Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid utilities, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenants' security deposit and pet damage deposit.

This matter was originally set for hearing on August 14, 2009, however it was adjourned at the request of the Tenants. At the beginning of the reconvened hearing the Tenants said that they served their evidence package on the Landlords and the Residential Tenancy Branch by fax on Friday, October 9, 2009. The Tenants' evidence package was not in the file as of the time of the hearing and the Landlords claimed that they had not had sufficient time to review the Tenants' documents and written submissions.

RTB Rule of Procedure 4.1 states that a Respondents' evidence must be received by the RTB and served on the Applicants no later than 5 days prior to the dispute resolution proceeding. RTB Rule of Procedure 11.5 states that a DRO may refuse to accept evidence if there has been a wilful or recurring failure to comply with the Rules of Procedure or the acceptance of the evidence would prejudice the other party. I find that the Tenants' evidence should have been submitted at the start of the hearing (4 months prior) or at the very latest during the 2 month adjournment period. I also find that it would be prejudicial to the Applicants who did not have an adequate opportunity to review and respond to this evidence. Consequently, I declined to accept the Respondents' late evidence but permitted them to refer to it in their oral evidence.

Issues(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit and pet damage deposit?

Background and Evidence

This tenancy started on July 1, 2008 and ended on or about February 13, 2009 when the Tenants moved out. Rent was $375.00 per week plus utilities. The Tenants paid a

security deposit of $750.00 and a pet deposit of $550.00 on June 20, 2008. The Tenants paid a further $200.00 for the pet damage deposit on July 4, 2009.

The Landlords completed a condition inspection report with the Tenants at the beginning of the tenancy. The Landlords said that they arranged to do a move out condition inspection report with the Tenants on February 19, 2009 but the Tenants called on February 13, 2009 and said they had to leave earlier and wanted to do it the following day. The Tenants said the Landlords' agent was not available on February 14, 2009 and the Landlords would not do the move out inspection on the scheduled day with an agent of theirs. The Landlords said they were under the mistaken belief that the Tenants had to be present for the move out inspection and therefore their agent completed the report in the Tenants' absence on February 17, 2009.

The Landlords claimed that there were municipal utilities of $379.63 that remained unpaid at the end of the tenancy. The Tenants did not dispute that they owed this amount but said they authorized the Landlords to deduct it from their security deposit.

The Landlords also claimed that the Tenants left the rental unit damaged and in need of cleaning at the end of the tenancy. The Landlords' witness (#1) who was their realtor gave evidence that she completed the move out condition inspection and that one of the Landlords (who was also present) signed it. This witness claimed that the carpets in the rental unit appeared very dirty and there was a burn mark on the hard wood floor in the living room. The Landlords' witness (#1) also claimed that the walls were grimy, a bathroom was dirty, the kitchen appliances were dirty and the laundry room had a bad odour. She also said that the rental unit was cold and when she tried to adjust the thermostat on the furnace, it would not start up. This witness claimed that the back yard was also messy in that there was dog feces everywhere, large holes left from dogs digging and 2 ornamental trees were chewed up or had deep scratches.

The Landlords said that they spent 4 hours cleaning the interior of the rental unit and a further 4 hours cleaning up dog feces from the back yard, filling holes, replacing mulch, re-seeding the grass and replacing torn out shrubs. The Landlords said that it was a term of the tenancy agreement that the Tenants would maintain the yard but they failed to do so. The Landlords also claimed that an ornamental tree died due to it being chewed or scratched and another one survived but was in poor condition. The Landlords also relied on another witness (#2) who claimed that he spent an additional 4 hours picking up dog feces and garbage from the back yard and filling holes.

The Tenants admitted that the back yard of the rental property was in poor shape as a result of their dogs. They also admitted that one of the ornamental trees was damaged by their dogs but denied being responsible for damaging the other one or removing any shrubs. The Tenants also argued that there were 2 bare spots in the grass at the

beginning of the tenancy that was caused by the Landlords' dogs and that one of the Landlords told them not to worry about the mulch in the garden area because he replaced it every year. The Tenants claimed that they had no knowledge of a chewed up hose as it was in good condition and was not left accessible to their dogs.

The Tenants also claimed that they cleaned the rental unit at the end of the tenancy. The Tenants relied on a witness who claimed that she helped the Landlords to wash walls, floors, bathrooms and clean the carpets. The Tenants admitted that the carpet in the master bedroom was still discoloured after cleaning it and that there were some stains that could not be removed from another bedroom carpet. The Tenants did not dispute that under the tenancy agreement the carpets were supposed to be professionally cleaned. The Tenants also admitted that they did not thoroughly clean inside or under the oven and that it was difficult to get rid of the dog hair.

The Landlords said that the furnace was new and in good working order at the beginning of the tenancy but needed repairs at the end of the tenancy. In particular, the Landlords claimed that on March 11, 2009 the furnace repair person found a tennis ball in the exhaust pipe and that once it was removed the furnace worked properly. The Landlords argued that the Tenants knew there was a problem with the furnace but never advised them because the Tenants allegedly told their neighbours that the house was always cold. The Tenants claimed that they had no problems with the furnace but did not use it as their primary source of heat. The Tenants said it was cold in some of the rooms because they believed the insulation was inadequate.

