Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

AMENDED DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, for cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit and pet damage deposit in payment of those amounts.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit and pet damage deposit and if so, how much?

Background and Evidence

This fixed term tenancy started on June 1, 2008 and ended on May 31, 2009. The Tenants sublet the rental unit to other tenants on October 1, 2008. Rent was $1,350.00 per month. The Tenants paid a security deposit of $675.00 on May 26, 2008 and a pet damage deposit of $675.00 on October 1, 2008.

At the beginning of the tenancy, the Landlord gave the Tenants a one page document entitled "Rental Inspection Form" which indicated that the rental unit was generally in good condition at the beginning of the tenancy. The Tenants added some comments to that document regarding deficiencies and returned it to the Landlord approximately 2 weeks later. The Parties did not complete a move out condition inspection report, however they inspected the rental unit on May 31, 2009, took pictures and discussed the Landlord's concerns about the condition.

The Landlord claimed that the rental unit was in "impeccable" condition at the beginning of the tenancy but that it was not reasonably clean and had damages at the end of the tenancy. In particular, the Landlord claimed that it took her and her husband 13 hours to clean such things as the interior windows, walls, doors, floors, baseboards, an en-suite shower and stove. The Landlord said the paint had rotted on window sills and had a build up of mould due to the sub-tenants' failure to keep them clean. She also claimed that there were many nail and screw holes in the walls that had been filled with

putty (but not sanded or painted) as well as gouges to the trim around doors and mouldings. The Landlord said the carpet also had an odour which she believed was caused by the sub-tenant's dog urinating on it.

The Tenants argued that the rental unit was reasonably clean at the end of the tenancy and said they offered to hire a maid service to appease the Landlord but she refused to consider their offer as she claimed it was too late. The Tenants claimed that a stove element was damaged at the beginning of the tenancy The Tenants also argued that the carpets were being cleaned when they were inspecting the rental unit with the Landlord and that there was no odour at that time. The Tenants claimed there were stains on the carpet at the beginning of the tenancy.

The Tenants also claimed that at the beginning of the tenancy there were obvious spots on the walls where nail holes had previously been filled and touched up with matching paint. The Tenants said that they filled the nail holes left behind by the subtenants with putty but could not paint over them because there was no touch up paint. The Tenants argued that damages to the paint beside a window were caused when a repair was made (by someone on behalf of the Landlord) during the tenancy. The Tenants claimed that they thought dents in a door frame might have been caused from a retractable screen snapping back and also suggested that it might have been like that at the beginning of the tenancy. The Tenants also said that they told the Landlord during the tenancy that the condensation was building up on the windows.

Analysis

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 in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report (that complies with the Act) is intended to serve as some objective evidence of whether a tenant is responsible for damages to the rental unit during the tenancy or if he or she has left a rental unit unclean at the end of the tenancy. In the absence of a 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 Landlord's "Rental Inspection Form" is deficient in many respects because it omits much of the *detailed* information that must be included in a condition inspection report as set out in s. 20 of the Regulations to the Act. However, it is some evidence as to the general condition of the rental unit at the beginning of the tenancy as are the photographs of the rental unit taken by the Landlord on or about May 30, 2008.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines reasonable wear and tear as "natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Based on the photographs of both parties (including all of those stored on CDs by the Landlord), I find that the rental unit was reasonably clean at the end of the tenancy. While there were some items the Tenants missed such as the pilot light switch beneath the fire place, some spots of oven cleaner in the oven, a dirty pantry shelf and some mildew on the shower door, the Act requires a standard of "reasonable cleanliness" and not "absolute cleanliness." Consequently, the Landlord's claim for cleaning expenses (including cleaning supplies) is dismissed.

I also find that there is insufficient evidence to support the Landlord's claim for carpet cleaning. The photographs provided by the Landlord were taken prior to when the carpet was cleaned on May 31, 2009 while those taken by the Tenants after the carpets were cleaned show them to be in good condition. Furthermore, there is no evidence that the Landlord incurred any expenses at the end of the tenancy to have the carpets re-cleaned in order to remove the alleged dog urine smell. Consequently, the Landlord's claim for carpet cleaning expenses is dismissed.

The Landlord claimed that there was substantial damage to 7 walls in the rental unit from nail holes, anchor screws or gouges. The Landlord claimed that she could not just touch up these damages as the touch up paint had allegedly been removed by the subtenants. I find that the Tenants' photographs do not depict the damages very well and consequently, I prefer the Landlord's photographs. Based on the Landlord's photographs (including those on CD), I find that there are a number of large anchor screws in a dining room wall and in a living room wall as well as in an en-suite bathroom wall. I also find that there are a number of tire marks in the storage room and significantly sized holes or gouges on a master bedroom wall. I find that there are two windows where mould or mildew has accumulated and damaged the paint (not including the decorative glass block frame) and that there are significant gouges to the front door frame.

Based on the photographs taken of the rental unit the day before the tenancy started and based on the Landlord's "Rental Inspection Form," I find that all of these damages occurred during the tenancy. I also find that none of these damages are reasonable wear and tear. In particular, I find that while humidity or condensation on windows may be a common issue for homes on Vancouver Island, I also find that it could have been prevented by the Tenants or subtenants not allowing the moisture to accumulate.

Consequently, I conclude that it was the neglect of the Tenants or subtenants that caused the damage to the 2 window sills.

Furthermore, the addendum to the Parties' tenancy agreement contains a clause (#6) which states that "no holes larger than a small finishing nail (are) permitted on the walls to facilitate hanging pictures." It is clear that much of the wall damage is the result of the Tenants' or their subtenants using nails much larger than finishing nails. On the other hand, I find that such things as the scraped shelves in the pantry and damage to some of the mouldings (in high traffic areas such as corners, for example) is reasonable wear and tear.

The Landlord admitted that the rental unit had not been painted prior to the tenancy but she argued that it did not need to be because it was in good condition (despite the fact that some areas that had been previously patched). The evidence provided by the Parties clearly shows damages to 5 walls. I note that some of those walls may have had existing repairs. Consequently, RTB Policy Guideline #1 states that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. Given that the Landlord's estimate for painting and repairs includes some items that are not the Tenants' responsibility because they are the result of reasonable wear and tear or because the Landlord would be required to paint as part of her responsibility under s. 32 (to maintain the property) in any event, I find that the Tenants should only be responsible for one-half of the cost.

In the absence of any evidence from the Tenants to dispute the Landlord's estimate, I find that the Landlord is entitled to recover $960.00 from the Tenants for the cost of repairing and repainting the damaged areas of the rental unit noted above. As the Parties have both been partially successful and as their filing fees would be offsetting in any event, their respective applications for it are dismissed.

In failing to complete the condition inspection report when the Tenants moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit (and pet damage deposit) for damages to the rental unit is extinguished. I find however, 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 and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord pursuant to s. 38(4) of the Act to keep $960.00 from the Tenants' security deposit and pet damage deposit and to return the balance to the Tenants as follows:

	Damage award:	$960.00
Less:	Security deposit:	($675.00)
	Accrued interest:	($6.09)
	Subtotal:	$278.91

Conclusion

A monetary order in the amount of **$278.91** has been issued to the Landlord 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*.

NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON NOVEMBER 9, 2009.

Dated: November 09, 2009.

Dispute Resolution Officer