Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The female Landlord filed an Application for Dispute Resolution, in which she applied for a monetary Order for damage to the rental unit, for a monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that sometime in June of 2017 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The female Tenant acknowledged receipt of these documents.

The Tenants filed an Application for Dispute Resolution, which names both Landlords, in which they applied the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that sometime in June of 2017 the Tenants' Application for Dispute Resolution and the Notice of Hearing were sent to the Landlords, via registered mail. The female Landlord acknowledged receipt of these documents.

On November 02, 2017 the Landlords submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenants via registered mail on November 01, 2017. The female Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 03, 2017 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally delivered to the Landlords' mail box on November 03, 2017. The female Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 06, 2017 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlords via registered mail on November 06, 2017. The female Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 09, 2017 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlords via registered mail on November 09, 2017. The female Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 15, 2017 the Landlords submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was personally delivered to the Tenants' mail box on November 15, 2017. The female Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Is the female Landlord entitled to compensation for damage to the rental unit and/or unpaid utilities?
Should the security deposit be retained by the Landlord or returned to the Tenants?

Background and Evidence

The Landlord(s) and the Tenants agree that:

- the tenancy began on July 15, 2013;
- the Tenants paid a security deposit of $950.00;
- a condition inspection report was not completed at the start or the end of the tenancy; and
- the tenancy ended on February 25, 2017.

The male Tenant stated that when this tenancy ended he wrote his forwarding address on a condition inspection report that was left in the rental unit by the Landlord and he left the report in the unit on February 25, 2017.

The female Landlord stated that the forwarding address that was allegedly written on the condition inspection report was not located by the Landlord. She stated that the Landlords did not receive a forwarding address for the Tenants until June 08, 2017, at which time it was provided by email. The female Tenant acknowledged that a forwarding address was provided to the Landlords, via email, on June 08, 2017.

The Landlord is seeking compensation, in the amount of $400.00, for removing baby locks the Tenants had attached to cupboards in the rental unit. The female Landlord stated that she originally claimed $100.00 for these repairs but she increased the claim to $400.00 after her current tenants told them it would cost that amount to remove the locks. She stated that the locks have not yet been removed.

The Tenants contend that when this tenancy ended they were told they did not have to remove the baby locks and that they would have removed the locks if they had been asked to do so.

The female Landlord stated that the Tenants were not told that leaving the baby locks was acceptable.

The Landlord is seeking compensation, in the amount of $200.00, for repairing the walls in the rental unit. The female Landlord stated that the walls were in good condition at the start of the tenancy and that the Tenants installed approximately 40 large anchors in the wall during the tenancy. The Landlord submitted photographs of the wall anchors. The female Tenant stated that those photographs are examples of the holes in the wall but she did not take photographs of all the holes.

The female Tenant stated they installed approximately 6 wall anchors during the tenancy and that all of the other anchors were in the walls at the start of the tenancy.

The female Landlord stated that the Landlords spent approximately 8 hours repairing the holes in the wall and $142.75 in supplies. She stated that the receipts for supplies used to repair the walls are located on document 1A.

The Landlord is seeking compensation, in the amount of $100.00, for preparing the wall for painting in one of the bedrooms of the rental unit. The female Landlord stated that the wall in that bedroom had to be sanded and primed because the Tenants painted stripes on the wall which left ridges on the side of the stripes. She said that she spent approximately 5 hours sanding and priming this wall.

The female Tenant stated that the stripes were painted on the wall with the permission of the Landlord. The female Landlord stated that the Landlords consented to the Tenants painting the wall but they did not consent to painting stripes on the wall.

The Landlord is seeking compensation, in the amount of $50.00, for removing items that had become lodged in the central vacuum system during the tenancy. The Landlord submitted a photograph of an object lodged in the system. She stated that it took approximately one hour to clear the system because items were lodged approximately 12 inches into the piping.

The female Tenant stated that they were not aware the vacuum system was plugged and they would have cleared the piping if they had been made aware of the blockage.

The Landlord is seeking compensation, in the amount of $40.00, for clearing the laundry room sink drain which was draining very slowly and cleaning the sink, which was mouldy. The female Landlord stated that the washing machine drains into the sink drain; the drain appeared to be clogged with animal fur; that she used a chemical cleaning agent to clear the drain; and she spent approximately ½ hour clearing the drain and cleaning the sink. The Landlord submitted a photograph of the sink, which shows the sink requires cleaning.

