Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

In this dispute, the landlords seek compensation for cleaning and damage to the rental unit pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). In addition, they seek recovery of the filing fee pursuant to section 72 of the Act.

The landlords filed an application for dispute resolution on June 14, 2020 and a dispute resolution hearing was first held on October 5, 2020, and then adjourned to December 10, 2020. One of the landlords and both tenants attended the second hearing. Both parties were given the opportunity to provide oral testimony and make submissions.

Issues

1. Are the landlords entitled to any or all of the compensation claimed?
2. Are the landlords entitled to recovery of the filing fee?

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 in this dispute began on May 1, 2018 and ended on May 31, 2020. Monthly rent was $1,700.00 and the tenants paid a security deposit of $850.00, which the landlords currently hold in trust pending the outcome of this application.

The landlords seek compensation for various costs related to the painting and cleaning of the rental unit, along with a replacement kitchen tap. A Monetary Order Worksheet was submitted into evidence on June 14, 2020 and the total amount claimed is $1,320.29. It should be noted that during the hearing, the landlord referenced another Monetary Order Worksheet, on which the total was $1,817.94.00.

However, I was unable to locate this worksheet during the hearing and thus did not hear anything but the briefest of references to two additional claims for a replacement crisper drawer and a repair of a cracked tile which were on the second, but not the first, Monetary Order Worksheet. Also included in the landlords' evidence is an amendment application, which is required when amending a monetary claim. I will address those claims at a later point in this decision.

The landlord testified that a Condition Inspection Report (the "Report") was completed both at the start of and at the end of the tenancy; a copy of the Report was submitted into evidence. Also included in the landlords' evidence were numerous photographs of the rental unit. In his testimony, the landlord largely repeated and summarized what was included in their application for damages, namely:

> Upon move-out, there was extensive damage to almost all walls of our townhouse, caused by attempts by tenants to cover up areas of extensive wall hangings, etc. The result was heavy paint brush/roller marks all over the walls that were an eyesore and required repainting to repair. The unit needed recleaning as well. There was also damage to other areas of the ceiling and walls that required filling the damage and repainting. Damage also to kitchen faucet, appliances [. . .]

The kitchen faucet was purportedly replaced by the tenants during the tenancy. This faucet was "causing problems" for the people who moved in after this tenancy ended, and thus it needed replacing at a cost of $320.14. The problem was that the "spray wasn't working." The landlord did not know how old the faucet was when the tenants moved into the rental unit, nor could he recall the brand or type.

Regarding the painting, the landlord testified that "a few walls" had to be painted, and this cost $885.15. He further testified that the walls were probably painted just before the tenants took occupancy. Finally, regarding the cleaning cost of $175.00, the landlord testified that this was primarily for areas not cleaned adequately by the tenants' cleaners.

The tenants' testimony started largely having to do with the amount of money they paid to the landlords, including upfront rent payments and the security deposit. According to the tenants, one of the landlords told the tenants that the house would be painted around the time or just before the tenants moved in. When the tenants arrived at the house, it was not painted. Rather, the interior paint was uneven in many places, and that it had different sheens.

Regarding the faucet, the tenants testified that they did, in fact, replace the kitchen faucet because there was a smell under the sink and there was mold present. It was a no-spray faucet and so they replaced it “with a better faucet.”

In respect of the cleaning, the tenants testified that they “knew it was likely that there would be a problem [with the landlords]” so they hired a reputable cleaning company who, with a team of two, spend in excess of 10 hours cleaning the rental unit. According to the tenant D.F., the team “missed one thing” and that it what the landlords seek compensation for.

At the conclusion of their testimony the tenants spoke of being tired of being ripped off, and that they were “people of integrity” who want to stand up for their rights. In his final submission, which was brief, the landlord said that they dispute this matter for a reason, and that they are entitled to the compensation claimed.

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

Section 37(2) of the Act states 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.

A completed Condition Inspection Report, and in some cases photographs and video, is the evidence that an arbitrator must consider when a landlord claims that a tenant breached section 37(2) of the Act, from which a claim for compensation may flow.

Section 21 of the *Residential Tenancy Regulation* 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.

In this dispute, the Report references the kitchen tap to be in “Good” condition at the start of the tenancy, whereas it is marked as “DIRTY, DAMAGED” at the end of the tenancy. Almost all of the walls are marked as “Good” at the tenancy’s start whereas they are marked various as “Damaged” at the tenancy’s end. The refrigerator crisper drawer is marked as “Good”, and then “CRACKED.” Many other areas of the rental unit are marked as “DIRTY.”

