Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on May 1, 2009 and ended on June 30, 2010 when the Tenants moved out. Rent was $1,225.00 per month. The Tenants paid a security deposit of $600.00 at the beginning of the tenancy. A move in inspection report was completed with the previous owner of the rental property on May 1, 2009. The current Landlord purchased the rental property on April 1, 2010.

The Landlord said that she waited all day for the Tenants to finish cleaning the rental unit on June 30, 2010 but they left without participating in a move out inspection. The Landlord said she had the Tenants' telephone number but knew they would be out of town for 4 days so she completed the move out inspection report in their absence on July 2, 2010 and also made a DVD recording with a witness present.

The Tenants said they asked the Landlord to do a move out inspection with them prior to the end of the tenancy but she did not propose any dates and did not advise them that she wanted to do one on June 30, 2010. The Tenants also said that they told the Landlord in advance that they would be going out of town for 4 days after vacating the rental unit but would be checking their messages. The Tenants said that after they returned, they were going to contact the Landlord again about doing a move out inspection but discovered that she had already started renovations. The Tenants said they disagree with many of the remarks the Landlord made on the move out condition inspection report.

The Landlord claimed that the Tenants left a number of items such as wooden pallets, foam mattresses, boxes and bags of garbage as well as a toaster oven and microwave oven in the basement at the end of the tenancy. The Tenants claim that at the beginning of the tenancy, they were told by the previous owner that they could use the basement for storage but that he would also be sharing it. The Tenants claim that the items left behind were already in the rental unit at the beginning of the tenancy and belonged to other tenants and the former landlord. The Tenants argued that because they shared the basement with the landlord they were not responsible for cleaning up this area. The Tenants admitted that they had the exclusive use of the laundry area and a spare bedroom in the basement and that the current Landlord did not use the basement as the former owner had. The Landlord argued that when she approached the Tenants about renovating the basement, they told her that it was included in their rent and that they would seek to enforce that agreement.

The Landlord also claimed that a great deal of cleaning was required to bring the rental unit up to a standard where it could be re-rented. The Landlord relied on a DVD recording she said she took of the rental property on July 2, 2010 in which she went from room to room making comments about the general state of cleanliness and repair. In particular, the Landlord claimed that it took approximately 2 hours to clean soap scum from the shower surround and tub and a further hour to clean mould off of the bathroom window frame. The Landlord also claimed that all the walls in the house were dirty and had to be washed. The Landlord further claimed that the kitchen and laundry room appliances had not been cleaned and that dust and dirt was not removed from door and window frames.

The Tenants argued that the rental unit was in cleaner condition at the end of the tenancy than it was at the beginning of the tenancy. The Tenants also disagreed with the comments made by the Landlord on her DVD recording and suggested that she had a different standard of cleanliness. For example, the Tenants argued that while the Landlord claimed the bathroom was dirty, the DVD recording showed that it was reasonably clean. The Tenants said they washed all of the walls and claimed that the walls had to be re-washed by the Landlord so that they could be primed for painting. The Tenants said their previous Landlord advised them that he had purchased the rental property in 2000, had never painted it and was unaware of when it had last been painted. The Tenants also said that some of the photographs relied on by the Landlord were taken a month after the tenancy ended and were unreliable. In particular, the Tenants argued that dust on the top of the cupboards could have been from the renovations.

The Landlord also sought to recover a proportion of the cost for drywall repairs and painting. The Landlord argued that many of the damages to the walls occurred during the tenancy because they were not recorded on the move in condition inspection report.

The Landlord also argued that due to the need to make extensive repairs to the drywall, the Tenants should also be responsible for part of the cost to paint the walls. The Tenants argued that most (if not all) of the damage to the walls existed at the beginning of the tenancy. The Tenants claimed that the previous owner did not record all of the damages to the walls (including nail holes) because there were so many. The Tenants also claimed that the previous owner advised them that the property had been rented out since 2000 and that he had made no repairs during that time.

The Landlord also sought to recover from the Tenants the cost of removing a broken panel of glass in the living room window. The Landlord claimed that one of the Tenants advised her that someone had hit it with a guitar which the Tenants denied. The Tenants said the glass was broken at the beginning of the tenancy and the damage was recorded on the move in condition inspection report. The Tenants said that during the tenancy, a guest leaned back against the window and part of the broken panel fell out. Consequently, the Tenants argued that they should not be responsible for this expense.

The Landlord also sought to recover $36.00 for replacing light bulbs and $60.00 to change a lock. The Landlord claimed that the Tenants received a key to the basement entrance at the beginning of the tenancy but did not return it at the end of the tenancy. The Tenants said they were never given a key to the basement door.

