Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications between the parties.

The Landlord submitted an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenants submitted an Application for Dispute Resolution, in which they made application for a monetary Order for the cost of emergency repairs and for the return of damage to the rental unit, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

There was insufficient time to complete the hearing on March 26, 2009, so the hearing was reconvened on March 27, 2009. Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions and to make submissions to me.

The Landlord attempted to introduce evidence that was not served on the Tenants, which the Tenants sought to exclude from the hearing. The Landlord stated that he was unable to serve his evidence on the Tenants, as they did not provide him with a forwarding address. The Landlord noted that the Tenant used the rental unit as their "service address" when they submitted their Application for Dispute Resolution on January 28, 2009. He also submitted a package that was mailed to him by the Tenants, on which the Tenants provided the rental unit as their return address. The tracking number on the package indicates that this envelope was mailed on January 29, 2009.

The male Tenant stated that they wrote a forwarding address on the Condition Inspection Report that was completed at the beginning of the tenancy. He acknowledged that this address was provided at the beginning of the tenancy, although he contends that the Landlord knew, or should have known, that this was his forwarding address.

I find that the Landlord properly served the documents related to this hearing by mailing it to the address that the Tenant's identified as their service address on their Application for Dispute Resolution. The Landlord submitted a copy of a Canada Post receipt, with tracking number, that shows that a document was mailed to the Tenants at the rental unit on February 12, 2009, but was not claimed.

I find that this is the most recent service address that was provided to the Landlord. I find that the Landlord was under no obligation to serve the Tenants at the forwarding address they provided at the beginning of the tenancy, as the information on the Application for Dispute Resolution, which is more recent, directed him to serve them elsewhere.

I find that the Tenants erred when they provided the rental unit as their service address without making arrangements to have it forwarded by Canada Post. On this basis, I will admit the evidence provided by the Landlord, as I find that the Tenants were the masters of their own fate when they did not provide a proper service address to the Landlord.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to a monetary order for damage to the rental unit; for a monetary order for unpaid rent; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenants' Application for Dispute Resolution, are whether the Tenants are entitled to reimbursement for staying offsite while repairs were being made to the rental unit and to the return of all or part of the security deposit.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on April 19, 2008; that they had a tenancy agreement that required the Tenants to pay monthly rent of $1,000.00; and that the Tenants paid a security deposit of $1,000.00 on August 19, 2008. I note that the legislation only authorizes the Landlord to collect a security deposit that is half of the monthly rent, which in these circumstances is $500.00.

The Landlord and the Tenants agree that their written tenancy agreement requires them to pay their rent on the first day of each month. The female Tenant stated that the parties had a verbal agreement that they could pay their rent on the fifth day of each month and that they provided the Landlords with post-dated cheques for the fifth day of each month. The Landlord agrees that he was provided with post-dated cheques for

the fifth day of each month, although he stated that he accepted those cheques only because he believed he did not have any other option.

The Landlord and the Tenants agree that a Condition Inspection Report was completed at the beginning of this tenancy, a copy of which was submitted in evidence. The parties agree that the Tenants provided the Landlord with the forwarding address that is noted on the Report at that time.

The Landlord and the Tenants agree that the rental unit was rendered inhabitable on December 17, 2009 when there was a flood that originated from a suite above this unit. The parties agree that the Landlord was not responsible for the flood that occurred. The parties agree that the Tenants moved into a hotel for several days and that they returned to the rental unit on December 26, 2009.

The Landlord and the Tenants agree that this tenancy was the subject of dispute resolution hearing on January 02, 2009, at which time the Tenant indicated that they wished to remain in the rental unit until January 31, 2009, and the Landlord was issued an Order of Possession for that date.

The Landlord and the Tenants agree that the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on January 02, 2009, even though he was in possession of a post-date cheque for January 05, 2009. The parties agree that the Tenants cancelled their post-dated cheque for rent for January and that the Tenants vacated the rental unit on January 06, 2009.

At the beginning of the second hearing, the Landlord initially stated that he completed a Condition Inspection Report, in the presence of the male Tenant, on January 06, 2009. He stated that the male Tenant would not sign the report. He stated that the male Tenant did not tell him that he could mail the security deposit to the forwarding address that had been provided at the beginning of the tenancy. At a later point in the second hearing the Landlord stated that he completed this report on January 12, 2009.

The male Tenant stated that he was present on January 12, 2009 when the Landlord completed the Condition Inspection Report. He stated that he did not sign the report because he did not agree with the content of the report. He stated that he told the Landlord at that time that he could use the forwarding address on the Condition Inspection Report for the purposes of returning the security deposit.