The female Tenant stated that the washing machine drains into the laundry room sink drain; that the sink always drained slowly; and if the drain was clogged it was likely due to normal use of the washing machine.

The Landlord is seeking compensation, in the amount of $100.00, for cleaning the rental unit. The female Landlord stated that she originally claimed $50.00 for cleaning but she increased the claim to $100.00 after re-calculating the time she spent cleaning the unit. The female Landlord stated that she spent approximately 4 hours cleaning the unit at the end of the tenancy.

The female Tenant stated that the rental unit was left in clean condition at the end of the tenancy. She acknowledged that the areas depicted by the Landlord's photographs were overlooked during the cleaning process, but she contends it was otherwise left in clean condition.

The Tenants submitted a text from the female Landlord, dated February 25, 2017, in which she wrote: "Thx for leaving the house so clean".

The Landlord submitted photographs that show a cabinet needed cleaning, a bathroom vent needed cleaning, the oven needed cleaning, and the air vents needed cleaning. The female Landlord stated that she wrote the text dated February 25, 2017 before she noticed the areas that needed cleaning, as depicted by her photographs.

The Landlord is seeking compensation, in the amount of $357.00, for cleaning the ducts in the rental unit. This claim is based on the items in the air vents, as depicted in the Landlord's photographs. The Landlord submitted an invoice for duct cleaning.

The Tenants acknowledge that the air vents needed vacuuming at the end of the tenancy but they argue they should not be responsible for cleaning all of the ducts.

The Landlord is seeking compensation, in the amount of $987.00, for replacing the carpets in a closet and on the stairs and $80.00 for cleaning the carpets. The female Tenant stated that the carpets were cleaned at the end of the tenancy in an attempt to eliminate a strong odour of cat urine. The female Landlord stated that the carpet cleaning did not eliminate the odour so the carpets were replaced. She stated that the Landlords did not notice the odour on February 25, 2017 because the house was cold but the odour was detected after the heat was turned on in the rental unit.

The Landlords submitted an electronic message form the individual who replaced the carpet, in which he noted that he could "smell that awful pet urine" and could "clearly see underneath the carpet stains of it". The Landlords submitted an email from the tenant who moved into the rental unit on June 21, 2017, in which the tenant reported smelling a strong cat urine odour on the carpet.

The female Tenant stated that the carpet was not damaged by her cat and she did not notice an odour at the end of the tenancy. She notes that the electronic message from the person who replaced the carpet refers to "pet" odours and not specifically to cat odours.

The Landlord and the Tenants agree that there were dogs in the rental unit prior to the Tenants moving into the unit. The Tenants submit that the dogs from the previous tenancy damaged the carpet.

The female Tenant stated that they verbally reported an odour in the carpets at the start of the tenancy and they asked for new carpets. The male Tenant stated that they reported problems with the tenancy both verbally and in writing during the tenancy. The female Tenant stated that they did not report the carpet odour in writing and that they never followed up with their request for new carpets because the Landlords were thinking of selling the unit and they did not want to "ask for too much".

The female Landlord stated that the Tenants never mentioned a carpet odour until the end of the tenancy. She stated that the Tenants did not ask for new carpets; that they reported many issues in writing; and that they would have asked for new carpets, in writing, if there was an odour. The Landlords submitted examples of written communications the parties had regarding repairs at the rental unit.

On February 28, 2017 the Landlord sent the Tenants a text message, in which she informs the Tenants of the smell of urine. In response to this message the Tenants informed the Landlord that the house smelled of "smoke and dog" when they moved in.

The Tenants submitted copies of electronic messages from people who were in the rental unit prior to the start of this tenancy. One person declares that there was "an extreme smell of cigarette smoke and what I thought to be cat urine" at the time of their visit. Another person declares that there was "a foul and unbearable odour" and "although I am not able to say with certainty I believe the strong odour could have been as a result of cat urine and or feces".

The Landlord is seeking compensation, in the amount of $742.15, for unpaid utilities. The Tenants agree that the Landlord is entitled to compensation in this amount.

The Tenants submit that they vacated the rental unit early a few days early and that the Landlord should have given them additional time to fix any deficiencies with the rental unit.

The Tenants submit that they vacated early and permitted the new tenant to move in early on the understanding that they get an "okay with cleaning/damage deposit first". This information was conveyed to the Landlord via text message on February 24, 2017, which was submitted in evidence.

