

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application for dispute resolution being filed by the landlords seeking:

1. A monetary Order for compensation for damage and/or loss;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

Total sum sought by the landlord \$2,633.89.

Both parties appeared at the hearing and gave evidence under oath.

Issues(s) to be Decided

Whether the landlord is entitled to the Orders sought.

Background and Evidence

This tenancy began on September 1, 2007 and ended on September 30, 2009. Rent was fixed at \$2,900.00 and the tenant's paid a security deposit of \$1,450.00 on July 30, 2006.

The landlords are claiming costs for the following items:

1	Cost of repairs to chain link fence	\$300.00
2	Cost of final law cut	36.75
3	Cost of cleaning carpets	177.45
4	Damage to main kitchen countertop	548.10
5	Damage to main kitchen floor	728.87
6	Damage to main stove top	20.00

7	Damage to basement vinyl floor	349.19
8	Cost of cleaning basement vinyl floor	71.93
9	Cost of 3 missing CRL's and 1 burnt out exterior flood light	13.98
10	Cost of 2 broken floor registers	20.12
11	Cost of removal of soil, debris and junk produced and left by tenant	367.50
	Total	\$2633.89

With respect to items 4, 5 and 7 the landlord says she is seeking only a percentage of the cost of those repairs. The landlord submits that she expects the Dispute Resolution Officer to determine the appropriate percentages.

The landlord submits the Condition Inspection Report prepared at move-in and move-out. Because the tenants had already relocated out of the country they appointed another person to act on their behalf with respect to preparation of the move-out Condition Inspection Report. The landlord submits that the tenant's agent agreed to the damages set out above numbered 5 through 9 inclusive. The landlord says she did not have repair estimates available at the time of the completion of Condition Inspection Report but has since received estimates and/or has completed repairs and can now determine the costs of those repairs/replacements and the sums are as claimed.

With respect to many of their claims the landlords provided photographs along with the Condition Inspection Report noting the damage.

The landlord testified that the flooring in the rental unit was newly installed in 2002. The landlord testified that the kitchen flooring now has numerous puncture holes in it and the basement flooring is damaged as well. The landlord testified that she initially had cleaners attempt to clean the basement flooring but the marks were permanent and the wear tears in the flooring. The landlord said it appears the tenants were performing some sort of construction work on the basement floor and this caused the damage. The landlord said that it also appears as though heavy objects were dragged across the basement flooring and this left scuff marks and one large tear.

With respect to items 10 and 11 (the broken floor registers and the soil removal) the landlord submits that these items only became apparent after the final inspection took place and are therefore not listed on the Condition Inspection Report. The landlord testified that no sums for repairs are listed on the Condition Inspection Report because she was unable to estimate the cost for repairing or replacement at the time the Report was prepared.

The tenant agrees with the costs incurred for carpet cleaning (\$177.45). The tenant agrees that they left a coffee pot on the kitchen countertop and this caused some damage. However the tenant says he should not be held responsible for the full cost of replacing the counter top (\$548.10) because they are only responsible for the small coffee pot burn damage and because the countertop was already old.

The tenant does not agree with the other claims. The tenant says that the chain link fence was not installed properly at the beginning of the tenancy. The tenant testified that he reported the matter to the landlords and they did not repair it. The landlord says that the hole began where the gate opened and closed and because repairs were not undertaken the hole became larger and larger over time.

With respect to the damage to the kitchen floor, again, the tenant says that the floor was old and they cannot be held responsible for its full replacement cost of \$728.87. With respect to the basement floor the tenants deny doing any sort of construction work on the floor or causing any damage.

With respect to the burnt out lights and the broken floor registers the tenant says he is not aware of these items.

With respect to the debris removal the tenant submitted a letter written to the landlords dated September 14, 2008 in which the tenant advises the landlord about the major renovation to the backyard and says that the landlord knew and agreed that the tenants could undertake this project. The tenant says the gardens and lawns had not been

properly maintained in years and the tenants actually spent their own money having the grounds improved.