Photographs of the walls, the faucet, and the cracked refrigerator door were submitted into evidence. There were no photographs of the cleaning that purportedly needed to be done. The tenants also submitted numerous photographs, although the resolution quality was such that they could not be used to assess painting issues with the walls.

I note that there is no indication on the Report that either party believed or thought that there was anything wrong with the walls when the tenancy began. However, the landlords note that the walls show different flashes and sheens at the end of the tenancy. Their photographs are evidence of this. And, while the tenants dispute this, and testified that the walls were basically like that at the start of the tenancy, there is no evidence that this was the case.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenants have failed to establish their version of what the walls looked like at the start of the tenancy.

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords has met the onus of proving their claim for compensation related to painting the walls. The amount of $885.15 is a reasonable amount, it has been proven through an invoice which is in evidence, and the landlord testified that it is a sub-trade painting, meaning that the cost of painting is therefore mitigated (versus

contracting a regular, professional painter which usually cost more). I therefore award the landlords this amount.

Regarding the faucet, the Report indicates that the faucet was damaged, and the photograph of the faucet shows that the nozzle dangling below the tap. I find that this is evidence of a damaged faucet. In addition, the landlord remarked that the new tenants were having problems with the faucet. That said, the tenants testified that they installed the faucet because the original faucet “didn’t work properly” and had created a mold issue under the sink. It does not strike me as sensible or reasonable, from either a monetary or a practical perspective, that the tenants would have simply replaced the original faucet and tap because they wanted a new one. It strikes me as a necessary step in stopping the mold. Thus, the “damaged faucet” to which the Report refers, and the photograph depicts, cannot be considered to be the original faucet. Ultimately, it would seem that one damaged or faulty faucet was replaced with another faulty faucet.

Given the above, I am not persuaded that the landlords have established a claim for damages relating to what was already a damaged faucet. Accordingly, this aspect of their claim is dismissed without leave to reapply.

Regarding the cleaning, the Report indicates many areas of the home that were dirty. Neither party produced any photographs (or photographs of satisfactory resolution or quality) showing the quality of the tenants’ cleaning team’s efforts. Thus, I am left with the evidence that is recorded on the Report. In addition, there is a reference in the cleaner’s notes, which were in evidence, of the following:

> Hi [landlord], Nothing was cleaned up to our standards.
>
> -Bathrooms:
> tubs, faucets, shower head, toilets, inside cabinets and drawers
> -Kitchen: walls, sink, faucet, fridge handle, top of fridge, inside of cabinets and drawers, cabinet fronts, bottom side of upper cabinets, stove rings, knobs, oven door
> -Hand prints and dust on doors throughout unit
> - Switch plates
> - Air intake grille
> - Washer and dryer
> - Cobwebs in high areas
> - Window sills
> - Closet doors

Taking into consideration all the oral testimony and 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 cleaning costs in the amount of $175.00.

Regarding the cracked crisper drawer, I note that the photograph of the manufacturing sticker for the refrigerator shows a manufactured date of 08-06, and the serial number is BA63301055. Which, based on the serial number codes for Electrolux appliances, puts the manufacturing date at 2006. The refrigerator was thus already 12 years old at the time the tenancy started, and the tenancy lasted just over 2 years.

The crack that appears on the crisper drawer, I find, attributable to reasonable wear and tear. Certainly, there was little testimony from either party on this particular aspect of the landlords' claim. However, plastic crisper drawers of the type depicted do not, from my own experience as a homeowner and frequent user of our family refrigerator, withstand the test of time particularly well. As such, I am not inclined to grant compensation for this specific claim.
Finally, while I did not hear any testimony regarding the claim for a cracked tile (the amount sought was $288.84), I note that there was no receipt for costs claimed or losses incurred. Rather, there was only an estimate for this amount.

Based on the fact that I did not hear evidence from either party regarding this particular claim, notwithstanding that no evidence of an actual loss borne by the landlord was submitted into evidence, I dismiss this specific claim *but do so with leave to reapply.* That is to say, the landlords are at liberty to reapply seeking compensation for this particular aspect of their claim for compensation.

As the landlords were successful in their application with respect to two claims, I grant them $100.00 in compensation for the filing fee under section 72 of the Act.

In summary, I grant the landlords are awarded a total of $1,160.15 (comprising $885.15 for painting, $175.00 for cleaning, and $100.00 for the filing fee).

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain the tenants' security deposit of $850.00 in partial satisfaction of the above-noted award. The balance of the award is issued by way of a monetary order in the amount of $310.15.

Conclusion

I grant the landlords' application, in part.

I grant the landlords a monetary order in the amount of $310.15 which must be served on the tenants. Should the tenants fail to pay the landlords the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia.

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

Dated: December 10, 2020

Residential Tenancy Branch