Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S, MNDCL-S

Introduction

The landlords seek compensation against their former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act").

The landlords filed an application for dispute resolution on August 28, 2020 and a hearing was held at 9:30 AM on December 1, 2020. One of the landlords, and the landlords' agent, attended the hearing; the tenant dialled into the hearing at 9:52 AM, explaining he had difficulties with the access codes. All parties were given a chance to testify and to make submissions. No issues of service were raised by the parties.

Preliminary Issue: Maximum Amount of Monetary Claim

The landlords' Monetary Order Worksheet indicated that their claim was $42,491.12. As per section 58(2)(a) of the Act, the maximum amount that may be claimed under the Act is $35,000. After briefly discussing this preliminary issue with the landlords' agent, he indicated that he was abandoning the claim of $7,000 for lost rental revenue and understood that whatever amount was awarded for the remaining claims might be reduced to bring the claim down to $35,000.

Issue

Are the landlords entitled to some or all of the amount claimed? And, if so, are they entitled to retain the tenant's security deposit as part of any amount awarded?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on February 2, 2020 (the landlord remarked that the tenant moved in on February 3) and the tenancy ended on August 28, 2020. Monthly rent was $3,500 for a fully furnished 5-bedroom 5-bathroom “million-dollar home with a lakeview.” The tenant paid a security deposit of $1,750.00, which the landlords currently hold in trust pending the outcome of this dispute.

The landlords’ claim is for compensation related to the tenant’s alleged damage to the house (“rental unit”) which required replacing hardwood floors and carpets, repairs made to walls and a ceiling, and painting. A breakdown of costs claimed are as such: (1) hardwood flooring removal of $7,355.25; (2) hardwood flooring purchase of $8,983.76; (3) hardwood installation of $4,630.50; (4) carpet replacement and installation of $8,116.61; (5) drywall and ceiling repairs of $840.00; and (6) painting costs of $5,565.00. Copies of receipts and invoices for all amounts were in evidence.

Submitted into evidence were dozens of photographs taken of the rental unit at the end of the tenancy. An extensively documented Condition Inspection Report was also submitted into evidence. In addition, a 128-page inspection report was submitted; this report was completed by a third-party property restoration company, and the first page states that

> In our opinion, there is not a square foot in this [4300 square foot] house that has not been damaged in some way.
>
> • Foul smell in all rooms, especially the garage.
> • Urine stains throughout on carpets/rugs.
> • Extensive scratches all over the wood floors.
> • All walls in every room and baseboard and trim have been marked, scuffed, damaged.
> • Pin holes on walls.
> • Animals have chewed baseboard, furniture, doors, toe kicks.
> • Patios need to be pressure washed.
> • Animal feces throughout.
> • Rotting garbage piled around the house.
> • Toilets filthy and stained.
>
> [. . .]
>
> • Holes in ceiling in media room.
> • Cable/electrical box outside house has been vandalized.
> • Evidence of cigarette smoking in the home.

The landlords' agent testified that the hardwood is engineered hardwood and was installed in 2006. The carpet is approximately two years old and was in "mint" condition at the start of the tenancy. In answer to my question about when the rental unit was last painted, the agent said that it was done just before the tenant moved in.

In his testimony, the tenant said that after the pandemic began, he started being late with rent, and the landlords started showing up at the property three or four times a week to conduct inspections. He questioned whether the landlord had receipts showing when the carpets were put in, and whether it was only two years ago; he remarked that the carpets were probably about ten years old. As for the hardwood floors, he stated that the scratching was "surface scratches and easily refinished." Yes, he acknowledged, there were pinholes, but he had planned on making the place his own. Regarding the damage to the ceiling, he explained that there had been a projection TV mount in the ceiling, but that he had to move it closer to the wall, hence the damage.

The tenant disputed the landlords' claim in general and argued that "they're trying to get a brand-new house." He added that the furnishings were something one would get from Value Village. "Low quality furniture for a low-quality house," he added. The tenant referenced the existence of a 30-year-old tube TV in the basement.

In rebuttal, the landlords' agent said that the scratches were so extensive that they went through the "wear layer." Once that happens, a simple refinishing is no longer an option and the floors must be replaced. The agent testified that he obtained the opinion of three flooring experts regarding this issue. Further, the carpets were not ten years old, but were in "brand new condition" or "mint" when the tenant took occupancy.

