Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 10, 2009 each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing sent to the forwarding address provided to the landlord by the female tenant. On November 26, 2009 the landlord received a letter from the female tenant which requested return of "our" deposit and provided "our address." The landlord provided a copy of the envelope, which included the tenant's forwarding address. The landlord sent each respondent Notice of this hearing via Canada Post, Express post and provided tracking numbers as evidence of service to each tenant.

These documents are deemed to have been served in accordance with section 89 of the *Act;* however the tenants did not appear at the hearing.

Preliminary Matter

The landlord's evidence refers to the female tenant as a sub-tenant. I have determined that the female tenant was a co-tenant. This individual did not sign the tenancy agreement, but she moved into the unit with the male tenant, signed the move-in condition inspection and paid rent directly to the landlord. Therefore, the female tenant jointly shared the responsibilities as a tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages to the rental unit?

May the landlord retain the deposit paid in partial satisfaction of the compensation claimed?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 1, 2005, rent was $2,500.00 per month. A deposit in the sum of $1,250.00 was paid on February 3, 2005. The tenancy ended on April 30, 2009. The landlord purchased the home from her mother in July 2008 and terminated the tenancy so she could move in to the home.

The tenants were offered 3 opportunities to complete a move-out condition inspection, on May 1, 2 and 4th, 2009; however the tenants did not attend. By the end of the tenancy the relationship between the parties had deteriorated and communication had become difficult.

The landlord has claimed the following:

Cleaning services	216.66
Wall repair – wallpaper steamer	24.50
Wall prep products	140.69
Painting service	2,079.00
Lock replacement	619.89
Outer oven door	232.77
Front door broken window	80.00
Home depot costs	38.62
Administration	170.48
Vancouver transfer station	6.00
Landscaping fee	89.25
Estimate for bathroom wall repair	1,641.00
Estimate to repair fence	486.00
	7,574.86

The landlord submitted a move-out condition inspection report completed in the absence of the tenants. A written move-in inspection report was submitted as evidence. This report was signed by the female tenant and the landlord's mother on March 5, 2005. The report indicated that both parties found the home to be in good overall condition and agreed to the following:

- There were small nick marks on painted door frames and baseboards, a small number of picture nail holes;
- that the home had been painted in 2004;
- ceiling had cracks from age but were clean;
- wood doors, frames, mouldings in good condition;
- that there were no remarkable flaws in the walls;
- that the original floors had been refinished in 2003 with a satin polish and were in consistently good condition throughout;
- Lights and bulbs all in good working order, blinds were nearly new and all working;
- Bathtubs were slightly discoloured, all fixtures operational;
- Appliances in good condition and working;
- Patio is in fair condition, rear fence is solid; and
- Grounds and garden tidy.

The landlord submitted photographs of the home, as evidence of the state of the unit at the end of the tenancy.

The landlord submitted a signed confirmation that on May 5, 2010, payment had been made to a cleaning service for floors, baseboards, windows, blinds, door frames, washrooms, kitchen appliance and cupboards.

The original wood floors had been refinished with a satin finish in 2003. During an inspection of the rental unit the landlord noticed that the tenant had added a gloss finish to the floors in the landing and stairs. The landlord sent the tenant a letter dated January 14, 2009, in which the tenant was asked to return the landing and stairs to the original satin finish. This did not occur. The landlord had all of the floors refinished and assigned a percentage of the bill to the tenants, for the cost of refinishing the areas altered by the tenants. The landlord did not wish to refinish only one area of the house and chose to have all of the fir flooring restored. This work was completed and billed on May 19, 2009.

The landlord provided photographs that showed an excessive number of holes in a bedroom. The walls had been covered in wallpaper by the tenants. Some walls had blue marking and were stained and the upstairs ceiling was covered in red marks. The upstairs bathroom had been plastered with a textured compound of some sort, which is like cement. The tenant had blamed the landlord's handyman. The landlord submitted a statement signed by her handyman, declaring he was not responsible for the textured compound in the bathroom. The landlord obtained an estimate of $1,641.00 to have the compound removed and has not yet been able to afford to have this work completed.

The landlord rented a wallpaper steamer and supplied receipts for removal products, stripping products, primer, drywall mix and a tape knife in the sum of $140.69. Receipts for these costs were supplied. These products were used to remove the wallpaper installed by the tenants.

The landlord hired a professional service to repair the upstairs walls which were billed on August 31, 2009 in the sum of $2,079.00. The walls in the upper landing, a closet, the south bedroom all had an excessive number of holes. The photographs showed a number of holes and some larger punctures to the walls.

The landlord confirmed that the locks had been replaced, rather than rekeyed. The landlord had given the tenant 2 sets of keys and received only one set at the end of the tenancy.

The landlord provided a photograph of the damaged oven door. The January 14, 2009 letter to the tenant asked that she repair the oven door; this did not occur. The landlord provided an invoice for replacement of the glass.

A photograph provided as evidence showed the broken window in the front door. This occurred toward the end of the tenancy and cost the landlord $80.00 to repair. A written receipt for payment was submitted as evidence.

