Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard and respond to the other party's submissions. An occupant of the rental unit was also called as a witness for the tenant.

In making this application, the landlord requested compensation of $3,000.00 and then subsequently provided additional documentation to request $4,223.56 in the compensation from the tenant. The tenant provided a written response to the landlord's evidence, including the addition amount claimed. I have accepted the amended claim and have considered the landlord's request for $4,223.56 in compensation.

In the tenant's written submission she requests compensation from the landlord; however, I have not considered those requests as the tenant has not made an application for dispute resolution. The tenant is at liberty to make an application is she wishes to pursue compensation from the landlord within the time limit permitted by the Act. As the landlord has requested retention of the security deposit and the tenant has requested its return, this decision addresses the handling of the security deposit.

Issues(s) to be Decided

1. Has the landlord established an entitlement to recover compensation for damage to the rental unit, unpaid rent and other damages or losses under the Act and if so, the amount?
2. Retention or return of the security deposit
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. The tenant began residing in the rental unit September 1, 2004. The tenant paid a $500.00 security deposit at the beginning of the tenancy and an inspection was performed by the parties; however, a move-in inspection report was not prepared. New tenancy agreements were entered into between the parties annually with the last tenancy agreement indicating a fixed term of September 1, 2008 through August 31, 2009. The last tenancy agreement required the tenant to pay rent in the amount of $1,119.46 per month. The tenant, the occupant and their children were supposed to vacate the rental unit July 31, 2009. The tenant provided the landlord with a written forwarding address on August 14, 2009 and within 15 days of receiving the forwarding address the landlord made this application.

The landlord's claim for compensation is comprised of the following amounts:

Item(s)	Total
Cleaning yard and house by landlord (25 hrs)	$375.00
Yard cleanup and trash hauling paid	165.00
Housecleaning services paid	90.00
Lightbulbs replaced	60.17
Cleaning supplies purchased	9.90

Develop photographs for this application	41.73
Cost to replace lavatory faucet (est.)	90.00
Cost to repair toilet anchor (est.)	50.00
Cost to replace lavatory fan(est.)	66.00
Cost to replace weatherstripping (est.)	25.00
Cost of postage	10.76
Cost to repair drywall holes and siding (est.)	100.00
Repair railing and deck boards (est.)	1,040.00
Rent discount given to new tenants	1,550.00
Cost to replace chainsaw (est.)	500.00
Filing fee	50.00
Total claim	$4,223.56

In summary, the landlord provided the following testimony.

- The tenant was supposed to vacate on July 31, 2009; however, when the landlord arrived at the property on July 31, 2009 the rental unit was still not completely vacated or cleaned. The rental unit was not vacated for another five days.
- As the tenant was out of town, the occupant was handling the move-out and the landlord had asked the occupant to meet him at the rental unit to view damage to the property but the occupant did not show up for the scheduled meeting.
- The landlord had to spent his own time and pay others to clean the windows, floors, cupboards, workshop and yard. In the yard was construction waste, old tires and a compost bin not removed by the tenant.
- The damage to the rental unit included:
    - a lifetime warranty lavatory faucet replaced by an inexpensive faucet;
    - a missing or broken bolt for the toilet;
    - a non-working lavatory fan;
    - weather stripping damaged by the tenant’s dog;
    - holes in the workshop drywall;

  - chewed railings on the exterior deck caused by the tenant's dog and worn deck boards.

- The tenant or a person permitted on the property by the tenant broke the taillight on the campervan the landlord had stored on the property.
- The occupant stole a chainsaw from a shed on the property. The landlord explained that he had last seen the chainsaw in the shed approximately one year before the end of the tenancy and that he had filed a police report.
- The incoming tenants moved in the rental unit August 4, 2009 and due to the condition of the rental unit the landlord had to discount the rent payable by the new tenants from $1,350.00 per month to $1,200.00 for the first six months and $1,250.00 for the six months thereafter. The landlord confirmed that most of the damages have not yet been repaired by the landlord.