The Landlords claimed that the carpets in the rental unit were 3 – 4 years old at the beginning of the tenancy but that they had to be removed from 2 bedrooms at the end of the tenancy because they smelled of dog urine. The Landlords said that the carpets had been professionally cleaned at the beginning of the tenancy and again at the end of the tenancy. They admitted that they did not notice a smell from these carpets until the furnace was fixed and the house warmed up. The Landlords said they did not believe the previous owners had pets but admitted that when they resided in the rental unit prior to the Tenants, they had dogs. The Landlords also claimed that a carpet in the recreation room was only 3 – 4 years old and in good condition at the beginning of the tenancy but had a small tear (or pull) in the centre of it at the end of the tenancy.

The Landlords also provided a copy of a statement from one of the tenants who moved into the rental property after the Tenants moved out. This witness claimed that when they moved in on February 20, 2009, the damp carpets in the bedrooms smelled of urine and that the smell intensified once the furnace was operating properly. She also claimed that the smell from the carpets could not be removed with deodorizers and as a result, the Landlords replaced them in 2 rooms. This tenant also claimed that when the carpets were removed there appeared to be a liquid that had permeated the wood on

the floor. The Tenants claimed that they never noticed a smell from the carpets but admitted that they bought a steam cleaner in the event their dogs should urinate on the carpets.

The Landlords also claimed that at the beginning of the tenancy the carpet in the recreation room was in good condition but at the end of the tenancy it had a small tear or pull in the centre. The Landlords admitted that there was another area of the carpet with similar damage that pre-exited the tenancy. The Tenants said they did not recall a tear being in the recreation room carpet but said that it appeared to be a run from a fibre having been pulled and therefore argued that it could have been a defect in the carpet.

The Landlords said that the Tenants also damaged the hardwood floor in the living room. They claimed that the mark closely resembled the heating coil pattern of an oil heater that was in the rental unit but which had a broken wheel and could have fallen on its side. The Tenants did not deny causing this damage but claimed that it was not a burn mark but rather they believed it was caused by stain leaching out of an entertainment unit that was in that location.

The Landlords claimed that the interior of the rental unit had been newly painted at the beginning of the tenancy. They also claimed that the Tenants tried to fill and re-paint a number of holes in the walls of the upper and lower hallway and the green bedroom but that the mud was not sanded properly and the paint was a shade darker than the walls. The Landlords said the house was not repainted until after the next tenants left in July 2009 as there was no time to do it before they moved in. The Tenants admitted that they tried to repair the walls in the hallways but that when they re-painted the color was darker. The Tenants claimed that the Landlords told them not to worry about re-painting a bedroom which had a mark on one of the walls because she could not find the matching paint.

The Tenants said that they were not aware of damaged heating (or air return) vents but admitted that they could have been damaged from furniture being placed next to them. The Tenants also admitted that their dogs probably damaged 3 screens that were missing at the end of the tenancy. The Tenants claimed that their dogs had chewed a railing but they had repaired it during the tenancy. The Landlords claimed that the railing was still damaged at the end of the tenancy.

Analysis

As the Parties agree that the Tenants have unpaid utilities of $379.69, I award the Landlords that amount.

Section 37 of the Act says that a tenant must leave a rental unit clean and undamaged at the end of a tenancy (except for reasonable wear and tear). Section 32 of the Act also says that a Tenant is responsible for repairing any damages that are caused by their acts or neglect (or that of someone they permit on the rental property). Consequently, even if a Tenant causes damages unintentionally, they will be responsible for repairing them.

The Tenants do not dispute being responsible for replacing 3 missing screens, broken heat vents and carpet cleaning expenses and as a result, I award the Landlords the amounts set out on their receipts for these items. The Tenants also admitted that they caused the damage to a hardwood floor. The Landlords provided an estimate as to what it would cost to have the floor repaired. The Tenants said they had no knowledge what the cost would be to repair the floor but suggested it might cost the same amount to replace the floor. In the absence of any evidence from the Tenants as to whether the repair estimate is a reasonable amount, I award the Landlords the amount set out on their estimate for repairing the hardwood floor.

The Tenants also admitted to being responsible for the damage to one ornamental tree however, the Landlords provided no evidence in support of their estimate that it would cost $200.00 to replace each tree. As the Landlords have shown that one tree needed to be replaced, I award them $100.00 for this part of their claim.

The Tenants disputed the balance of the Landlords' claims. Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy with the Tenants and provide a copy of it to them (within 7 to 15 days). The purpose of having both parties participate in a move in condition inspection report is to provide some objective evidence of the condition of the rental unit at the beginning and end of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a properly prepared condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. I find that the Landlords breached 35 of the Act when they refused to allow the Tenants to have an agent participate in the move out condition inspection. Consequently, I do not give a lot of weight to the move out condition inspection report.

However, based on the Landlords' photographs, I find that some remedial cleaning was required bring the rental unit to a reasonably clean standard. Consequently, I find that the Landlords are entitled to recover $200.00 for cleaning expenses and supplies.