The Landlord also ought to recover a loss of rental income for ½ of a month or $600.00. The Landlord said she anticipated that repairs would only take 2 weeks but after the Tenants vacated the rental unit, she discovered that it would take much longer as the property was in worse shape than she had thought due to the Tenant's failure to maintain it. The Landlord said she put a sign out advertising the rental unit approximately 2 weeks after the tenancy ended because it was not in a condition to show while repairs were being made. The Tenants said the Landlord never showed the rental unit to any prospective tenants during the last month of the tenancy and they never saw a "for rent" sign on the rental property in mid-July. In any event, the Tenants said the flooring, paint and appliances in the rental property had not been changed or maintained for *at least* 10 years and showed signs of neglect at the beginning of the tenancy. The Tenants argued that those things would all have had to be replaced due to age and wear and tear in any event and the Landlord was aware of that when she purchased the property in April of 2010.

Analysis

Section 17 of the Regulations to the Act says that a Landlord must offer a tenant 2 opportunities to schedule a condition inspection by proposing one or more dates or times and the 2nd opportunity must be delivered to the Tenant in the form of a Final

Notice to Schedule a Condition Inspection. I find that the Landlord did not offer the Tenants any opportunity to participate in a move out condition inspection and as a result, I find that she contravened s. 35 of the Act.

The Act permits a Landlord to complete a condition inspection report without a tenant **only** when the tenant refuses to participate. However, in this case I find there is no evidence that the Tenants refused to participate. To the contrary, I find that the Tenants asked the Landlord to arrange a move out inspection, gave her one month advance notice of when they would be moving out and advised her that they would be unavailable for 4 days following the end of the tenancy. Notwithstanding this information, I find that the Landlord made no attempt to schedule a condition inspection report with the Tenants and instead completed it on her own 2 days after the tenancy ended. Consequently, I give the Landlord's move out condition inspection report little weight. The Landlord also relied on a DVD recording of her inspection of the rental unit on July 2, 2010 which she submitted as evidence at the hearing.

Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. 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." In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy and that any damage was due to an act or neglect of the Tenants and not the result of reasonable wear and tear.

The Tenants completed a move in condition inspection report with the former owner of the rental property on May 1, 2009. The Tenants said the former owner put a slash across the portion of the report for the basement because they were not supposed to be responsible for it. However, the Tenants also argued that they were permitted to use the basement for storage, for laundry and to use the spare bedroom from time to time. In any event, the Tenants claim that the articles left in the basement were there at the beginning of the tenancy and they were not responsible for disposing of them. The Landlord argued that the Tenants were responsible for the basement because they had the exclusive use of it.

I find that it is irrelevant to the Landlord's claim for garbage disposal whether the Tenants had the use of the basement or not (and I make no finding in that regard). If the items in the basement belonged to the previous owner or previous tenants, then it was not the responsibility of the Tenants to dispose of them but rather the Landlord's. Given the contradictory evidence of the parties, I find that there is insufficient evidence to conclude that the items left in the basement belonged to the Tenants and as a result, that part of the Landlord's application is dismissed without leave to reapply.

The Landlord also claimed that she incurred $495.00 to clean the rental unit at the end of the tenancy. The Landlord relied on the DVD recording she took on July 2, 2010 as well as the evidence of her witness, T.C. Other than T.C.'s evidence that it took 3 hours to clean the bathroom, there is little other evidence to support the amount claimed. The Landlord argued that the Tenants had not washed the walls but the Tenants denied this and claimed that the walls were only washed again by the Landlord in preparation for painting and they should not be responsible for that. The Landlord also argued that the kitchen and laundry appliances were dirty but admitted that the stove was disposed of. The Tenants argued that the rental unit was cleaner at the end of the tenancy than it was at the beginning of the tenancy.

It is not a defence for the Tenants to argue that the rental unit was cleaner at the end of the tenancy than it was at the beginning of the tenancy. Section 32 of the Act says that a Landlord must provide the rental unit to a Tenant in a reasonably clean state at the beginning of the tenancy. Consequently, if the rental unit was not reasonably clean at the beginning of the tenancy, the Tenants should have addressed this with the previous owner. The Act requires the Tenants to leave the rental unit reasonably clean at the end of the tenancy but not to a higher standard.

RTB Policy Guideline #1 sets out the specific responsibilities of Landlords and Tenants for cleaning and repairs. Page 3 states, for example, that a Tenant is responsible for cleaning the inside of windows and tracks during and at the end of the tenancy, including removing mould. It also states that a Tenant is responsible for cleaning the inside and outside of major appliances but is not responsible for cleaning behind and under them if they are not on rollers. A Tenant is also responsible for washing scuff marks and finger prints from walls unless the marks cannot be removed and are the result of reasonable wear and tear. This is also subject to the Landlord's duty to paint the interior at reasonable intervals.

I find that the Landlord has provided insufficient particulars to support the amount claimed for cleaning. In particular, while I find that the Tenants did not leave the appliances (ie. the dishwasher, microwave oven, stove, washer and dryer) reasonably clean, I also find that the stove (for which 3 hours of cleaning was estimated) was not required because it was old and in poor condition and had to be replaced. The Tenants also claimed that the stove and refrigerator could not be pulled out and as a result, I find that they were not responsible for cleaning under and behind those appliances. I also find that the Tenants did not remove dust, dirt and mould from around door and window frames and light covers. However, I also accept the Tenants' argument that the dust on top of the cupboards may have accumulated from renovations after the tenancy ended. Aside from mould around the bathroom window, I find that the poor condition of the bathroom fixtures (including the shower surround) was the result of years of wear and

tear (and the build up of water sediments) and not due to the Tenants' failure to clean. Similarly, I find that the walls likely had to be thoroughly re-washed by the Landlord due to years of wear and tear (including cigarette smoke resin) in order to prime the walls for painting and that the Tenants are not responsible for that. Consequently, I find that the Tenants are responsible for some (but not all) of the Landlord's cleaning expense which I assess at **$200.00** representing 8 hours of cleaning at $25.00 per hour.

