Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND-S, FF

Introduction

This hearing was convened in response to an application by the landlord made January 22, 2019 for a monetary order pursuant to a claim of damage to the unit against the security deposit as well as their filing fee.

Both parties attended the conference call hearing. There was no dispute in respect to service of the Notice of Hearing and application documents of this matter. Therefore, I am satisfied the tenant was served with the action against them in accordance with the Act. The parties provided affirmed/sworn evidence. The parties acknowledged exchanging evidence as provided to the proceeding, except for the Condition Inspection Report (CIR). The parties were provided with opportunity to mutually settle or resolve their dispute to no avail.

Preliminary matters – service of evidence

The tenant claims they have never been provided a copy of the CIR. The landlord testified they included a copy of the CIR with their hearing and evidence package by registered mail. The tenant testified that upon opening the registered mail they noted the absence of the CIR and on February 02, 2019 they e-mailed the landlord to send it by e-mail of which the tenant provided a copy into evidence. The landlord acknowledged receiving the e-mail however determined the tenants could view it online therefore did not respond. As a result, at the outset of the hearing some time was spent sharing the contents of the CIR received by the landlord. The tenant recollected signing the CIR and that they disagreed with the landlord's thinking about the functionality of the stove's electronic control panel.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed evidence is that the tenancy started May 01, 2018 as a fixed term tenancy with an effective end date of April 30, 2019, which however ended early by agreement on December 30, 2018.

The payable rent under the written tenancy agreement was $2600.00 per month. At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit in respective amounts of $1300.00 which the landlord retains in trust the amount of $2600.00. The landlord provided a copy of the tenancy agreement containing a one page addendum. The parties agreed that at the start of the tenancy the landlord's mother conducted a mutual condition inspection. The landlord claims they personally provided a copy of the CIR to tenant ZM sometime after the move in inspection; however the tenant denied this took place and that they have never received the CIR. The parties agreed that at the end of the tenancy they came together on December 30, 2018 and the landlord conducted a mutual condition inspection which they all signed and of which the tenant had limited recollection of the contents. The landlord claims the tenant did not provide a forwarding address at the end of the tenancy nor has ever provided it in writing; therefore they ultimately sought out the tenant's new addresses (1 per each tenant) on their own so as to file a claim for damage while retaining the deposits.

The landlord claims that the tenant left the rental unit carpeting unclean and did not have it cleaned in accordance with the tenancy agreement requiring the tenant to have the rental unit professionally cleaned upon vacating. The tenant testified they cleaned the carpeting themselves in several ways however agreed the carpeting was not professionally cleaned. The landlord claims $160.00 for carpet cleaning however absent a supporting receipt.

The landlord claims that 2 days after the move out inspection they experienced a clogged toilet of the master bedroom. The landlord provided an invoice from a plumber dated 3 days after the move out condition inspection which states the toilet was clogged

by "*a large paper towel ball*". The invoice was in the amount of $157.50. The parties agreed that during the move out inspection the landlord tested only the main bathroom toilet and not the toilet of the master bedroom. The landlord testified it was an oversight. The tenant testified they did not cause the toilet to become clogged and argued the landlord may not claim damage found after the move out inspection. The landlord testified the clogged toilet could only have been the tenant's doing.

The landlord claims the cost to replace an *electronic touch control panel* for the oven on the gas range of the unit in the amount of $536.40. The landlord testified the range is 10 years old along with the rental unit and that the repairperson servicing the range stated in their invoice note, *"On and off buttons damaged, most likely caused, by using excessive force when operating the oven."* – as written. The landlord testified they were solely relying on this notation to support that the tenant is responsible for the panel's replacement. The tenant testified they rarely used the oven during their 8 month tenancy, and had alerted the landlord of the oven's deficient panel operation in October 2018. The tenant provided undisputed testimony that aside from the on and off buttons the oven touch panel functioned normally.

The landlord claims the cost to replace the entire living room engineered hardwood flooring in the total amount of $3791.08, inclusive of $350.00 for baseboards not included in the submitted estimate (*proposal*) of $3441.08 (for a quoted 211 square feet of flooring). The tenant's undisputed testimony is that they left the room's window open for the sake of their dog during a late afternoon and evening of rainfall, and as a result incoming rainwater resulted in some surface discrepancy in approximately 4 square feet of the flooring panels near the window. By their document evidence and undisputed testimony the tenant claims that rainwater had entered the same area of the floor prior to the tenancy, that the landlord had "lived with the problem" during their own occupation of the unit, and that the landlord's mother had alerted them to the fact that water could enter through the window and their method of mitigating the problem. The tenant testified that after their rainwater episode they placed a window air conditioning unit in the window to mitigate future water ingress. The landlord and tenant each provided a photo image of the claimed floor issue adjacent to the window. The landlord's image appears to show soft darkening of the panels as if moist. The tenant's image appears to show no darkening, however some pronounced spacing between

some panels are noticeable. The landlord testified they have not acted on the submitted estimate for floor replacement.