In response to the landlord's submissions, the tenant testified as follows.

- The landlord had asked the tenant to end the tenancy early to which the tenant agreed. The landlord was made aware of the fact that she would be out of town during the end of tenancy and that the occupant would be handing the move-out for her and their children.
- The landlord had taken pictures of the rental property before the occupant had finished cleaning and vacating the property and that the rental unit was vacated and cleaned August 1, 2009 with the landlord's permission. The tenant pointed to pictures of garbage on the deck that was subsequently removed by the occupant, a dirty oven that was subsequently cleaned by the occupant, a dirty fridge that was subsequently cleaned by the occupant, and a soccer ball in the yard that the occupant had subsequently removed.
- In early August 2009 the occupant and landlord spoke over the telephone and the landlord was making accusations of damage but that no formal request for an inspection was made. The occupant acknowledged that he was supposed to meet the landlord at the property to view damages but that he did not keep the appointment.

- The occupant explained that he did the best he could as far as cleaning the house and yard went but acknowledged that there was a compost bin, cedar shavings and wood box left behind in the yard but that the tires did not belong to him or the tenant. The occupant also acknowledged that the workshop was left dusty.
- The tenant accepted responsibility for the damaged weather stripping caused by the dog but the deck railings were not chewed by the dog as the dog was not permitted on the deck. The tenant further explained that the railings had been left untreated or unstained by the landlord and the railings could have been chewed by squirrels.
- The lavatory faucet was rusted and old and that they replaced it themselves, at their own expense, instead of complaining to the landlord as the landlord lives out of town.
- The bathroom fan never worked properly.
- The toilet was loose but that the problem was within the floor and not something they had done.
- That the hole was in the workshop drywall was there at the beginning of the tenancy and have no knowledge of the hole in the siding.
- The occupant denied stealing the landlord's chainsaw and was unaware of the broken taillight on the campervan.

The landlord had provided photographs of the property in support of his claim. Initially, the landlord testified that the photographs were taken after the tenant had vacated and the occupant had finished cleaning; however, after hearing from the tenant and occupant, the landlord changed his testimony and acknowledged that a few of the pictures were taken earlier than originally stated. Upon further enquiry, the landlord testified that he constructed the rental unit in 1999 and confirmed that the fixtures were original to the construction of the rental unit. The landlord provided copies of the tenancy agreement for the subject tenancy and the tenancy agreement for the incoming

tenants, other correspondence with or from the tenant and the incoming tenants, and receipts or estimates as evidence for the hearing.

In the tenant's written submissions, the tenant explained that the landlord had advised that the rent would be increasing to $1,350.00 for the upcoming lease term so the tenant gave notice to end tenancy at the end of the lease term. The landlord then requested the tenant vacate earlier to accommodate incoming tenants to which the tenant agreed. The tenant explained that plywood was installed on the deck to preclude bears from trying to climb up on the deck. The tenant also explained that the former tenants had just moved out when she moved in and that the rental unit was in need of cleaning at the beginning of the tenancy. Finally, the tenant expressed dismay in the landlord's accusations as the landlord had inspected the property annually and had never mentioned any concerns about the condition of the property.

Analysis

Upon review of the tenancy agreement signed by the parties August 28, 2008 I find that the tenancy was to run for a fixed length of time to end August 31, 2009 and after August 31, 2009 the tenancy was to continue on a month to month basis. The tenant stated that the landlord informed her that rent would be increasing to $1,350.00 after the expiration of the fixed term. An undated letter from the landlord confirms that the landlord had informed the tenant that rent would be increasing at the end of the fixed term but the amount of the increased rent was not specified in the letter. The tenancy agreement signed by the incoming tenants shows that rent initially agreed upon by the incoming tenants was in the amount of $1,350.00 per month. Therefore, I accept the tenant's testimony that the landlord intended to increase the tenant's rent to $1,350.00 after August 31, 2009 had the tenancy continued.

