Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNR, MND, MNSD, FF
Tenant: MNSD, O (MNDC), FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for cleaning and repair expenses, for aggravated damages, 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 pet damage deposit plus compensation equal to the amount of the deposits due to the Landlords' alleged failure to return them as required by s. 38(1) of the Act, for compensation for aggravated damages and to recover the filing fee for this proceeding.

On the first day of the hearing, the Tenant claimed that he had not received the Landlords' evidence package. The Landlord said the Tenant provided him with an incomplete forwarding address so he sent the evidence package to the rental unit address which the Tenant used as his address for service. The Tenant argued that the package should still have been forwarded to his new address but that he didn't receive anything. At the end of the first day of hearing, arrangements were made to provide the Tenant with another copy of the Landlords' evidence package and the Tenant was ordered to serve any responding evidence on the Landlord no later than April 30, 2012. At the beginning of the second day of hearing, the Tenant claimed that he left his evidence package in the mail box at the Landlords' residence on April 30, 2012 however the Landlords claim they did not receive it. The Landlords said they take no issue with the missing evidence and I note that aside from three pages of written submissions, most of the documentary evidence includes copies of the Landlords' documents.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for cleaning and repairs?
3. Are the Landlords entitled to compensation for aggravated damages?
4. Is the Tenant entitled to compensation for aggravated damages?
5. Is the Tenant entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

This tenancy started on November 1, 2010 as a one year fixed term tenancy that continued on its expiry as a month to month tenancy. The tenancy ended on February 8, 2012 when the Tenant moved out. Rent was $650.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $325.00 and a pet deposit of $325.00 at the beginning of the tenancy. The rental unit is located on the lower floor of the rental property and the upper floor of the property is rented to other tenants.

The Parties have had two previous dispute resolution proceedings. In a hearing on September 19, 2011, the Tenant's application to cancel a One Month Notice to End Tenancy for Cause was granted and the balance of the relief sought by him dismissed. In a subsequent hearing on December 19, 2011, the Tenant's application to cancel another One Month Notice to End Tenancy for Cause (on different grounds) was granted and the balance of the relief sought by him dismissed.

In order to give some context to the claims made by the parties in this matter, I find that it is necessary to summarize some events that gave rise to these disputes. The Parties agree that in August 2011, the Tenant and the upstairs tenant got into a physical altercation. The Tenant admitted that he reported the upstairs tenant for allegedly abusing his children and claims that in retaliation, the upstairs tenant (and/or Landlords) falsely accused him of a number of things including giving alcohol to a 13 year old child. The Landlord, K.Z., said he spoke to both sets of tenants in an attempt to resolve the conflict between them but was unsuccessful and thereafter he got continual complaints from each tenant and police were involved and therefore he concluded that one of them would have to leave. The Landlord said there were some other issues as well that led to his decision to end the Tenant's tenancy so in mid-August, 2012, the Landlords served the Tenant with a One Month Notice. The Tenant claimed that the Landlords chose to evict him because the upstairs tenants paid more rent.

The Landlords also claimed that in September 2011, they received a letter from the municipality advising them that the Tenant's suite contravened a secondary suite by-law and that it would have to be decommissioned. Consequently, the Landlords served the Tenant with a second One Month Notice to End Tenancy for Cause in late October 2011 on this ground. The Tenant successfully argued that the municipality only required that his cooking facilities be removed and not that he had to vacate.

The Landlords' Claim:

1. Cleaning and repairs:

The Landlords claim a condition inspection report was completed with the Tenant at the beginning of the tenancy and he signed it however the Tenant denies this and claims the signature purporting to be his on the Report is a forgery. The Parties agree that on

or about January 20, 2012, the Tenant sent the Landlord, K.Z., a text message asking him not to deposit his rent cheque for February 2012 because he might be moving out and K.Z. agreed. On February 1, 2012, K.Z. texted the Tenant and asked him when he intended to pay rent for the days he would still be residing in the property. At that time, the Tenant said he intended to move out by February 12, 2012 (and possibly the 8th) so the Landlords could deduct a pro-rated amount of rent from his security deposit. K.Z. said he did not agree with this but the Tenant then threatened not to move out and he didn't want any more problems with the Tenant so he reluctantly agreed. The Parties agree that the Tenant did not make a rent payment for February 2012. The Landlords admit that they did not try to re-rent the rental unit because it currently does not comply with the secondary suite by-law and certain improvements were not done under permit.