The landlord provided a Home Depot receipt dated August 5, 2009 for light bulbs, and sanding and wallpaper removal supplies in the sum of $38.62. Many of the light bulbs had been removed or replaced by 15 W or coloured bulbs.

The landlord claimed administration costs related to preparation for this hearing.

The move-out inspection indicates that garbage and recycling was left on both porches, garbage containers were overflowing, that exterior bulbs were missing; the lawn was overgrown, there were holes in the garden and lawn, and vines and weeds. The parking area was overgrown with weeds, broken furniture was left in the parking area and a fence panel was broken.

Analysis

Section 37 of the Act requires a tenant to leave a rental unit in a reasonably clean and undamaged state at the end of the tenancy. Residential Tenancy Branch policy suggests:

> *If a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.*

Policy also suggests that any changes made to the rental unit that were not explicitly consented to by the landlord must be returned to the original condition.

I have considered the evidence submitted by the landlord and, in the absence of the tenants, find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Floor services	1,750.00	700.00
Wall repair – wallpaper steamer	24.50	24.50
Wall prep products	140.69	69.80
Painting service	2,079.00	300.00
Lock replacement	619.89	80.00
Outer oven door	232.77	232.77
Front door broken window	80.00	80.00
Home depot costs	38.62	32.96
Administration	170.48	0
Vancouver transfer station	6.00	6.00
Landscaping fee	89.25	89.25
Estimate for bathroom wall repair	1,641.00	1,641.00
Estimate to repair fence	486.00	0
	7,574.86	3,472.94

I find that the landlord is entitled to cleaning costs as, based on the evidence before me; the unit was not left in a reasonably clean condition at the end of the tenancy.

In relation to the floor refinishing, I find that from 2003 to 2009 the floors would have experienced natural wear and tear. At the end of the tenancy the landlord refinished all of the floors, so that the finish would be uniform. Residential Tenancy Branch policy suggests that the expected lifespan of the hardwood flooring is twenty years. The floors in this home were fir, which I understand is a softer wood that is more susceptible to damage. It is reasonable to expect that a finish on soft wood floors would last at least ten years. In this case the floors had gone 6 years since the last restoration; therefore I find that the landlord is entitled to compensation for the equivalent of 4 years that could have been expected to pass before the floors would have required refinishing. I find that the failure of the tenants to repair the change they made to the original finish resulted the landlord having to remediate the floors earlier that would have been expected.

The move-in condition inspection indicated that the unit was last painted in 2004. Residential Tenancy Branch policy suggests that the average lifespan of paint in a rental unit is 4 years. As this tenancy commenced in 2005 I find that the landlord would have been faced with painting the entire unit by the time the tenancy ended in 2009.

I have considered the damage to the walls and the cost of filling holes in the bedroom walls and covering areas that were marked beyond what I find to be normal wear and tear and find that the landlord is entitled to nominal costs in the sum of $300.00 for

painting service and supplies. Tenants may place a reasonable number of holes in walls for the purpose of hanging art; however, I find that the number of holes, particularly in the one bedroom, was excessive. I find that balance of the claim for painting is dismissed.

I find that the landlord is entitled to all costs claimed incurred directly related to removal of the wallpaper and wall preparation products; less costs for items that may be reused. The letter given to the tenants, dated January 14, 2009, reminded the tenants that any customized decor must be reversed at the end of the tenancy. The tenants did not do this, this resulting in costs to the landlord.

In the absence of evidence of the cost of re-keying the doors, I find that the landlord is entitled to a nominal amount for rekeying in the sum of $80.00. I dismiss the balance of the claim for locks as I find that full replacement of the locks was the choice of the landlord and not a requirement.

I find that costs related to preparation for the hearing is borne by the Applicant; however, as the landlord's Application has merit, I find that the landlord is entitled to filing fee costs in the sum of $100.00.

In relation to the product that was placed on the bathroom walls, I find, on the balance of probabilities, and in the absence of the tenants at this hearing, that the tenants did cover the bathrooms walls with a textured product that will result in costs to the landlord for removal. The tenants must return all decor changes to their original condition and they have failed to do so. Therefore, I find that the landlord is entitled to the estimated cost for removal of this product from the walls.

I find that the landlord is entitled to compensation related to costs incurred for exterior clean-up. The grounds were tidy and clean at the start of the tenancy and the tenants failed to ensure the yard was restored to the same condition at the end of the tenancy.

In relation to the fence repair, policy suggests that a landlord is responsible for maintenance of fences. I am unable to determine, on the balance of probabilities, who caused the damage to the fence. The landlord believes the tenants were responsible, but there is no evidence before me that this is the case. Therefore, the claim for fence repair is dismissed.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of $1,294.25**,** in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $3,643.83, which is comprised of $3,543.83 in damage to the rental unit and $100.00 in

compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of $1,294.25, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $2,349.58**.** In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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: April 2, 2010.

Dispute Resolution Officer