

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from May 1, 2009 to April 30, 2010. Thereafter, tenancy continued on a month-to-month basis until October 31, 2010. Monthly rent was \$2,300.00, and a security deposit of \$1,150.00 was collected. Added to the monthly rent was \$300.00 to cover utilities. In this regard, clause # 6(B) of the tenancy agreement provides, in part, as follows:

At the end of 1 year any overpayment will be refunded to Tenant at lease termination and any shortage will be due to Landlord by an additional payment.

Both parties participated together in the completion of the move-in condition inspection and report near the start of tenancy.

While both parties also participated together at the beginning of the move-out condition inspection, there are differing perspectives as to how that process unfolded and then ended; however, there is no apparent disagreement that the move-out condition inspection report was ultimately completed by the landlord who then provided a copy to the tenants. New renters took possession of the unit on November 1, 2010.

Documentary evidence submitted by the parties reflects tentative efforts made to resolve at least some aspects of the dispute prior to the hearing. However, these efforts were not successful and, during the hearing, both parties remained argumentative.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides as follows:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises,” and provides in part as follows:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the [Act].

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. A dispute resolution officer may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The various aspects of the landlord’s application and my findings around each are set out below. While the testimony and the detailed documentary evidence submitted by both parties has been considered, not all details are reproduced here.

\$1,565.00: water damage to cabinets, repair & re-stain damaged kitchen cabinets. The landlord’s evidence includes a quote dated November 6, 2010, for this amount. The landlord testified that the work for which the quote was provided has not been completed. In the result, there is no evidence of any directly related cost incurred by the landlord. Accordingly, this aspect of the landlord’s application is hereby dismissed with leave to reapply.

\$950.00: water damage to floor around and under kitchen fridge (includes repair to damaged cabinets / pantry). The landlord’s evidence includes a quote dated November 15, 2010 for an amount ranging from \$800.00 to \$950.00. However, in her submission the landlord notes that this is “not [an] acceptable fix” as “only 2 closets & not enough hidden spaces to remove existing flooring to use to repair.”

Further to the above quote, the landlord’s evidence includes a receipt for the purchase of “birch cherry” flooring in the amount of \$4,270.60, and a claim that the cost of installation has been quoted at \$5,600.00. This grand total of \$9,870.60 has not been included in the landlord’s claim (\$4,270.60 + \$5,600.00).

Based on the documentary evidence and testimony of the parties, I am persuaded that the landlord’s intent is not to proceed with work described in the quote for \$950.00, and that the landlord had determined prior to the end of the

subject tenancy that the flooring would likely be replaced following the end of the subject tenancy. In the result, this aspect of the claim is hereby dismissed.

\$3,000.00: *unrepairable dining room table – excessive damage.* In consideration of normal wear and tear prior to the start of the subject tenancy, and during the subject tenancy, and in view of the tenants' acknowledgement of possible staining from water that may have been trapped under a "dark wood bamboo placemat," I find on a balance of probabilities that the landlord has established entitlement limited to **\$100.00***.

\$200.00: *unrepairable damage to sea grass chest.* This item appears to have been purchased in September 2008 for a cost of \$220.00. In consideration of normal wear and tear both prior to and during the subject tenancy, and in view also of the tenants' acknowledgement of having "cut off 7 strands that were sticking out," I find the landlord has established entitlement limited to **\$75.00***.

\$305.42: *destruction on all chairs on patio set.* A receipt shows purchase of the patio set on or about July 17, 2008. In consideration of normal wear and tear both prior to and during the subject tenancy, and based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the state of the patio set is a result of normal wear and tear. In sum, this aspect of the application is hereby dismissed.

\$200.00: *loss of value of queen mattress in guest room.* I note the landlord advertised the mattress for \$400.00, and ultimately sold it for \$200.00. There are no e-mails included in the landlord's evidence which confirm that anyone had committed to pay the \$400.00 asking price. Further, however, I find that the tenants have provided no persuasive evidence to dispute the landlord's claim that they were responsible for the stains. Accordingly, I find that the landlord has established entitlement limited to **\$50.00***.

\$190.00*: *change locks (mail key & key to house).* Pursuant to section 37 of the Act, as above, tenants are required to return all keys in their possession at the time when they vacate the unit. However, evidence submitted by the tenants indicates that they returned keys in care of the new tenants on November 3, 2010. Accordingly, I find that the landlord has established entitlement to the full amount claimed, which is supported by a receipt submitted in evidence.

\$84.21: *cost to replace water filters.* The receipt for purchase shows that filters "have a 6 month life," however, there is no evidence of a formal agreement

between the parties concerning this particular matter. Further, in their documentary evidence the tenants claim as follows:

During the move-in inspection [the landlord] told us we only needed to replace the water filter if we were planning on using it. We chose to drink tap water instead.

In the result, this aspect of the landlord's application is hereby dismissed.

\$10.00*: replacement light bulbs. Residential Tenancy Policy Guideline # 1 provides that a tenant is responsible for "replacing light bulbs in her or her premises during the tenancy." Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has established entitlement to the full amount claimed.

\$400.00: miscellaneous labour. Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has established entitlement limited to **\$100.00***.

\$100.00: filing fee. As the landlord has achieved limited success with this application, I find she has established entitlement limited to **\$50.00***.

In summary, I find that the landlord has established a claim of **\$575.00**, as above. I order that the landlord withhold this amount from the security deposit, and FORTHWITH repay the balance to the tenants in the amount of **\$575.00** (\$1,150.00 - \$575.00).

As to the matter of whether or not the landlord owes the tenants an "overpayment" for hydro of \$849.14, and an "overpayment" for cable of \$147.80, in addition to HST of \$17.74, the parties have the option of trying to resolve that matter between them or, in the alternative, the tenants have the option of making their own application for dispute resolution. Evidence submitted by the parties for this proceeding does not include any statements or invoices from the respective utility service providers, which are pertinent to the term of this tenancy.

Conclusion

I hereby order that the landlord may withhold **\$575.00** from the tenants' security deposit.

I further hereby order the landlord to FORTHWITH repay to the tenants the balance of the security deposit of **\$575.00**.

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*.

DATE: March 18, 2011

Residential Tenancy Branch