INTERIM DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This was a cross-Application hearing

This reconvened 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 property, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants have made Application requesting compensation for damages and loss, fro return of double the deposit paid and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the reconvened hearing and reminded that they continued to provide affirm testimony. At the start of the hearing I introduced myself and the participants.

Preliminary Matter

The hearing commenced at the scheduled start time of 1:30 p.m. The tenant's advocate did not enter the hearing until approximately 1:45 p.m.

The landlord's Application indicated a claim for compensation in the sum of $295.00 and the details of the dispute indicated that the keys were not returned. Evidence submitted to the Residential Tenancy Branch on May 25, 2010, by the landlord included a breakdown of the monetary claim, which differed from that included on the Application.

A respondent must know the claim being made against them, therefore; I have determined that the landlord's monetary claim will include only the amount indicated on the Application. The landlord was required to amend their Application to include an increase in the amount claimed. Any amended Application must be served to the respondent as required by the Residential Tenancy Rules of Procedure and that did not occur in this case.

Background and Evidence

This tenancy commenced in June 2008, with the tenants signing a new tenancy agreement, after moving from another rental unit in the same building. Rent was

$990.00 per month, due on the first day of the month; a deposit in the sum of $495.00 was paid on May 12, 2008.

On November 29, 2009, the tenants provided the landlord with written Notice that they would move out “at the end of November.”

The tenants are claiming:

Return of double the deposit paid	990.00
	2,016.00

The landlord is claiming:

Damage to bathroom floor	295.00

The tenants gave Notice to move as they understood that a neighbouring unit had a bed bug problem. The tenants were fearful that the bugs would migrate into their unit. The tenants did not discuss this with the landlord prior to giving Notice.

The landlord told the tenants that they had not given proper Notice and would have to pay December 2009, rent owed. The tenants paid December rent and returned the keys to the rental unit on January 4, 2010. The tenants testified that they kept the keys only for the purpose of checking the mail and that all of their belongings had been moved out of the rental unit on December 12, 2010. The tenants submitted that they did not have possession of the rental unit in December and are entitled to return of the December rent paid. The tenants also argued that the landlord did not provide any notice of entry to repair the bathroom floor.

The landlord told the tenants they would enter the rental unit during December in order to complete repairs to the bathroom floor.

The parties disputed the contents of the move in and move out condition inspection reports. The report completed on June 1, 2008 included hand-written comments from the landlord and the tenants, recording deficiencies in the unit. The landlord stated that this provides evidence that at the start of the tenancy the tenants had closely examined the state of the unit and made their own comments in relation to deficiencies. Neither party made any notations in relation to the state of the bathroom, outside of a note by the landlord that there was a large chip on the tub. There were notations made by the tenants in relation to a noisy fan and a power outlet that was not functioning.

The move-out inspection report dated December 10, 2009, indicated that the bathroom floor was stained and badly damaged. The report also included the tenants forwarding address. The previous tenant had moved out on the last day of May, 2008 and on that day the landlord had the bathroom floor replaced. The tenant questioned the landlord as to why a receipt for that work had not been submitted as evidence and provided a

written statement from the previous tenant indicating that the bathroom floor required repairs.

The landlord submitted an invoice dated December 20, 2009 in the sum of $327.50 for floor replacement costs. The invoice indicated that the same business had replaced the floor in May 2008 and that the repair should have lasted fifteen years. The invoice indicated that damage could have been caused by soap, dye or chemicals.

The landlord supplied photographs of the floor, which show staining around the toilet and the edge of the tub. The landlord is claiming a pro-rated cost for this repair.

The tenants provided their forwarding address on the December 10, 2009, condition inspection report. On December 29, 2009, the landlord submitted an Application claiming against the deposit paid.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation is the reason the party making the application incurred damages or loss;
3. Verification of the amount of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In relation to the end of the tenancy, I find that the tenant's November 29, 2009, Notice ending their tenancy was effective on December 31, 2009. I based this decision on section 45 of the Act, which provides, in part:

> ***45*** *(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
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> > *(a) is not earlier than one month after the date the landlord receives the notice, and*
> > *(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

As the tenants gave Notice after November 1, 2009, and prior to December 1, 2009, and rent was due on the first day of the month; the Notice given November 29, 2009, was effective December 31, 2009.

I find that the tenants had legal possession of the rental unit for the month of December. The tenants retained the keys and did not return them until January 4, 2010. The tenants provided no evidence that they were denied use and occupancy of the rental unit during the month of December. Therefore, the tenant's claim for return of December 2009, rent paid is dismissed.

I also reject the tenant's claim that they were forced to move due to the fear of bed bugs. There is no evidence before me that their unit had any problems with bed bugs. Further, the tenant had a responsibility to discuss any concerns, as required by section 7 of the Act, and to provide the landlord with an opportunity to investigate the concern and respond appropriately. This did not occur.

I find, on the balance of probabilities that the bathroom floor was in good condition at the start of the tenancy. I based this decision on the condition inspection reports which included notations by the tenants of items that were of much less consequence than the floor, which the tenants alleged was damaged at the start of the tenancy. The damages indicated in the photographs clearly show staining to the floor, which I find would have been obvious to each party when completing the move in condition inspection; particularly when note was made of a chip to the bathtub.

I also based this decision on the evidence submitted in the form of an invoice, which declared the repairs were made on May 30, 2008 and that they were also required on December 20, 2009, due to staining. There is no evidence before me that there was any concern reported to the landlord by the tenants, in relation to water leaks or other potential causes of the staining.

Therefore, I find that the landlord is entitled to compensation in the sum of $295.00 for floor repair.

Section 38 of the Act provides, in part:

> ***38*** *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> > *(a) the date the tenancy ends, and*
> > *(b) the date the landlord receives the tenant's forwarding address in writing,*
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> *the landlord must do one of the following:*
>
> > *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> > *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

The landlord submitted an Application claiming against the deposit on December 28, 2010. The landlord was given the tenant's forwarding address on December 10, 2009, and the tenancy ended on December 31, 2009. I find that the landlord met the requirements of section 38 of the Act, as they had already submitted a claim against the deposit for damages to the rental unit. Therefore, I find that the tenants are not entitled to return of double the deposit, as provided by section 38(6) of the Act. Further, condition inspections were completed, as required by the Act.

Therefore, I find that the tenants are entitled to return of the deposit plus interest in the sum of $499.75; less the cost of pro-rated floor repair in the sum of $295.00.

As each Application has some merit I decline filing fees to either.

Conclusion

The tenant's claim for compensation requesting return of December 2009, rent is dismissed.

The landlord's is entitled to compensation for damages to the rental unit in the sum of $295.00.

The tenant's claim for return of double the deposit is dismissed.

The tenants are entitled to return of the deposit plus interest, in the sum of $499.75; less $295.00 owed to the landlord.

Based on these determinations I grant the tenants a monetary Order for **$204.75.** In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: July 27, 2010.

Dispute Resolution Officer