With respect to the landscaping the landlord referred to the tenancy agreement which states that the tenants had to have the landlord's permission in writing to undertake any landscaping. The landlords submit that the tenants had no such permission.

The tenants submit that the landlord has not actually made repairs and has only supplied estimates of the costs of repairs in some instances.

Analysis

The landlords bear the burden of proving their claims. When one party makes a claim and the other party offers a reasonable explanation for the matter, then the person who is making the claim has failed in their burden.

Chain Link Fence

In this regard, I find that the tenant has offered a reasonable and probable explanation for the damage to the chain link fence. I will accept the tenant's testimony in this regard and deny the landlord's application for \$300.00 therefor.

Kitchen Countertop and flooring (kitchen and basement)

With respect to the damage to the kitchen countertop and to the kitchen and basement flooring, the tenant has agreed that they did cause some damage by placing a hot coffee pot on the countertop. Because the evidence shows only a small area of the countertop was damaged by the coffee pot, I will allow \$100.00 in this regard.

With respect to the flooring I find that the landlord has proven, with the Condition Inspection Reports and the photographs, that there were damages (punctures, tears and scrapes) to the floors that cannot be attributed to normal wear and tear. The landlord states that the floors were replaced in 2002 and they are therefore currently 8 years of age. Using the Residential Tenancy Branch's Guidelines on the "Useful Life of

Work Done or Thing Purchased” this flooring has a life of 10 years. The landlord has submitted that the kitchen and basement flooring replacement cost at this time would be \$1,276.97. Dividing that sum by 10 years I have determined that the “value” of floors to be \$127.70 per year. As the floors should have 2 years of useful life left I will allow 2 x \$127.70 = \$255.40 as the tenants’ share of the replacement costs of the flooring.

Debris and Final Lawn cutting

With respect to the removal of debris which has resulted from the landscaping tasks performed by the tenants, regardless of whether or not the tenant’s had the landlord’s permission to undertake the landscaping, the evidence shows that they did undertake landscaping work and they did remove soil and pile it under tarps. Having done that, I find they should have completed the work undertaken by having the soil removed and not leaving a pile covered by a tarp on the rental property. I will therefore allow the landlord’s claim for the expenses they incurred in completing this job. I am not satisfied with the landlord’s evidence respecting the final lawn cutting and this claim is dismissed.

Remainder of the Landlords’ Claims

As the damage with respect to the remaining items is noted and accepted on the Condition Inspection Reports and because I find the amounts claimed to be reasonable, I will allow the landlord’s claims in this regard.

To summarize I have awarded the following sums to the landlords:

1	Cost of repairs to chain link fence	0
2	Cost of final lawn cut	0
3	Cost of cleaning carpets	177.45
4	Damage to main kitchen countertop	100.00
5	Damage to main kitchen and basement floors	255.40
6	Damage to main stove top	20.00

8	Cost of cleaning basement vinyl floor	71.93
9	Cost of 3 missing CRL's and 1 burnt out exterior flood light	13.98
10	Cost of 2 broken floor registers	20.12
11	Cost of removal of soil, debris and junk produced and left by tenant	367.50
	Total	1026.38

As the landlords have been mostly successful in their claim I will allow them to recover the filing fee in the sum of \$50.00 bringing the total award to \$1,076.38.

The landlord holds a security deposit in the sum of \$800.00 paid July 30, 2006. With interest that deposit now has a value of \$826.29. The landlord has applied to retain that deposit and I will allow them to do so. I will therefore issue a monetary Order payable by the tenants to the landlord in the sum of \$250.09.

Conclusion

The landlords are provided with a formal Order in the above terms. The tenants must be served with a copy of the order as soon as possible. Should the tenant fail to comply with the Order the Order may be filed and enforced as an Order of the Provincial Court of British Columbia.