Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, FF
Tenant: MNSD, FF

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 Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit and a pet damage deposit and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

This tenancy started on September 1, 2009 and ended on December 30, 2011 when the Tenant moved out. Rent was $1,032.00 at the end of the tenancy. The Tenant paid a security deposit of $500.00 and a pet deposit of $200.00 at the beginning of the tenancy.

The Parties completed a move in condition inspection report on August 20, 2009. At the end of the tenancy the Landlord prepared a hand written "check out inspection" which listed damages. This document was signed by the Tenant on December 30, 2011 but was not signed by the Landlord. The Parties also completed a document called, "Security Deposit Statement" on December 30, 2011 that set out estimated cleaning and repair expenses of $129.20 for wall repairs and general cleaning, carpet cleaning and a carpet repair expense (for the stairs).

The Tenant said he gave the Landlord written authorization to deduct $129.20 from his security deposit and the Landlord told him he would return the balance of $570.80 to him. Instead, the Tenant said on January 13, 2012 the Landlord returned $258.20 to him with an amended copy of the Security Deposit Statement on which he had added an additional $192.00 for wall repairs and cleaning, $70.60 for cleaning supplies and $50.00 for carpet repairs. The Tenant said the Landlord also advised him in an accompanying letter that he had discovered a cat urine smell in the laundry room and

that if the Tenant decided to take “RTB action”, the Landlord would request “full restitution” for the cost to replace the flooring and a loss of rental income.

The Landlord said that during the move out inspection he noticed a strong smell of a cleaner such as Pinesol in the rental unit. The Landlord said on January 4, 2012, he returned to the rental unit and discovered a strong cat urine smell in the laundry room which he believed the Tenant had tried to mask with a cleaner. The Landlord said he purchased some cleaning products to try to remove the smell over a period of a week and although the smell lessened a bit, an odour still remained. The Landlord said he then showed the rental unit to two sets of prospective Tenants on January 15, 2012, however they both made remarks about the strong smell of urine in a bedroom adjoining the laundry room. Consequently, the Landlord said he had to remove the carpeting from the bedroom and the linoleum from the laundry room, put a sealer in the area of the wall adjoining the two rooms and replace the flooring. As a result, the Landlord said he incurred additional expenses of $70.60 for cleaning products, $378.00 to replace the carpet and $142.00 to replace the linoleum.

The Landlord admitted that he advised the Tenant not to fill in nail holes on the walls because it was the practice of his handy man to fill them with putty mixed with a paint to match the color of the walls. However, the Landlord said he had to hire someone else to do this work and instead they filled the holes with a light-coloured putty which had to be sanded and painted over. The Landlord claimed that he also discovered more small holes after the inspection. The Landlord also claimed that a piece of carpeting on the stairs could not be repaired as easily as he thought and that instead he had to replace a section of carpet. The Landlord further claimed that he did not notice during the move out inspection that light fixtures and window ledges had not been cleaned by the Tenant.

The Landlord admitted that the carpeting on the stairs and in the bedroom and the linoleum in the laundry room were at least 10 years old but he argued that they were still in good condition and would not have had to have been replaced but for the damage sustained to them during the tenancy. The Landlord also argued that he did not charge the Tenant for the cost to replace the carpeting on the stairs but only the labour to do so. The Landlord also argued that he was only charging the Tenant ½ the estimated cost to replace the bedroom carpeting and 20% of the estimated cost to replace the linoleum. The Landlord claimed that as a result of the urine smell and the need to do repairs, he lost rental income for January 2012 in the amount of $1,032.00.

The Tenant denied that the flooring was damaged by cat urine during the tenancy. The Tenant and his mother, J.U., claimed that the cat box was located under a sink next to an opposing wall and that the wall alleged to have an odour had a freezer and laundry hamper up against it during the tenancy. The Tenant and J.U. claimed that there was never a smell of cat urine during the tenancy and denied that there was one at the end of the tenancy. The Tenant claimed the Landlord took almost an hour to methodically inspect the rental unit on December 30, 2011 and there was no mention of a urine smell at that time. The Tenant said he also found it suspicious that the Landlord only

discovered a strong odour in a bedroom 2 weeks after he vacated but failed to contact him to inspect the alleged damaged flooring and that the Landlord only got quotes for the alleged damaged flooring the day after he received the Tenant's hearing package (January 24, 2012). The parties agree that the Landlord invited the Tenant's mother to inspect the laundry room on January 4, 2012 while she was at the rental unit to deal with a satellite provider. The Tenant's mother said she declined the Landlord's offer because the move out inspection had already been completed with her son and she did not think it was necessary.

Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB 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." Because the Landlord has the burden of proof in this matter, he must show that the Tenant was responsible for damages to the rental unit and that the damages were not the result of reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 21 of the Regulations to the Act says "*a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless the landlord or tenant has a preponderance of evidence to the contrary*." I find that the "check out inspection" document completed by the Landlord on December 30, 2011 is not a proper condition inspection report because it is missing most of the information that is required under s. 20 of the Regulations to the Act and it is not signed by the Landlord. However, I find that the document is of some evidentiary value as to the condition of the rental unit on December 30, 2011.

Carpet and Linoleum Replacement & Cleaning Supply Expenses:

The Landlord claimed that flooring in a laundry room and adjacent bedroom had to be replaced because it was damaged by cat urine during the tenancy. The Landlord's spouse, E.L., gave corroborating evidence of a cat urine smell discovered by she and her husband after the tenancy ended and the Landlord provided photographs of what he claimed showed urine had seeped into the cement floor underneath the carpeting. The Landlord also provided an invoice from a carpet cleaning provider for cleaning the laundry room floor on January 4, 2012 and on the invoice is written "laundry room severe cat urine odor." The Tenant disputed these claims and argued that the Landlord was manufacturing this claim and acting in retaliation for him seeking to have his security deposit and pet deposit returned.

Given the contradictory evidence of the Parties on this issue, I find that (in order to meet the burden of proof on him) the Landlord needs to provide some additional corroborating evidence that the flooring was damaged by cat urine during the tenancy. However, I find that the Landlord has not done so. I do not give much weight to the invoice filled out by the carpet cleaner on January 4, 2012 as he or she did not attend the hearing to be cross-examined on that statement and therefore I find that it is hearsay and unreliable. I am also not persuaded that a photograph showing large discoloured areas in the middle of a cement floor in a bedroom is cat urine as alleged by the Landlord given that the Landlord also claimed that the alleged urine damage was largely confined to the area by the wall. Although the Landlord's spouse gave corroborating evidence, I find that this was contradicted by the Tenant and his witness's corroborating evidence.

Where the evidence of the Parties themselves is concerned, I preferred the evidence of the Tenant as I did not find the Landlord's evidence to be very reliable on a number of issues including this one. In particular, the Landlord was evasive when asked questions about the age of the flooring, as well as when asked if he had actually incurred expenses to replace the flooring, when the flooring was replaced and when asked why he had not contacted the Tenant after the inspection to view the alleged damages. Furthermore, on the first day of the hearing the Landlord relied on written estimates dated January 24, 2012 for the flooring (in the amounts of $755.76 and $711.76) he said was installed ***on January 25, 2012***. However, at one point in his evidence the Landlord claimed he had not yet purchased the flooring but then he changed his evidence and claimed that he had. It was only when confronted with this discrepancy that the Landlord agreed to provide receipts for the flooring. However, on the second day of the hearing, the Landlord provided one invoice for linoleum and carpeting dated January 26, 2012 in the total amount of $463.67 (with a receipt dated February 6, 2012), a handwritten invoice dated ***January 27, 2012*** in the amount of $322.37 for installing carpeting that day and a cheque dated ***January 27, 2012*** payable to "cash" in the amount of $200.00 which he claimed was to pay for the installation of the linoleum flooring that day.