The Parties agree that in the late afternoon on February 8, 2012, the Tenant, K.Z. (and a witness K.Z. brought with him) met at the rental unit to do a move out inspection. K.Z said he asked the Tenant if he wanted to walk around with him but they agreed that K.Z. would inspect the unit first and then go over any deficiencies with the Tenant. K.Z. claims that when he finished the report, he put it down on the counter for the Tenant to look at and the Tenant became defensive when he saw notations about carpet damage. K.Z. said the Tenant refused to sign the report, threatened that he would stay, wouldn't return the keys and would destroy the property. K.Z. he was concerned because the Tenant had previously told him that he owned a gun so he called 911 and they advised him to leave until an RCMP member arrived. K.Z. said he waited in his vehicle until the police arrived about an hour and a half later. K.Z. said he spoke with an RCMP member and advised him that the Tenant would not return the keys and as a result, the RCMP member retrieved them. K.Z. said the Tenant left but he could not be sure that the Tenant had not made copies of the keys so the RCMP member offered to remain on the property until the Landlord could return with a new lock.

The Tenant claimed that after K.Z. inspected the rental unit, he advised the Tenant that there were damages so he would not be getting his deposits back. The Tenant said he asked K.Z. what damages he was referring to because he would go to a hardware store if necessary and repair them. The Tenant said K.Z. then flew into a rage and called 911 alleging that the Tenant had threatened him. The Tenant said K.Z. then went outside to speak on the telephone and overheard him say that the Tenant was refusing to return the keys. The Tenant said once K.Z. concluded his call, he made a gesture that he would cut the Tenant's throat and claimed that he had killed before. The Tenant said K.Z. then went outside and blocked the Tenant's vehicle with his own (which K.Z. denied). The Tenant said the RCMP member recommended that he leave and that K.Z. stay away from him.

On February 11, 2012, K.Z. sent the Tenant a text message offering him an opportunity to complete the condition inspection report. The Tenant said he would agree if an RCMP member attended so the Landlord proposed a date and time. The Tenant later responded claiming that the RCMP advised him not to attend and that he did not believe that he had to attend because in his view the inspection had been completed.

Consequently, the K.Z. said he sent the Tenant a Final Notice of Opportunity to Schedule a Condition Inspection for February 21, 2012 but the Tenant did not attend.

The Parties agree that the rental unit was freshly painted and had new carpeting at the beginning of the tenancy. The Landlords claim that at the end of the tenancy, there was a tear in the carpet and it had an odour of cat urine that could not be removed. The Landlords also claim that the Tenant was responsible for a number of other damages including the following:

- some outlets had been pulled out of their sockets;
- a telephone jack had been pulled out of the wall;
- two air return vents were missing;
- a vacu-flo outlet was damaged;
- scratches on a wall and on a bathroom vanity cabinets;
- stickers on a front entrance door;
- chip in the paint in the bedroom;
- range hood exhaust fan damaged;
- yellow streaks on the bathroom and front entrance door
- mould in the shower area and discoloured floor tiles;
- screws left in the kitchen wall; and
- a chipped kitchen floor tile.

The Landlords also claimed that there was dirt, grease on the kitchen cabinets and scratches on the bathroom vanity cabinet, that the Tenant had left garbage on the rental property and that he smoked in the rental unit.

The Tenant claimed that the carpet separated at a seam at the beginning of the tenancy due to faulty installation and that he brought it to the Landlords' attention but they did nothing about it. The Tenant denied that there was a cat urine odour in the carpet and argued that he steam cleaned it at the end of the tenancy and there were no stains. The Tenant said the electrical outlets were not new as K.Z. alleged and that Telus had removed the telephone jack without leaving a hole in the wall. The Tenant also claimed that the vacu-flo outlet was in the same condition that it was at the beginning of the tenancy (with loose screws holding it in place). The Tenant said he believed the stickers on the front entrance door were on it when it was purchased. The Tenant denied that the bathroom floor tiles were water damaged and claimed that was their actual colour. The Tenant said there was old silicon and mould in both the upstairs and downstairs bathrooms at the beginning of the tenancy and while the Landlords had repaired the damage upstairs, they had not done so downstairs. The Tenant said the bathroom and kitchen cupboards were approximately 18 – 20 years old, made of rough unfinished wood and could not be cleaned but instead had to be sanded. The Tenant said he was unaware of any damage to the bedroom wall and that the chip in the kitchen floor tile was there at the beginning of the tenancy. The Tenant said he offered to remove some screws in a kitchen wall but the K.Z. told him to leave them there so it wouldn't have to be patched.