The Act and Residential Tenancy Regulations provide for the amount the landlord may increase the rent. Since the tenancy was to continue on a month to month basis at the

end of the fixed term, without the tenant's written consent, the landlord was permitted to increase the rent only 3.7% in 2009. Accordingly, the landlord was not permitted to increase the tenant's monthly rent to $1,350.00. However, the tenant did not appear to obtain information on her rights under the Act and responded to the landlord's notice of increased rent by choosing to end the tenancy at the end of the fixed term. I am satisfied that at some point, the parties mutually agreed to end the tenancy as of July 31, 2009. Therefore, the tenant and all other occupants were required to vacate the rental unit by July 31, 2009.

At the end of a tenancy, the Act requires that a tenant leave the rental unit "reasonably clean" and provide the landlord with the keys to the rental unit. In addition, the tenant must ensure any damage, beyond normal wear, caused by the tenant or persons permitted on the property by the tenant during the tenancy is repaired. From the evidence before me, I am satisfied that the occupant had vacated and cleaned as much as he was going to by August 1, 2009. I am also satisfied that the condition of the rental unit on August 1, 2009 did not meet the landlord's standards. The issue for me to determine is whether the condition of the rental unit on August 1, 2009 violated the Act, regulations or tenancy agreement.

Where a party makes a claim for monetary compensation against another party, the party making the application has the burden to prove the claim. The burden of proof is based on the balance of probabilities. Sections 7 and 67 of the Act provide for awards for compensation and in accordance with those sections, in order for a party to succeed in a monetary award against another party, I must be satisfied of the following:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. Verification of the amount of the damage or loss; and,
4. The applicant did whatever was reasonable to mitigate their damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Act requires that both parties must participate in a move out inspection but the landlord has the burden of preparing condition inspection reports, even if the tenant does not attend the inspection. In this case, the landlord did not prepare condition inspection reports at the beginning or end of the tenancy. There is no dispute that the rental unit was not vacated and cleaned by July 31, 2009; however, the tenant alleged that the rental unit was vacated and cleaned by August 1, 2009 and that the landlord had given the occupant permission to stay and clean until August 1, 2009. I am left with mostly disputed evidence concerning the condition of the rental unit at the beginning of the tenancy and the condition of the rental unit on August 1, 2009.

I have considerable reservations about the timing of the photographs provided by the landlord as the landlord provided changing testimony in this regard. However, I also reject the tenant's position that the house was not sufficiently clean at the beginning of the tenancy as a defence as the Act clearly requires the tenant to leave the rental unit reasonably clean at the end of the tenancy and there is no exemption provided for this requirement. If the rental unit had been dirty at the beginning of the tenancy, the tenant had the responsibility to address the issue with the landlord at that time. Based on the occupants response that he "did the best he could" as far as cleaning the rental unit and the occupants acknowledgement that some abandoned possessions were left in the yard, I find the landlord is entitled to some compensation for cleaning costs and junk removal. I do not find the landlord sufficiently refuted the tenant's assertions that some of the yard debris was on the property when their tenancy began. Therefore, I award the landlord one-half of the cleaning and yard cleanup costs for an award of $319.95 [($375.00 + 165.00 + 90.00 + 9.90) x 50%].

As the tenant accepted responsibility for the damage to the weather stripping I further award the landlord $25.00.

In accordance with Residential Tenancy Policy Guideline 1, tenants are generally required to replace light bulbs as they burn out during the tenancy. The landlord provided a receipt for $20.17 for light bulbs at a department store and payment of $20.00 cash for florescent light bulbs. Therefore, I award the landlord $40.17 for light bulbs.

Landlords are required to repair and maintain a rental unit in reasonable intervals and when repairs are required. Fixtures deteriorate with normal use and may require repairs due to mechanical failure. Accordingly, where a fixture is replaced, an award for compensation must reflect the depreciation of the fixture due to normal aging and deterioration. Residential Tenancy Policy Guideline 37 provides for the normal useful lives of most fixtures in a residential unit which I have consulted in determining whether the landlord is entitled to compensation for replacement of certain items.