The female Tenant stated that they vacated the rental unit on January 06, 2009 because they believed the rental unit was uninhabitable. She stated that she believed the rental unit had not been sanitized, as she observed sewage on the floor.

The Landlord stated that the rental unit was sanitized prior to the Tenants returning; that the tiles were removed from the bathroom; that a few tiles were removed from the

hallway; and that a small portion of the hardwood flooring had been removed. He agrees that these areas had not been repaired by December 26, 2008, although he contends that the rental unit was habitable. He stated that all of the repairs have now been completed.

The Tenants submitted photographs of the rental unit that both parties agree represented the condition of the rental unit when the Tenants moved back into the rental unit. It shows a small amount of tiles missing from the hallway and the flooring covering missing from the bathroom. In my view, the photographs do not indicate that the rental unit is dirty or uninhabitable.

The Tenants wished to call a witness to verify that the rental unit was uninhabitable when they returned on December 26, 2008, although she acknowledged that this witness had not viewed the rental unit after the rental unit had been allegedly sanitized. As this witness would not be able to give evidence relative to the condition of the rental unit after it had been cleaned, the Tenants were not permitted to call this witness, as I concluded that the witness would be unable to provide information that would help to establish the condition of the rental unit on December 26, 2008.

The Landlord is claiming compensation, in the amount of $1,000.00, for the rent from January.

The Landlord is claiming compensation, in the amount of $15.00, for an NSF fee that he incurred after the Tenants cancelled their post-dated cheque for rent from January. The Landlord did not submit any evidence to show that he was charged an NSF fee.

The Landlord is claiming compensation, in the amount of $35.00, for an administrative fee for processing the NSF cheque that was tendered for rent from January.

The Landlord is claiming compensation, in the amount of $258.72, for the cost of cleaning the rental unit. He submitted photographs that he stated were taken at the end of the tenancy, which indicated that there were some areas in rental unit that were dusty, that the stove had not been cleaned, that the dishwasher had not been wiped, that the area behind the fridge had not been cleaned, and the deck had not been swept.

The male Tenant stated that they thoroughly cleaned the rental unit, although he acknowledged that they did not have time to clean the stove. The Tenants submitted photographs the show the rental unit was left in reasonably clean condition, albeit the photographs are taken from further away than the photographs presented by the Landlord. The Tenants did submit a photograph of the oven, which shows that it had not been cleaned.

The Condition Inspection Report that was completed at the end of the tenancy, in the absence of the Tenants, indicates that several areas of the rental unit had not been

cleaned. The veracity of this report is questionable, as it indicates that the refrigerator and freezer are dirty, yet the photographs of the refrigerator and freezer that were submitted by the Tenants show that they are very clean.

The Landlord submitted a bill from The Maids Home Services, which indicates that he paid $258.72 to have the rental unit cleaned. The male Tenant argued that the bill is not credible due to the fact that the Landlord owns this company. The Landlord acknowledged that he is a principle in the cleaning company.

The Landlord is claiming compensation, in the amount of $12.00, for replacing 4 light bulbs that were missing from a fixture in the hallway and some spare bulbs that were left in the rental unit. The Tenant denies removing the light bulbs from the hallway fixture and he denies taking spare light bulbs that belong to the Landlord.

The Landlord is claiming compensation, in the amount of $392.00, for repairing holes in the walls that were made by the Tenants. The Landlord stated that the Tenants stapled a cable over the fireplace, a photograph of which was submitted in evidence. He submitted a photograph of the fireplace at the beginning of the tenancy, which shows that the cable was not present at that time. He stated that the Tenants drilled ½" holes through three walls to bring that cable into another room, however he did not submit photographs of those holes. He stated that the Tenants made several holes in the walls, although he did not submit photographs of that damage. He stated that that the Tenants chipped some paint off the top of a door, and he submitted a photograph of that damage.

The male Tenant acknowledged that he attached the cable to the fireplace and made some nail holes in the wall but he denied drilling holes for the cable in the wall.

The Landlord submitted a receipt from Acme Repairs, which indicates that he incurred costs of $392.00 for making the above noted repairs.

The Landlord is claiming compensation, in the amount of $75.00, for drapes that were missing from two of the bedrooms. The Landlord submitted photographs that he contends were taken at the beginning of the tenancy that shows there were curtains in both bedrooms. The Condition Inspection Report indicates that the window coverings in the master bedroom were in good condition, although there is no report done on the second bedroom. The Landlord did not submit a receipt for the curtains, although he states that he just purchased them at a cost of $73.50.