The Tenant said the range hood exhaust fan was not new (as the Landlords claimed) and that the gas stove was improperly installed and unsafe so he never used it. The Tenant denied smoking in the rental unit and claimed he has never smoke. The Tenant also claimed that the garbage left on the rental property (with the exception of one bucket) belonged to the upstairs tenants. The Tenant admitted that he forgot to clean some window tracks. The Tenant said he did not know what the yellow streaks were and suggested that it might be steam marks caused by the Landlords. The Landlords argued that the Tenant never advised them during the tenancy of any "pre-existing damages" and during their hearing on September 19, 2011 when asked by the Dispute Resolution Officer what repairs he was seeking to have made, the Tenant identified only the gas stove.

2. **Aggravated Damages**:

The Landlord, K.Z., said that he started having problems with the Tenant in the summer of 2011 when he got into a fist fight with the upstairs neighbour. After that incident, K.Z. said the Tenant made numerous complaints to him about the upstairs tenant (sometimes calling in the middle of the night) about noise or causing a flood and when he followed up on some of the complaints, he found they were not substantiated.

K.Z. said the Tenant has made repeated threats to him that he owns a gun and knows how to use it and how to make him disappear. K.Z. said the Tenant also claimed that he has friends who are police officers who could make his life hell. K.Z. said the upstairs tenant told him that the Tenant had made the exact same threats to him so he contacted the RCMP but because he had not seen a gun, they would not do anything. K.Z. said the Tenant also threatened to "drain him financially" by involving him in litigation and named him in a Supreme Court action for which he is seeking $50,000.00 in damages. K.Z. said because the allegations made by the Tenant in those proceedings (regarding giving the upstairs tenant's child alcohol) are contained in public documents, he fears his business reputation in the community will be damaged. Consequently, the Landlord said he believes the Tenant's claim in these proceedings is about getting revenge by dragging him through more litigation.

K.Z. said he was also very upset that the Tenant made a false claim to the RCMP on February 8, 2012 alleging that he threatened to cut the Tenant's throat and that he had claimed to have killed before (which he denied). K.Z. said he has a medical condition and the stress of dealing with the Tenant has aggravated it.

The Tenant denied making any threats to the Landlord and argued that they were manufactured by the Landlord and the upstairs tenant.

<u>The Tenant's Claim</u>:

1. Aggravated Damages:

The Tenant initially said he was seeking damages due to the "torture from the beginning" that the Landlord, K.Z, had put him through including allegedly lying in previous proceedings. The Tenant then said he was limiting his claim to the period from early January 2012 to the end of the tenancy. The Tenant argued that the Landlords were upset with the outcome of the hearing held on December 19, 2011 and decided to take matters into their own hands to force him to move. The Tenant said approximately a week and a half after he received a copy of that Decision, the Landlord, K.Z., and the upstairs tenant started "stalking him" by continually looking through his window. The Tenant said he did not feel safe so on January 19, 2012 he started looking for a new residence.

The Tenant also claimed that K.Z. made a false claim to the RCMP on February 8, 2012 alleging that he had a gun. The Tenant said the upstairs tenant sent a letter to his employer alleging that he had made these threats (as those alleged by the Landlord) with the result that it is now under investigation. The Tenant said he believes the Landlords have made these false allegations about him in retaliation for losing in the two previous dispute resolution proceedings.

The Landlord, K.Z., claimed that he had nothing against the Tenant but after he got into a fist fight with the upstairs tenant he had to do something and evicting one of them seemed the only solution. K.Z. claimed that the Tenant "lied his face off" at the first hearing which did not help matters. K.Z. also said after receiving the Decision from the December 19, 2011 hearing, he and his spouse decided that they would let the Tenant continue to reside in the rental unit if he was content to be there without cooking facilities and they would keep their distance. K.Z. said he has not been to the rental unit and has not spoken with the Tenant since the last hearing.