Analysis

Section 88 of the *Residential Tenancy Act (Act*) stipulates how a forwarding address can be provided to a landlord. Section 88(g) of the *Act* authorizes a tenant to serve a forwarding address by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord. I find that leaving it in the rental unit does not constitute service pursuant to section 88(g) of the *Act*, as the rental unit is not the Landlords' business address. I therefore cannot conclude that the Tenants served the Landlord with their forwarding address when they left it in the rental unit on February 25, 2017.

I find that there is insufficient evidence to establish that the Landlords received the forwarding address that was allegedly written on the condition inspection report and left in the rental unit on February 25, 2017. In reaching this conclusion I was heavily influenced by the female Landlord's testimony that it was not located and by my conclusion that it could have easily been located by the new occupants, who may have neglected to forward it to the Landlords.

Section 88 of the *Ac*t does not authorize a tenant to provide a forwarding address by email. On the basis of the undisputed evidence, however, I find that the Landlords received a forwarding address for the Tenants on June 08, 2017, via email. I therefore find that the forwarding address was received by the Landlords on June 08, 2017, pursuant to section 71(2)(b) of the *Act.*

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits. As I have concluded that the Landlords received the forwarding address on June 08, 2017 and the female Landlord filed her Application for Dispute Resolution on June 17, 2017, I find that the Landlords have complied with section 38(1) of the *Act.*

As the Landlords have complied with section 38(1) of the *Act,* I dismiss the Tenants' application for return of double the security deposit.

In adjudicating the claim for double the security deposit I find it irrelevant that the Landlords did not complete a condition inspection report at the start or end of the tenancy. Sections 24(2) and 36(2) of the *Act* stipulates that the Landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with sections 23(2) and 35(2) of the *Act.* As the Landlord has applied for compensation for unpaid utilities in addition to a claim for damage, I find that her right to make that claim has not been extinguished.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates 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. I find that the Tenants were obligated to comply with section 37(2)(a) of the *Act* on the date the unit was vacated, which was February 25, 2017. There is nothing in the *Act* that requires a landlord to request that damage be repaired or that requires a landlord to give a tenant additional time to make repairs after the unit was vacated.

I find there is insufficient evidence to establish that the Landlord agreed the Tenant did not have to comply with section 37(2)(a) of the *Act* on the basis that they were vacating the rental unit early. In the absence of clear evidence that the Landlord promised to return the security deposit and not pursue damages if the Tenants vacated early, I find that the Tenants remained obligated to comply with section 37(2)(a) of the *Act.*

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove the baby locks they had attached to cupboards in the rental unit. In the absence of that corroborates the Tenants submission that the Landlords told them the locks did not have to be removed or that refutes the female

Landlord's testimony that the Tenants were not told the locks could remain, I find that the Tenants were obligated to remove the locks.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of removing the baby locks. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's estimate that it will cost $400.00 to remove the locks. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present receipts or estimates from a qualified source. In the absence of evidence to show that the Landlord's current tenant has expertise in the construction industry, I do not consider a verbal estimate from that occupant to be a reliable estimate.

I find that the Landlord has submitted insufficient evidence to establish that there were no wall anchors in the wall at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's submission that there were no wall anchors in place at the start of the tenancy or that refutes the Tenant's submission that there were wall anchors in place at the start of the tenancy. As the Landlord has submitted insufficient evidence to establish that there were no wall anchors in place at the start of the tenancy, I cannot conclude that the Tenants installed all of the anchors.

On the basis of the female Tenant's testimony I find that the Tenants installed at least 6 wall anchors during the tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove the wall anchors and repair the wall, and I find that the Landlord is entitled to compensation for repairing the walls. As the Landlord estimates there were 40 approximately 40 wall anchors and the Tenants acknowledged responsibility for 6 of them, I find that the Tenants must pay 15% of the cost of repairing the walls.

On the basis of the female Landlord's testimony that the Landlords spent 8 hours repairing the walls, I find that they would have been entitled to the full amount of their claim of $200.00 if I had concluded that the Tenants were obligated to pay for repairing all of the holes in the wall. I find compensation of $25.00 per hour to be reasonable for labour of this nature. As I have concluded that the Tenants are only obligated to pay for 15% of the repairs, I find that they owe $30.00 to the Landlord for these repairs.

When a tenant makes changes to a rental unit the tenant has an obligation to restore the unit to its original condition at the end of the tenancy, unless the landlord consented to the change. In circumstances such as these, where the Tenants contend that the Landlord gave them permission to paint stripes on the wall, the onus is on the Tenants to establish that the Landlord gave that permission.