The Tenant stated that there were no curtains in the bedrooms at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of $400.00, to replace a mirror. The Landlord and the Tenant agree that there was a framed mirror above the fireplace

in the living room at the beginning of the tenancy, which was missing at the end of the tenancy. The male Tenant stated that the Landlord told him he could keep or dispose of the mirror above the fireplace, which the Landlord denies.

The Landlord stated that he simply estimated the cost of replacing the mirror and he submitted no evidence to corroborate his estimate. The male Tenant stated that he gave the mirror to a store known as SOS. He stated that he recently viewed the mirror at that store and that it is presently being offered for sale for $20.00.

The Landlord is claiming compensation, in the amount of $100.00, for not returning the mail key. The Landlord stated that the male Tenant returned keys to the rental unit and the front door of the building. It was noted on the Condition Inspection Report that 4 keys were issued at the beginning of the tenancy and 4 keys were retuned at the end of the tenancy. The Landlord stated that the mail key was not returned, although there is no notation on the Condition Inspection Report about a missing mail key.

The male Tenant stated that he returned the keys to the mail box and that he did not attempt to access the mail box. He stated that he returned to the residential complex sometime prior to January 15, 2009, that he was given access to the rental unit by a friend who lives in the building, and that he waited in the lobby as he was expecting a parcel and he wished to meet the courier in the lobby.

The Landlord stated that the building manager advised him that the Tenants still had a key to the mail box and that the male Tenant had returned to the rental unit to retrieve mail from the mail box. The Landlord asked to call the manager as a witness, however the manager was not available at the phone number provided by the Landlord. The Landlord did not submit written documentation from the manager that corroborates this statement by the Landlord.

The Landlord asked to call his brother as a witness, who I will refer to as Witness #1. The Witness #1 stated that he was present when the male Tenant came to the rental unit to complete the Condition Inspection Report. He stated that after the Tenant left the building manager advised him and the Landlord that he had seen the Tenant access his mail box on two occasions. The male Tenant argued that this observation is irrelevant, as he did not return the keys to the rental unit until the Condition Inspection Report was completed, and he therefore had the ability to check his mail until that time.

The Landlord asked to call a representative for the Property Management Company who manages this residential complex, who I will refer to as Witness #2. Witness #2 stated that he had been advised by the building manager that the Tenants had not returned their mail key, although he did not recall specifically when he was advised that the keys had not been returned. He stated that he was not advised that the Tenants had been attempting to access their mail box after the tenancy ended.

The Landlord is claiming compensation, in the amount of $100.00, for damage to the hardwood floor. The Landlord contends that the floors were “scratched and gouged” in several places throughout the rental unit. He submitted one photograph that he contends shows a large “gouge” on the master bedroom floor.

As the Tenants did not have copies of the photographs submitted by the Landlord they could not comment on that specific mark, however they contend that they are not aware of any damages they caused to the floor. They contend that there may have been small scratches, but nothing beyond normal wear and tear.

The Landlord and the Tenants agree that the Tenants were displaced because of the flood between December 17, 2008 and December 26, 2008, and that they stayed in a hotel during that period. The parties agree that the strata corporation paid for the first night of hotel accommodations, which the Landlord stated was a sign of good will.

The Tenants are claiming compensation, in the amount of $1,200.97, for the cost of staying in a motel for the remainder of their displacement. The female Tenant stated that their insurance company advised them that they would be compensated for their personal belongings but their hotel accommodations should be paid by the Landlord or the person who caused the flood. The female Tenant stated that the Landlord advised her he would pay for the hotel bills, and she expects him to honour his commitment.

The Landlord submitted a letter from the Tenants’ insurance company that states that the company will compensate the Tenants for “additional living expenses incurred if their premises become uninhabitable because of an insured peril under the policy”. He stated that he never told the Tenants that he would pay for their hotel bill however he stated that he is willing to refund the rent that the Tenants paid for the eight days they were unable to occupy the rental unit.

Analysis

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

I find that the Tenant did not pay any rent for January of 2009, as required by section 26(1) of the *Act.* I find that this rental unit was reasonably habitable during the month of January and that the Tenants had not established that they had a right to withhold any portion of the rental unit. In reaching the decision that the rental unit was habitable after December 26, 2008, I was strongly influenced by the photographs submitted by the Tenants which show that the rental unit was clean even though the flooring was not fully repaired. I specifically note that on January 02, 2009 the Tenants attended a dispute resolution hearing at which time they indicated a desire to continue the tenancy until

January 31, 2009, which causes me to conclude that the rental unit was habitable. On this basis, I find that the Tenants owe the Landlord $1,000.00 for rent from January of 2009.