I also find that some yard work was required to bring the yard up to a reasonable state. However, I find that the Landlords are not entitled to the full amount they have claimed as part of it is for work rendered 7 months after the tenancy ended (and after a

subsequent tenancy). In other words, it is likely that some of this work was due to factors that had nothing to do with these Tenants but rather due to regular maintenance. Furthermore, I find that there is insufficient evidence that the mulch had to be replaced solely due to the acts or neglect of the Tenants and find that the Landlords would have replaced it in any event. Consequently, I find that the Landlords are not entitled to recover $240.00 for 8 hours of yard work in September or to $106.94 for cedar mulch. I also find that the amount of $40.00 per hour for the Landlords' witness to pick up dog feces is unreasonable and I reduce that amount to $25.00 per hour (plus supplies) for a total of $128.54. I also award the Landlords $100.00 for an additional 4 an hours of yard work in March and April plus $80.84 for grass seed. I find that there is insufficient evidence that the Tenants damaged a hose and that part of the Landlords' claim is dismissed. In summary, I award the Landlords $309.38 for yard clean up and supplies.

I find that there is insufficient evidence that the Tenants removed 3 shrubs from the back yard and note that nothing about them is mentioned on the move out condition inspection report. Consequently, this part of the Landlords' claim is dismissed. I find that the Tenants are responsible for damaging one ornamental tree, however in the absence of any evidence from the Landlords to support their estimate for replacing it, I award them $100.00 for a replacement tree.

I find that there is insufficient evidence that the Tenants were responsible for the repair to the furnace. The Landlords claimed that the furnace was working properly at the beginning of the tenancy but was not working properly on February 17, 2009 and that the new Tenants also complained that it was not working properly when they moved in shortly thereafter. However, the Tenants claimed that they rarely used the furnace. Furthermore, the ball in the furnace was not discovered until March 11, 2009, almost a month after the tenancy ended and 3 weeks after new tenants had started living there. Consequently, I find that there is insufficient evidence to conclude that a ball lodged in the exhaust pipe was the result of an act or neglect or the Tenants and that part of the Landlords' claim is dismissed.

I find that the Landlords are entitled to recover expenses related to repairing and painting damaged walls (which were damaged beyond reasonable wear and tear). However, the Landlords based their claim on a verbal estimate given by a professional painter although they did the work themselves. In the circumstances, I find that a more reasonable amount would be $300.00 and I award the Landlords that amount. I also find based on the Landlords' photographs that the railing remains damaged and as a result, they are entitled to recover $50.00 to repair it.

I find on a balance of probabilities that the Tenants' dogs were responsible for the damage to the carpets in the two bedrooms. I make this finding having regard to the Landlords' evidence that the carpets were only 3 years old at the beginning of the

tenancy and had been professionally cleaned. I conclude that if there had been urine damage from the Landlords dogs, it would have been apparent at that time. I am also persuaded by the undisputed evidence of the Landlords that the Tenants' dogs had puppies (who would not be house trained) as well as the Tenants' evidence that they purchased a steam cleaner to address the dogs wetting on the carpets. Consequently, I find that the Landlords are entitled to recover $295.56 for removing the carpet in one room and installing linoleum, as well as $552.80 for removing and replacing the carpet in another bedroom for a total of $848.36.

I also find on a balance of probabilities that the Tenants are responsible for a small tear in the carpet of the recreation room and I award the Landlords $100.00 representing the reduced value of it. I make this finding based largely on the fact that there was no tear in the carpet at the beginning of the tenancy despite it having sustained wear for the previous 3 – 4 years. I find that if there was a defect in the carpet as alleged by the Tenants, it likely would have been apparent during the first 3 or 4 years after it was installed.

In summary, I find that the Landlords are entitled to compensation. Section 36(2) of the Act says that a landlord who does not complete a condition inspection report in accordance with the Act forfeits the right to make a claim against a security deposit or pet damage deposit. However I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently I order the Landlords to keep the Tenants' security deposit and pet damage deposit in partial satisfaction of the damage award as follows:

Unpaid Utilities:	$379.63
Heat Vents:	$31.04
General Cleaning:	$200.00
Carpet Cleaning:	$210.00
Window Screens:	$158.30
Bedroom Carpets:	$848.36
Rec. Room Carpet:	$100.00
Damaged Tree:	$100.00
Yard clean up and Landscaping expense(s):	$309.38
Hardwood floor repair:	$1,828.50
Railing repair:	$50.00
Wall repair & painting:	$300.00
Filing fee:	$100.00
Subtotal:	$4,615.21

Less:	Security deposit:	($750.00)
	Accrued interest:	($5.99)
	Pet deposit:	($750.00)
	Accrued interest:	($5.89)
	Balance Owing:	$3,103.33

The Landlords adduced some evidence about a missing mirror and a foosball table that had to be removed at the hearing although they were not included in their list of damages they were claiming. Consequently, I have not included those items in the damage award and the Landlords are at liberty to reapply for compensation for them should they choose to do so.

Conclusion

A monetary order in the amount of **$3,103.33** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: October 16, 2009.

Dispute Resolution Officer