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, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing by registered mail on November 3, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on November 6, 2009. I find that the Tenant was served as required by s. 89 of the Act.

At the beginning of the conference call, each Party in attendance was requested by the Dispute Resolution Officer to identify themselves but only the Landlord and his agent did so. As the online conference console showed that 3 parties (not including the moderator) had dialled in, each Party was requested to provide the Dispute Resolution Officer with their telephone number for the purpose of determining why a third telephone number had appeared. The Landlord confirmed that one telephone number belonged to him and his agent claimed that she believed one of the telephone numbers was her cell phone number and the other was her home telephone number. When the conference call concluded, the same telephone numbers appeared on the console, however, the system administrator at that time indicated that the Tenant had exited the conference call. At no time during the conference call did the Tenant identify herself or otherwise indicate that she was in attendance although requested to do so a number of times by the Dispute Resolution Officer. The Tenant did not submit any documentary evidence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on April 1, 2009 and was to expire on April 1, 2010 however it ended on October 24, 2009 when the Tenant moved out. Rent was $2,100.00 per month. The Tenant paid a security deposit of $1,050.00 at the beginning of the tenancy.

The Landlord said that the rental unit was newly built and in "outstanding" condition at the beginning of the tenancy. The Landlord claimed that he did a move in inspection

with the Tenant on March 23, 2009 and she acknowledged in their tenancy agreement that this was the case. The Landlord also provided photographs showing the condition of the rental unit on March 28, 2009.

The Landlord said he did a move out inspection with the Tenant on October 23, 2009 and completed a report. The Landlord also provided photographs of the rental unit taken on October 24, 2009 that showed the condition of the rental unit on the day the Tenant moved out. The Landlord claimed that the Tenant damaged the new laminate flooring in the living room and den and based on a written estimate he provided, he said it would cost a minimum of $1,600.00 to make those repairs. The Landlord also claimed that three ceramic tiles near the entrance to the garage and the den were cracked and based on a verbal estimate, he said it would cost $150.00 (for supplies and labour) to replace them.

The Landlord said that the Tenant damaged a towel rack which had been partially pulled out of the wall, damaged some slats on a new venetian blind, put some scrapes and dents in walls and damaged a section of a baseboard in an upstairs bedroom. The Landlord also claimed that the rental unit required approximately 6 hours of cleaning because the stove was left with grease on it, the floors were dirty and there was oil in the garage. The Landlord admitted that many of the cleaning issues were only discovered after the Tenant moved out.

Analysis

Section 37 of the Act says that at the end of a tenancy, the 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.”

I find that the scratches or gouges to the laminate flooring in the rental unit are not the result of reasonable wear and tear and as a result I find that the Landlord is entitled to recover his reasonable expenses to repair that damage. I further find that the Landlord has chosen the most inexpensive route to make this repair which I find is reasonable and as a result, I award him the amount of $1,680.00 for this part of his claim.

Given that the ceramic tile floor was relatively new and given the short length of the tenancy, I find on a balance of probabilities that the ceramic tiles were broken as a result of neglect rather than normal wear and tear. I further find that the amount claimed by the Landlord for this repair is reasonable and as a result, I award him the amount of $150.00 for this part of his claim.

Based on the Landlord’s evidence (including photographs), I also conclude that gouges in the walls and a section of a baseboard in a bedroom were damaged by neglect rather than reasonable wear and tear and as a result, I award the Landlord $80.00 for this part of his claim. However, I cannot conclude that the repair to the towel rack in the

bedroom was due to neglect rather than the usual wear and tear of pulling towels off of it and as a result, this part of the Landlord's claim is dismissed.

I find that the damage (ie. creases) to 2 slats on a set of venetian blinds is minimal and does not warrant replacing the blinds and as a result, I award the Landlord $10.00 for the diminished value of the blinds due to the damage. With respect to the Landlord's claim for cleaning expenses, I note that the move out condition inspection report refers only to a "sticky" counter top, something left in the waste disposal in the sink and some black marks on a hallway wall. Although the Landlord claimed that the stove, floors and other things were also dirty, he provided no photographs or other evidence of them (except for a photo of small area of oil drops in the garage).

Section 35 of the Act says that a Landlord and Tenant must do a move out condition inspection report on or after the last day of the tenancy but before a new tenant occupies the rental unit. Consequently, I do not give a lot of weight to the Landlord's evidence of cleaning he says he discovered after the move out inspection and in the absence of any other evidence, I find that the rental unit was reasonably clean and that this part of the Landlord's claim is dismissed.

As the Landlord has been successful in this matter, he is entitled to recover the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

	Laminate repair:	$1,680.00
	Tile repair:	$150.00
	Wall repairs:	$80.00
	Blind damage:	$10.00
	Filing fee:	$50.00
	Subtotal:	$1,970.00
Less:	Security deposit:	($1,050.00)
	Accrued interest:	($0.00)
	Balance owing:	$920.00

Conclusion

A Monetary Order in the amount of **$920.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: March 04, 2010.

Dispute Resolution Officer