I find that the Tenants have submitted insufficient evidence to establish that they had permission from the Landlord to paint stipes on a bedroom wall. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that they had permission to paint stripes or that refutes the Landlord's submission that they did not have permission to paint stripes.

As the Tenants did not establish that they had permission to paint stripes, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to paint over the stripes on the wall. I therefore find that the Landlord is entitled to the full amount of her claim of $100.00 for the five hours she spent sanding and priming the wall. I find compensation of $20.00 per hour to be more than reasonable for labour of this nature.

On the basis of the undisputed evidence that the vacuum system was plugged with foreign objects, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to clear the blockages in the system. I find that the Tenants had an obligation to clear any objects that are too large for the vacuum system. I therefore find that the Landlord is entitled to compensation of $25.00 for the one hour the Landlords spent clearing the system. I find compensation of $25.00 per hour is reasonable compensation for labour of this nature.

On the basis of the undisputed evidence I find that the washing machine drains into the laundry room sink drain. I find that it is reasonable to conclude that the laundry room sink was draining slowly as a result of material that is introduced into the drain through normal use of the washing machine. In the absence of evidence that shows the Tenants introduced anything into the sink that was not intended to be disposed of through the drain, I find that material accumulating in the sink should be normal wear and tear, which the Tenants are not responsible for repairing. I therefore dismiss the Landlord's application for the cost of clearing the drain. The claim for cleaning the sink will be considered in the Landlord's general claim for cleaning the rental unit.

On the basis of the photographs submitted in evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when did not leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find the Landlord is entitled to $100.00 for cleaning the rental unit, which includes cleaning the laundry room sink, a cupboard, the oven, and venting.

In adjudicating the claim for cleaning I have placed limited weight on the text of February 25, 2017 in which the female Landlord thanked the Tenants for leaving the rental unit "so clean". I find that the photographs speak for themselves and that the Landlord's explanation that she sent the text before she noticed the areas that needed cleaning is credible and reasonable.

With the exception of vacuuming debris that has fallen into heating vents, I find that the Tenants are not responsible for cleaning heating ducts. Landlords are responsible for cleaning heating ducts on a regular basis. I therefore dismiss the Landlord's claim of $357.00 for cleaning heating ducts. The Landlord has already been awarded compensation for vacuuming out the floor vents.

On the basis of the testimony of the female Landlord; the electronic message from the person who replaced the carpet; and the email from the tenant who moved into the unit at the end of this tenancy, I find that there was a smell of pet urine in the carpet when this tenancy ended.

I find that the Landlord has submitted insufficient evidence to establish that the carpet did not smell of pet urine at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's submission that the carpet did not have an odour.

Conversely, I find that the electronic message from the person who declared that there was "an extreme smell of cigarette smoke and what I thought to be cat urine" at the time of their visit and the electronic message from the person who declared that there was "a foul and unbearable odour" and "although I am not able to say with certainty I believe the strong odour could have been as a result of cat urine and or feces", serve to corroborate the the Tenants' submission that the carpet had an odour at the start of the tenancy.

My decision that there is insufficient evidence to establish that the carpet did not have a pet odour at the start of the tenancy was further influenced by the undisputed evidence that there were dogs in the unit prior to the start of the tenancy. Given that there were pets in the unit prior to this tenancy, I find it entirely possible that the urine stains/smell were caused by those pets.

Even if I accepted the Landlord's testimony that the Tenants never reported that the carpet had an odour when this tenancy began, I could not conclude that this established there was not odour at the start of the tenancy. I find it entirely possible that some tenants are simply less sensitive to odours and would not, in that case, raise the issue with the Landlord.

As the Landlord has failed to establish that the carpet was odour free at the start of the tenancy, I find that she has submitted insufficient evidence to establish that the carpets were damaged by pets during the tenancy. As the Landlord has failed to establish that the carpets were damaged during the tenancy, I dismiss the Landlord's application for compensation for cleaning and replacing the carpets.

On the basis of the undisputed evidence I find that the Tenants owe $742.15 in unpaid utilities.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their claim to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed.

The Landlord has established a monetary claim, in the amount of $1097.15, which includes $130.00 for repairing walls, $25.00 for clearing the vacuum system, $100.00 for cleaning, $742.15 for utilities, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenant's security deposit of $950.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance $147.15. In the event the Tenants do not voluntarily 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 28, 2017

Residential Tenancy Branch