. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit. Therefore, I find that the landlord may not claim travel costs, as they are costs which are not named by the *Residential Tenancy Act.* I therefore dismiss the landlord's claim for $169.40, without leave to reapply.

Late move out fee-

Pursuant to section 57 of the Act, a landlord is entitled to compensation from a tenant who occupies the rental unit after the tenancy is over. In this case, the tenancy was to end on July 31, 2103, and the evidence indicates that the tenants did not vacate the rental unit until August 1. I therefore find the tenants were overholding in the rental unit and the landlord is entitled to compensation of 1 day of rent for August 1, or in this case, $32.71 ($995 monthly rent X 12 months = $11,940 ÷ 365 days = $32.71 daily rate.)

I find the landlord's application contained partial merit and I therefore award him reimbursement of a partial filing fee, or $25.

Due to the above, I find the landlord is entitled to a monetary award of $57.71.

The landlord is directed to retain $57.71 from the tenants' security deposit of $500 in satisfaction of his monetary award, and I order that he return the balance due to the tenants, in the amount of $442.49.

Pursuant to section 67 of the Act, I award the tenants a monetary order in the amount of $442.49, which I have enclosed with the tenants' Decision.

I note that the evidence suggests that the tenants paid a pet damage deposit of $250 and that this amount has been returned to the tenants. If this is not the case and the landlord continues to retain the pet damage deposit, the landlord is directed to return the pet damage deposit to the tenants immediately.

Conclusion

The landlord's application for monetary compensation is partially granted and he has been directed to retain that amount from the tenants' security deposit in satisfaction of his monetary award.

The tenants are granted a monetary order for the amount of $442.49, the balance of their security deposit.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: December 13, 2013

Residential Tenancy Branch