The landlord and tenant did not say anything else after I asked each of them if they had any final thoughts or submissions; I concluded the hearing ended at 10:10 AM.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act or a tenancy agreement the non-complying party must compensate the other for resulting damage or loss. Further, a party claiming compensation must do whatever is reasonable to minimize the damage or loss.

First, the basis for the landlords' claim will flow from a proven breach of section 37(2) of the Act, which requires a tenant vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Taking into consideration all the oral testimony of the landlord and the landlords' agent, the information contained in the Condition Inspection Report, the documentary evidence contained in the 128-page third party property restoration report, the dozens of photographs of the rental unit, along with 26 videos, I find that the tenant did not leave the rental unit reasonable clean and undamaged except for reasonable wear and tear. Having looked at the photos of the hardwood floors, I am not persuaded by the tenant's argument that the scratches are simply surface scratches.

I consider the application of section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, which states that in dispute resolution proceedings

> a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Thus, based on the evidence before me, I conclude that the tenant breached section 37(2) of the Act, which may result in damages being awarded.

Having found that the tenant breached the Act, I must then determine whether the landlords' loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, but for the tenant's negligence and breach of the Act the landlords would not have suffered loss and damage.

Next, the landlords have, I find, proven the dollar amounts claimed by way of documentary evidence in the form of invoices and receipts, and the agent confirmed each of these amounts with the supporting documentation. Prima facie, then, the landlords have established the amounts claimed. The amounts are, I find, reasonable, and based on the agent's testimony regarding doing some of the work himself (for example, picking up and carrying the hardwood flooring supplies) I conclude that the landlords have mitigated their losses to a reasonable extent.

As mentioned to the parties during the hearing, depreciation must also be considered and, where applicable, applied to the specific building elements for which compensation is being sought. This depreciation cannot be waived or unaccounted for even when something is described as "mint" or "brand new," unless the building elements is in fact brand new. While depreciation may be somewhat subjective, in the absence of any conclusive evidence to the contrary I apply *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements.* This policy guideline outlines the useful life in years for various building elements.

For the claim related to the two-year-old carpet, which has useful life of 10 years according to the policy guideline, the amount must be reduced by 20%. Thus, the amount awarded for the carpet is a reduce amount of $6,493.29.

For the claim regarding the hardwood floors, the policy guideline refers to "Hardwood, parquet," which it should be noted is not the same as engineered hardwood floors. As a homeowner myself, and one who has previously lived in homes having both engineered and traditional hardwood flooring, such floors are commonly known to have 50-year useable lifespans. The flooring in this rental unit was, according to the landlord, installed when the house was built in 2006. Thus, a total of 14 years has elapsed since the hardwood floors were installed, which results in a depreciation of 28% based on an anticipated lifespan of fifty years. In applying this depreciation to the total amount of the claims related to the flooring ($20,969.51) the reduced amount awarded is $15,098.05.

In respect of the claim for drywall and ceiling repairs, there is no reference to lifespan within the policy guideline and as such I apply no deprecation to the claim of $840.00 for drywall and ceiling repairs.

In respect of the painting costs claimed, the policy guideline refers to a 4-year useful life for interior paint. The landlord and the agent testified that the rental unit was "painted just before the tenant moved in" and as such I apply no depreciation to the claim of $5,565.00.

Taking into consideration all of the oral testimony and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for the above-noted damages and are thus awarded compensation in the amount of $27,996.34

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security deposit if “after the end of the tenancy, the director [the arbitrator] orders that the landlord may retain the amount.”

Applying this section of the Act, I order the landlords to retain the tenant’s security deposit of $1,750.00 in partial satisfaction of the above-noted award. The balance of the award of $26,246.34 is granted by way of monetary order. This order is issued in conjunction with this decision to the landlords.

Conclusion

The landlords’ application is hereby granted.

I grant the landlords a monetary order in the amount of $26,246.34. A copy of the order must be served on the tenant. If the tenant fails to pay, then the landlords may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: December 1, 2020

Residential Tenancy Branch