Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord submitted an application requesting compensation for damage to the rental unit, to retain the deposit in satisfaction of the claim and to recover the filing fee from the tenants for the cost of his Application

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The details of the dispute attached to the landlord's Application set out the claim for loss of revenue; therefore I have considered that portion of the claim for compensation.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

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

Is the landlord entitled to compensation for loss of rent revenue?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2008, a deposit in the sum of $550.00 was paid on January 5, 2008. The tenancy ended with proper written notice effective May 30, 2010. A copy of the tenancy agreement was submitted as evidence.

The parties agreed that on June 15, 2010, the tenant provided the landlord with a written forwarding address; at which time the landlord refunded a portion of the deposit, in the sum of $263.55. A move-in and move-condition inspection report was not completed.

The tenants have requested return of the deposit paid less the amount previously returned by the landlord.

The landlord has claimed the following compensation:

Carpet cleaning	136.45
Loss of rent revenue	550.00
TOTAL	836.45

The tenant agreed that they did not professionally clean the carpets at the end of the tenancy as required by the terms of the tenancy agreement, as the landlord wished to do some painting and relieved them of responsibility for the carpets. The landlord stated that he told the tenants he would delay the carpet cleaning and that the tenants would be responsible for the cost, as required by their written agreement. The parties agreed there was to be a delay, but each dispute whether the landlord forgave the tenants responsibility for payment. The landlord submitted a July 13, 2010, receipt for carpet cleaning in the sum of $136.45.

The tenant's recorded a telephone conversation with the landlord on June 30, 2010, in which they discussed the carpets and provided a transcript of this conversation as evidence. The tenant acknowledged the landlord was going to complete repairs before cleaning the carpets and the landlord informed the tenant he had obtained a quote and would give the tenants the difference. If the actual cost was less the landlord would return any balance of the deposit owed. The tenant did not dispute this arrangement and then hung up.

The parties agreed that 3 months after the tenancy began the landlord was told that something had dropped on the kitchen floor, damaging a tile. The landlord told the tenants to place mats on the floor in order to protect it from further damage and offered to purchase mats for the tenants. The tenants did not place mats on the floor and caused 2 others chips to the floor; in front of the stove and the fridge. The landlord considered this negligent, as the tenants had been told to cover the floor and had been offered mats.

Two weeks before the end of the tenancy the landlord, tenant and the tenant's son were outside. The tenant's son told the landlord that his father had repaired the tiles. At the end of the tenancy the landlord found 3 chips in the kitchen floor; all had been filled with a water soluble grout. Photographs of the damage were supplied as evidence.

The tenant stated that there were chips in the floor at the start of the tenancy but that they did cause the hallway damage. The tenant also submitted the damage was part of normal wear and tear.

The landlord submitted a July 8, 2010, receipt for tile replacement in the sum of $150.00.

The landlord has claimed the loss of 2 weeks rent as portions of the unit required painting after the tenancy ended, despite the unit having been painting 2 years prior. Due to the time needed to repair the tiles and to paint, the landlord did not rent out the unit and suffered a loss of rent.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

On June 15, 2010, the landlord did repay a portion of the deposit owed to the tenants, in the sum of $263.55. There is no evidence before me that the tenants gave written permission for any deductions from the deposit and, in the absence of a condition inspection report that included such an agreement and, based on the disputed testimony, I find that the landlord failed to return all of the deposit or to make a claim against the deposit within fifteen days of June 15, 2010. Therefore, pursuant to section 38(6) of the Act, I find that the tenants are entitled to return of double the $550.00 deposit paid to the landlord; less $263.55.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord have failed to offer the opportunities for inspection.

Section 35 of the Act requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

Section 72(2) of the Act provides:

> *(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*
>
> > *(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*
> > *(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

I have found that the right of the landlord to claim against the deposit for damages was extinguished. However; pursuant to section 72(2) of the Act, I have set-off the amount owed to the landlord from the deposit held in trust by the landlord.

In relation to the floor tile, I find, on the balance of probabilities and from the evidence before me that the initial damage to the kitchen tile was not the result of any negligent act on the tenant's part. The damage occurred and the tenants notified the landlord. However, the other 2 areas of damage, on the submission of the landlord, occurred later in the tenancy, despite the landlord's request that the tenants place mats on the floor or accept mats from the landlord.

The tenant disputed the tile damage occurred as the result of negligence and told the landlord it was due to normal wear and tear. I have placed considerable weight on the landlord's testimony, that the tenant's son, in the tenant's presence, told the landlord that his father had repaired the tiles. The tenant did not correct his son at that time, nor provide any explanation as to the repairs he had completed and I find that this places the tenant's testimony in a different light.

The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant in relation to the tiles.

Therefore, I find that the tenant's are responsible for two thirds of the cost of tile repair, based on the receipt supplied by the landlord; in the sum of $100.00. If the tenant's had placed mats on the floor it is highly unlikely any further damage would have occurred. They chose not to accept the landlord's offer of mats and did not take steps to protect the floors, after a request had been made that they do so.

There is no evidence before me, that even if the tenants had caused damage that resulted in the need for painting that the work completed by the landlord resulted in a loss of rent income to the landlord. The tile work completed was minor and I find it was so insignificant that this would not have barred the landlord from re-renting the unit for June 1, 2010. Therefore, the claim for loss of rent revenue is dismissed.

Therefore, I find the landlord is entitled to retain the following from the deposit:

	Claimed	Accepted
Tile repair	150.00	100.00
Loss of rent revenue	550.00	0
TOTAL	836.45	236.45

The amount owed to the tenants is based on the following calculation:

Deposit paid	550.00
Less amount previously paid	263.55
Balance owed to tenants	844.61
Owed to landlord	236.45
Amount retained by landlord	286.45

Overpayment to landlord	50.00
Balance owed to tenants	894.61

As I find that each application has some merit I have determined that neither party is entitled to filing fee costs from the other.

Conclusion

I find that the tenants have established a monetary claim, in the amount of $1,100.00 less $263.55 previously returned to the tenants, plus interest in the sum of $8.16 and a $50.00 overpayment to the landlord**.**

Based on these determinations I grant the tenants a monetary Order for $894.61**.** 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.

The landlord has established a monetary claim in the sum of $236.45, which has been previously retained from the deposit held in trust.

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: November 24, 2010.

Dispute Resolution Officer