The Tenant argued that the Landlord had fabricated the handwritten invoice because the handwriting on it was identical to that of the Landlord on other documents. Although the Landlord claimed he filled out particulars on behalf of the provider, I find it suspicious that the Landlord did not provide this invoice in his original evidence package if it was already in his possession as he claimed. I also find it unreasonable that the Landlord did not ask the Tenant to inspect the alleged damaged flooring once he discovered it especially if they were on very good terms as the Landlord claimed. The Landlord claimed that he did bring the laundry room flooring to the Tenant's attention in his letter of January 13, 2012 but could not account for why he replaced the damaged flooring without first giving the Tenant an opportunity to inspect it. Finally, the Landlord admitted that the damaged flooring in question was in excess of 10 years of age. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of carpeting and linoleum flooring is 10 years. The Landlord argued that the flooring was still in good condition and would not have had to be replaced but for the damage. However, I find it very likely

that if there was damage to the underlay of the carpet and linoleum that pre-existed the tenancy, it would not have been discovered by the Landlord until such time as he pulled it up to replace it or inspect it. Consequently, I cannot conclude that the underside of the flooring was in good condition at the beginning of the tenancy as the Landlord claimed and I conclude instead that the Guidelines regarding wear and tear apply and that the flooring therefore had no depreciated value for compensation purposes.

For all of these reasons, the Landlord's claim for cleaning products and to replace flooring in the downstairs bedroom and laundry room are dismissed without leave to reapply.

Replacement of Carpeting on Stairs:

The Parties agree that the Tenants' cats pulled up some carpet fibres on the stairs. The Parties also agree that the Landlord agreed to charge the Tenant $10.00 to repair the pulls. However, the Landlord claimed that after the pulls were cut, it left a bare spot and therefore a section of carpet had to be replaced. The Landlord provided a photograph of a person standing in the stairwell holding a piece of replacement carpeting. The Tenant argued that the section of the carpeting replaced by the Landlord was in a different area than where the pulls to the carpet were, however the Landlord disagreed.

Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord, I find that there is insufficient evidence that the carpeting on the stairs had to be replaced and that part of the Landlord's claim is dismissed without leave to reapply.

Wall Repairs and General Cleaning:

The Parties agree that following the move out inspection, they agreed that the Tenant would pay $24.00 for any additional cleaning and wall repairs. The Landlord argued that he later found some additional small holes and other areas that were not cleaned. The Landlord also claimed that due to the excessive number of holes, the walls had to be repainted at an additional cost. The Tenant argued that the Landlord painstakingly counted the number of holes during the move out inspection and specifically advised him not to fill them.

I find that there are no grounds for this part of the Landlord's claim. While a Tenant is responsible for repairing damages such as an excessive number of nail holes, I find that the Landlord was well aware of the number of holes, specifically told the Tenant not to repair them and agreed that $24.00 would be sufficient to compensate him for those repairs. I find that the Landlord cannot now seek to recover additional amounts because his new handyman does not make repairs in the same manner that he was accustomed. Furthermore, in the absence of a proper move out condition inspection

report, I find that there is no evidence that the rental unit was not reasonably clean at the end of the tenancy. Consequently, this part of the Landlord's claim is also dismissed without leave to reapply.

Loss of Rental Income

Given that I have found that there is insufficient evidence that the Tenant was responsible for damages to the flooring in the rental unit, I find that there are no grounds upon which to award the Landlord compensation for a loss of rental income for January 2012 and that part of his claim is also dismissed without leave to reapply.

Security Deposit and Pet Damage Deposit:

I find that the Tenant gave his written authorization to the Landlord to deduct the following amounts from his security deposit:

Carpet Cleaning:	$95.20
Carpet Repair:	$10.00
Wall Repairs & Cleaning:	$24.00
Total:	$129.20

Consequently, I find that the Landlord is entitled to retain this amount from the Tenant's security deposit. However, I find that the Landlord has only returned $258.20 of the Tenant's security deposit and pet damage deposit (which total $700.00). As a result, I find that the Tenant is entitled to the return of the balance of his security deposit and pet damage deposit in the amount of $312.60. As the Tenant has been successful in this matter, I also find pursuant to s. 72(1) of the Act that he is entitled to recover the $50.00 filing fee he paid for this proceeding.

Conclusion

The Landlord's application is dismissed in its entirety. A Monetary Order in the amount of **$362.50** has been issued to the Tenant 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: February 28, 2012.

Dispute Resolution Officer