Section 7(1)(c) of the Residential Tenancy Regulation authorizes landlords to charge a service fee incurred when a tenant's cheque is returned. Although the Landlord did not submit documentary evidence to corroborate his statement that he incurred a $15.00 NSF fee when the Tenants rent cheque from January was returned, I find that it is commonly understood that such fees are charged and that the amount he is claiming seems reasonable under the circumstances. I therefore find that the Landlord is entitled to $15.00 in compensation for an NSF fee.

Section 7(1)(d) of the Residential Tenancy Regulation stipulates that a landlord can charge a fee of not more than $25.00 for processing an NSF cheque. As the Landlord is claiming a fee that exceeds the amount authorized by legislation, I dismiss the Landlord's application for a $35.00 fee.

After considering the contradictory evidence regarding the cleanliness of the rental unit, I find that the Tenants failed to leave the rental unit reasonably clean, although I find that the Landlord has exaggerated the extent of the cleaning that was needed. In reaching the conclusion that the rental unit was left reasonably clean, I was strongly influenced by the Tenants' admission that they did not clean the oven, the photographs of the dirty stove, and the photographs submitted by the Landlord that show there were some areas that were not properly wiped/vacuumed. In reaching the conclusion that the Landlord exaggerated the amount of cleaning that was required, I was strongly influenced by the photographs that were submitted by the Tenants that show the rental unit was generally clean and that the Landlord noted on the Condition Inspection Report that the refrigerator and freezer are dirty, yet the photographs of the refrigerator and freezer show that they were very clean.

Based on the photographs that were submitted, I find that some cleaning was required in the rental unit. Based on those photographs I find that it would take approximately 3 hours to finish cleaning the rental unit, and I award cleaning costs of $20.00 per hour, for a total of $60.00. I have arbitrarily determined the cleaning costs in these unique circumstances because I found that the Landlord exaggerated the need for cleaning, and that the amount claimed for cleaning appears to be excessive given the photographs that were submitted.

Section 37(2) stipulates, in part, that a tenant must leave a rental unit undamaged, except for reasonable wear and tear, at the end of a tenancy. Upon viewing the photographs of the cable that was affixed to the fireplace, I find that the resulting holes constitute reasonable wear and tear. Upon viewing the photograph of the damage to the door, I find that a small amount of paint will repair that door and I therefore conclude that it constitutes reasonable wear and tear. In the absence of photographs that show

the damage caused by the nails the Tenants acknowledged placing in the walls, I cannot conclude that the resulting holes are anything more than reasonable wear and tear that occurs with picture hanging. On this basis, dismiss the Landlord's claim for compensation for repairing the nail holes in the walls, the holes around the fireplace, and the chipped door.

There is a basic legal principle that places the burden of proving damages on the person who is claiming the damages which, in these circumstances is the Landlord. As the Tenant denies drilling holes in the walls for the purpose of threading cable through walls, the Landlord has not submitted photographs to show the extent and the nature of the damage, and the Landlord has not established that the holes were not present at the beginning of the tenancy, I find that the Landlord has not met the burden of proof in regards to these specific damages. On this basis, I dismiss the Landlord's claim for compensation for repairing the holes that were drilled in the walls.

As the Tenant denies removing light bulbs from the hallway fixture and taking spare light bulbs left in the rental unit and the Landlord has not submitted any evidence to corroborate his statement that they were missing, I find that the Landlord has not met the burden of proof in regards to these specific damages. On this basis, I dismiss the Landlord's claim for compensation for the missing light bulbs.

I find, on the balance of probabilities, that there were curtains in both bedrooms at the beginning of the tenancy. In reaching this conclusion, I was strongly influenced by the photographs of the rental unit at the beginning of the tenancy and by the Condition Inspection Report that was completed at the beginning of the tenancy, which was signed by both Tenants, which indicates that the window coverings in the master bedroom were in good condition.

I find that the Tenants failed to comply with section 37(2) of the Act when they failed to replace the curtains that were in the bedrooms at the beginning of the rental unit. The Landlord did not submit a receipt of the cost of replacing the curtains, I therefore award him compensation in the amount of $50.00, which I find to be reasonable for replacing two curtains.