The sum of the landlord's monetary claim is $4644.98.

Analysis

*A copy of the Residential Tenancy Act, Regulations and other information are available at **www.gov.bc.ca/landlordtenant**.*

Under the Act, a party claiming losses bears the burden of proof on a balance of probabilities. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the test established by Section 7 is as follows,

1. *Proof the loss exists,*
2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement.*
3. *Verification of the actual amount required to compensate for the claimed loss.*
4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Therefore, proving a claim in damages requires establishing that the damage or loss occurred and was not instead a loss due to reasonable wear and tear. That the damage or loss was a result of a breach of the tenancy agreement or *Act; and,* verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate or minimize their loss.

I find the tenant agreed they did not have the carpeting professionally cleaned as per the contracted tenancy and effectively conceded to the landlord's claim of **$160.00**; which as a result I award the landlord.

I disagree with the tenant's premise that damage found after the move out inspection may not give rise to a claim for compensation. In this matter the landlord tested one toilet during the move out inspection but not the other. I have no evidence to suggest the landlord was neglectful in this task. I accept the landlord's testimony it was an oversight. But moreover, on a balance of probabilities, I prefer the overall evidence of the landlord in finding that the toilet clog likely occurred during the tenant's possession of the unit. As a result I award the landlord their claim for the cost of the plumber's service in the amount of **$157.50.**

In respect to the landlord's claim for replacement of the *electronic touch control panel* for the oven, I find on preponderance of the evidence that the landlord has not provided sufficient evidence that this loss was the result, solely, of the actions or conduct of the tenant. As a result I **dismiss** this portion of the landlord's application, without leave to reapply.

I accept the undisputed evidence of the tenant that the water ingress occurrence near the living room window, after the window was left open, was a known issue to the tenant prior to and during the tenant's occupation. I accept from the landlord's testimony that the engineered flooring of the unit as likely 10 years old. **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements - Finishes** states that the useful life of *hardwood, parquet* flooring is 20 years. I find the evidence in this matter is that the rental unit flooring is not hardwood, but rather engineered flooring with a hardwood finish. Therefore, it would be reasonable to assign a useful life to the landlord's flooring of less than 20 years. I find that even if I were to accept the landlord's claim on application the mitigated or minimized value of the claim would be reduced or depreciated to less than half the landlord's claim for replacement of the living room flooring. But moreover the calculation for this claim is that indeed some loss exists. I find that the landlord has not sufficiently proven the loss was the result, solely, of the actions of the tenant, however I find that the tenant by their conduct certainly contributed to a greater loss of the floors value in this matter and that it was not available to them to do so despite any previous damage. In the absence of a paid invoice, I am not wholly satisfied that a sole estimate is a sufficiently mitigated representation of the value of the loss. Therefore, in this matter I find that reasonable compensation *is an amount representing a devaluation* of the 10 year old flooring

resulting from damage by the tenant to a fraction of the total square footage of the room, which I set at **$100.00**, without leave to reapply.

I find that the landlord was statutorily obligated to provide the tenant with a copy of the Condition Inspection Report within 7 days of completing the *move in* inspection. In the face of contrasting evidence by the tenant they were not personally given a copy as claimed by the landlord I find the onus was on the landlord to prove they did so, however they have not satisfied this burden of proof. As a result, I find that pursuant to **Section 24** of the Act the landlord's right to make a claim against the security deposit or pet damage deposit was extinguished. Therefore being precluded from making an application claiming against the deposits the landlord was obligated to repay the deposits within 15 days of receiving the tenant's forwarding address *in writing* as stated by **Section 38(1)** of the Act. I have not been presented with evidence in this matter that the tenant provided the landlord with a forwarding address *in writing*. I find that the doubling provisions of **Section 38(6)** of the Act state they apply if the landlord fails to comply with the requirements of **Subsection 38(1)** of the Act. Therefore, solely the *original* deposits of the tenancy will be off-set from the awards made herein. As the landlord has in part been successful in their application they are entitled to recover their filing fee. Calculation for a Monetary Order is as follows:

Carpet cleaning	$ 160.00
Plumber's invoice – clogged toilet	157.50
Oven electronic touch control panel	0
Flooring devaluation	100.00
Filing fee	100.00
Less - *sum of tenant's deposits held in trust*	*-2600.00*
Monetary Order to tenant	**($2082.50)**

I Order the landlord may retain **$517.50** of the tenant's security deposit in full satisfaction of their award, and return the balance, along with the pet damage deposit in its entirety, in the sum of $2082.50, forthwith. To perfect my Order,

I grant the tenant a **Monetary Order** under Section 67 of the Act for the amount of **$2082.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord's application has been granted in the above terms.
The tenant is given a monetary order in the above terms.

This Decision is final and binding.

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: April 17, 2019

Residential Tenancy Branch