The deck railings and deck boards were approximately 10 years old at the end of the tenancy and the deck railings had not been stained or treated since they were installed. As the policy guideline provides a normal useful life of 10 years for deck railings I find the railings to be at or near the end of their useful life and the landlord not entitled to be compensated for their replacement. Deck boards have a normal useful live of 20 years; however, I did not find sufficient evidence the deck boards required replacement. Rather, from the photographs submitted I find it reasonable that the boards require repairs and that repairs to some boards are needed due to damage caused by the tenant. Therefore, I award the landlord two hours to repair the deck boards for an award of $30.00.

I do not find sufficient evidence that the tenant caused the lavatory fan to stop working and given the age of the fan, I find it reasonable that its failure was mechanical in nature. I do not find sufficient evidence that the tenant caused the toilet to become lose due to actions or neglect of the tenant, or a person permitted on the property by the

tenant. Rather, I find it more likely than not that the lavatory fan and the toilet repairs to be ordinary maintenance required of a landlord.

I was provided evidence that the landlord had installed a quality lavatory faucet in 1999 and the tenant replaced the lavatory faucet with an inferior fixture during the tenancy instead of requesting the landlord to repair the item. However, I find the tenant's actions also saved the landlord the cost of travelling to Nelson from New Westminster or paying someone to make the repair. Therefore, I reduce the landlord's claim for the lavatory faucet by $50.00 for an award of $40.00.

In the absence of a move-in condition report or other evidence to establish the condition of the property at the beginning of the tenancy I find the landlord did not meet the burden of proof with respect to the hole in the hole in the drywall or siding and I deny this claim.

I deny the landlord's claim for the rent discount given to the incoming tenants as I am not satisfied of there was a loss and if there was a loss that the landlord did whatever was reasonable to minimize the loss. Rather, I have considered that the tenant was paying rent of $1,119.46 at the end of the tenancy. Had the tenancy continued, the landlord would have been permitted to increase the rent 3.7% to $1,160.88. Since the landlord is receiving rent of $1,200.00 or $1,250.00 from the incoming tenants I find the landlord has experienced a financial gain from the tenancy ending. Further, in light of the above findings, I do not find the tenant entirely responsible for the deteriorated condition of the rental unit as the landlord did not make timely repairs to the property.

Based on the evidence before me, I am satisfied that the tenant over held the rental unit one day and the landlord is entitled to compensation for over holding one day which I calculate to be $36.11 ($1,119.46 x 1/31 days).

I do not find the disputed verbal testimony to be sufficient to show the tenant, or a person permitted on the property by the tenant, was responsible for the broken taillight

on the van stored on the property or the missing chainsaw. Therefore, I dismiss this portion of the landlord's claim.

The Act provides that an applicant may be awarded the filing fee; however, there is no provision for recovery of other costs associated with dispute resolution proceedings. Since the landlord has only been partially successful with this application, I award the landlord one-half of the filing fee, or $25.00.

In accordance with section 72 of the Act, I offset the tenant's security deposit and accrued interest against the amounts awarded to the landlord. I calculate the balance of the security deposit to be as follows:

Awarded to landlord:	
Cleaning	$ 319.95
Weather stripping	25.00
Light bulbs	40.17
Lavatory faucet	40.00
Deck board repairs	30.00
Overholding – 1 day	36.11
Filing fee	25.00
Total awarded to landlord	$ 516.23
Less: security deposit and interest	(517.71)
Balance owing to tenant	$ 1.48

As the balance of the security deposit is nominal, I do not provide either party with a Monetary Order. The landlord's application has been resolved by retention of the tenant's security deposit and accrued interest.

Conclusion

The landlord was partially successful in this application by establishing an entitlement to compensation of $516.23. As the landlord still has possession of the tenant's security deposit and interest I have offset these amounts against the amount awarded to the landlord. As the balance of the security deposit is miniscule, I provide no Monetary Order to either party.

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: January 15, 2010.

Dispute Resolution Officer