I find that the Tenants did not replace a mirror that was in the rental unit at the beginning of the tenancy. In this particular circumstance, I find that the burden of showing that the Tenants were authorized to keep or discard the mirror rests with the Tenants, as they are the parties that are alleging this agreement. In reaching this agreement, I note that it is commonly understood that tenants are not permitted to remove property from a rental unit and they are, therefore, compelled to establish that they had an agreement that is contrary to this common understanding.

I find that the Tenants failed to comply with section 37(2) of the Act when they failed to replace the mirror that was in the rental unit at the beginning of the rental unit. The

Landlord did not submit a receipt or an estimate for the cost of replacing the mirror, nor did he submit any evidence that the mirror was expensive at the time of purchase. As I am personally aware that a framed mirror of similar size to the missing mirror can be purchased for $50.00, I award the Landlord compensation in that amount.

As the Tenants insist that that they returned their mail key, I find that the Landlord has submitted insufficient evidence to show that the Tenants failed to return their mail key. In light of the contradictory evidence regarding the keys, I find that the burden of proving that the keys were not returned rested with the Landlord. In these circumstances, even a notation on the Condition Inspection Report that the mail key was not returned would have been helpful.

I find that the evidence provided by Witness #1 is not helpful in determining whether the mail keys were returned. In reaching this conclusion, I noted that on the day the Tenants returned the keys to the rental unit the building manager told the Witness #1 and the Landlord that he had previously observed the Tenants accessing their mail box. This does not in any way establish that the Tenants possessed a key after this date or that they used a key to access their mail box after the Tenants returned keys on this date.

I find that the evidence provided by Witness #2 was not helpful in determining whether the mail keys were returned. In reaching this conclusion, I note that Witness #2 was unable to establish when he was told that the mail key had not been returned and that this conversation, therefore, could have occurred prior to the date of the final Condition Inspection Report. As it has not been established that the Tenants did not return their mail keys, I dismiss the Landlord's claim for compensation for the re-keying the mail box.

After viewing the one photograph that shows damage to the hardwood floor in the master bedroom, I find that the damage constitutes reasonable wear and tear. Although the photograph is not particularly clear, the damage that I can see appears to be one long, narrow scratch that in no way can be considered a "gouge". As the damage I can see is minimal, and the Landlord has not submitted photographs to corroborate his statement that there were other areas on the floor that were damaged, I dismiss his claim for compensation to repair the floors, as tenants are not obligated to repair damage that is considered reasonable wear and tear.

Section 67 of the *Act* authorizes me to compensate a party to the tenancy agreement only when that party suffers a loss as a result of the other party not complying with the *Act.* As the flood that caused the Tenants to be displaced from their rental unit was not the fault of the Landlord and was not in any way related to the Landlord's failure to comply with the *Act*, I find that the Landlord was not obligated to pay for the Tenants' accommodation expenses during the period of the displacement. On this basis, I dismiss the Tenant's claim for compensation for their hotel costs.

I find that the Tenants are not obligated to pay rent for the period that the rental unit was uninhabitable. The parties agree that the Tenants vacated the rental unit on December 18, 2009 and they returned on December 26, 2008, and I find that they are entitled to compensation for 8 days of rent, at a rate of $32.25 per day, for a total of $258.00.

I find that the Tenants have submitted insufficient evidence to show that they gave the Landlord their forwarding address at the end of the tenancy. In reaching this conclusion I note that the male Tenant stated that he verbally advised the Landlord that he could use the forwarding address that was provided on the Condition Inspection Report at the beginning of the tenancy, and the Landlord stated that the male Tenant did not tell him he could use that address as his forwarding address after the tenancy ended. In this situation, I find that the burden of proving that a forwarding address was given to the Landlord rests with the Tenants, as they are the party that is alleging that it occurred. I find that the Landlord was not obligated to return the Tenants' security deposit until the tenancy ended and he received a forwarding address in writing, and I am not satisfied that the Landlord had a forwarding address that he reasonably believed was current.

I find that the Applications of both parties have some merit and I therefore find that both parties should be responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of $1,175.00, which is comprised on $1,000.00 in unpaid rent, $15.00 in NSF fees, $60.00 for cleaning, and $100.00 in damages to the rental unit. I hereby authorize the Landlord to retain the $1,000.00, plus interest of $5.53, in partial satisfaction of this monetary claim, leaving a balance of $169.47.

I find that the Tenants have established a monetary claim, in the amount of $258.00, which is compromised of a refund for 8 days of rent.

After offsetting the two monetary claims, I find that the Landlord owes the Tenants $88.53, and I grant the Tenants a monetary Order for that amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: March 30, 2009