The Landlord also claimed expenses for drywall repairs. The Landlord claimed that the Tenants left a number of holes in the drywall of varying sizes. The Tenants claimed that these holes were made by previous tenants and that the previous landlord did not record all of them on the move in Condition Inspection Report because there were so many of them. The move in Condition Inspection Report shows that the walls of each room had "some marks" and that one of the bedrooms also had a hole in the wall.

Section 21 of the Regulations to the Act says that a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit on the date of inspection unless one of the Parties has a preponderance of evidence to the contrary. In the absence of a preponderance of evidence to the contrary from the Tenants, I find that the move in condition inspection report is the best evidence of the condition of the walls at the beginning of the tenancy. However, I find that some of the damages (especially in the hallway and on the corners) are more likely the result of reasonable wear and tear from being in a high traffic areas. Consequently, I find that the Tenants are responsible for a portion of the drywall repair expense claimed by the Landlord which I assess at **$200.00**.

I find that the Tenants are not responsible for compensating the Landlord for any of her painting expenses. As indicated above, a Landlord is responsible for painting an interior at reasonable intervals. I find that the interior of the rental unit had not been painted for at least 10 years and would therefore have to be re-painted whether there was any drywall damage or not. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also sought to recover $60.00 for changing a lock to the basement entrance as she claimed the Tenants failed to return a key. The Landlord also sought to recover $20.00 to replace burned out light bulbs. The Tenants claim that they never received a key to the basement, however according to the tenancy agreement, they did. In the absence of a preponderance of evidence to the contrary from the Tenants, I find on a balance of probabilities that the Tenants had a key to the basement which was not returned to the Landlord at the end of the tenancy. RTB Policy Guideline #1 at p. 5 states that a tenant is responsible for replacing light bulbs during the tenancy. However, the Landlord did not provide any evidence to support her claim for these

expenses (such as a receipt) and as a result, these parts of her claim are dismissed without leave to reapply.

The Landlord also sought to recover $45.00 for the broken living room window. However, the move in Condition Inspection Report shows that the window was already broken at the beginning of the tenancy and I find that the Landlord cannot now seek to recover all or part of the expense of replacing it simply because part of the broken section fell out due to an act of a guest of the Tenants. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also sought to recover a loss of rental income for ½ of a month as she claimed that due to the Tenants' failure to properly maintain the rental unit during the tenancy it took longer than anticipated to make repairs. The Tenants argued that the condition of the rental unit was the result of the previous owner's failure to maintain the property and specifically to address wear and tear over a period of 10 years preceding the tenancy. The Tenants also argued that the Landlord not only made repairs but conducted extensive renovations to the rental unit for which they should not be responsible. The Landlord and her witness gave evidence that most (if not all) of the flooring was replaced (including baseboards), that some of the bathroom fixtures were replaced and that drywall repairs and painting was required throughout the unit. Consequently, given all of the repairs made to the rental unit, I cannot conclude that the repairs and cleaning for which I have found that the Tenants were responsible was the reason the Landlord lost rental income for ½ of a month.

Furthermore, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Tenants argued that the Landlord made no attempts to re-rent the rental unit until after she completed repairs and renovations. The Landlord admitted that she waited until mid-July, 2010 at which time she put a sign out because she could not show the unit when it was ripped apart. I find that the Landlord could have advertised the unit earlier (ie. during the last month of the tenancy) but chose to wait until the renovations had almost been completed before she made any attempt to re-rent the rental unit. I find that merely putting a sign out on the property to re-rent it was inadequate and as a result, I also find that the Landlord did not take reasonable steps to minimize her losses and her claim for a loss of rental income is dismissed without leave to reapply for both of these reasons.

The Landlord also sought to recover the cost of the filing fee for this proceeding and her service or registered mail expenses from the Tenants. However, as the Landlord has been successful in recovering less than 20% of the amount she claimed, I find that this

is not an appropriate case to award those amounts and that part of the Landlord's claim is also dismissed without leave to reapply.

Section s. 36(2)(c) of the Act says that if a Landlord contravenes s. 35 of the Act (by failing to complete a move out condition inspection report with the Tenants) the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the discretion to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, ***I order the Landlord to keep $400.00 from the Tenants' security deposit and accrued interest to compensate her for the monetary award and I further order the Landlord pursuant to s. 38(1)of the Act to return the balance of the Tenants' security deposit of $200.00 to them forthwith***.

Conclusion

A Monetary Order in the amount of **$200.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: January 12, 2011.

Dispute Resolution Officer