2. Security Deposit and Pet Damage Deposit:

As indicated above, the Tenant claims that a move in condition inspection report was not completed at the beginning of the tenancy and that he participated in a move out inspection on February 8, 2012 (which the Landlords deny). The Tenant claimed that he gave the Landlords his forwarding address in writing on February 28, 2011 but admitted that they did not receive the complete address until April 10, 2012. The Parties agree that the security deposit and pet damage deposit have not been returned to the Tenant. The Parties also agree that the Tenant did not give the Landlords written authorization to deduct anything from his security deposit but did give them verbal approval to deduct pro-rated rent for 8 days in February 2012 from this security deposit.

Analysis

The Landlords' Claim:

1. **Cleaning and Repairs**:

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except 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." In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for causing damages during the tenancy that were not the result of reasonable wear and tear. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit and pet damage deposit *for damages to the rental unit* is extinguished. In other words, the Landlord may still bring an application for compensation for damages however she may not offset those damages from the security deposit or pet damage deposit.

The Landlords claim that they completed a Condition Inspection Report with the Tenant at the beginning of the tenancy and that he signed it. The Tenant denied this and claims that his signature is forged on that document. The Landlords have the burden of proof to show that the Tenant did sign it. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I cannot conclude that the Tenant signed the report and as a result, I give it no evidentiary value. However I accept the Landlords' evidence that the DVD recording and photographs they took of the rental unit on or about February 12, 2012 accurately depict the condition of the rental unit at the end of the tenancy. The Tenant also provided copies of photographs that he said he took at the end of the tenancy and claimed that his did not show some of the damages alleged in the Landlords'. I agree with the Landlords that this was because the Tenants' photographs omitted those areas or were taken from a distance.

The Parties agree that the rental unit was freshly painted and had new carpet at the beginning of the tenancy. The Landlords claim the rental unit had no condition issues. The Tenant claims there were pre-existing damages such as the carpet seam separating, mould in the bathroom, a broken kitchen tile and old electrical outlets and range exhaust fan. The Landlords argue that on September 19, 2011, the Tenant's application for repairs was heard but he did not mention any of these alleged damages

although specifically asked by the Dispute Resolution Officer nor did he ever bring them to their attention during the tenancy.

I find on a balance of probabilities that the carpet damage in the living room was caused due to an act or neglect of the Tenant. It is not obvious whether the damaged section lies on a seam as the Tenant claimed or not however, I find that this is irrelevant in any event. There appear to be 2 rips in the carpet where fibres approximately ¼ inch in width are missing and in adjacent places the carpet appears to have been pulled up or snagged. I also note what appear to be a few round rust spots where legs of furniture rested. However, I find that there is no corroborating evidence of a cat urine smell as the Landlords claim. I find it likely that this damage was caused by the Tenant's cat and the fibres subsequently were cut off by the Tenant leaving the small gap. Consequently, I award the Landlords carpet repair expenses of **$280.00**.

I also find that there is wall damage that is not the result of reasonable wear and tear. In particular, I find that there is a fairly long gouge in the bedroom wall near the floor as well as on a living room wall. Consequently, I find that the Landlords are entitled to recover repair and repainting expenses for these two walls which I assess at **$200.00**. I further find that there were a number of areas in the rental unit (ie. in the bathroom, bedroom, and front entrance door) that had large drip marks of a yellow substance or residue. I also find that with the exception of one window, all window tracks were dirty. The Landlord claimed that the patio door frame was yellowed from cigarette smoke residue. While I cannot conclude the source of the residue, I find that the Tenant failed to clean this at the end of the tenancy. I also find that the interior of at least one kitchen cabinet was not cleaned. Consequently, I award the Landlords **$150.00** for cleaning expenses.

However, I find that there is insufficient evidence that the Tenant is responsible for the balance of the damage claims sought by the Landlords and they are dismissed without leave to reapply. In particular, I cannot conclude that the bathroom tiles are stained as the rust color appears consistently on all of the tiles and could therefore be the pattern as the Tenant claimed nor can I conclude that the Tenant was responsible for a small area of water damage to an area by the shower stall. Given the age and condition of the kitchen cupboards and the bathroom vanity, I cannot conclude that the Tenant caused any damages that would reduce their already depreciated value due to wear and tear. In the absence of any other evidence of the condition of the rental unit at the beginning of the tenancy, I also cannot conclude that the Tenant was responsible for a chipped kitchen tile, dents and scratches to the front door, discoloration to the range exhaust fan, a missing vent cover or for another falling out and for replacing new electrical outlets with old ones. Finally, I find that there was no apparent damage from a telephone jack being removed from the wall nor is there any apparent wall damage in the kitchen and I am unable to conclude that the garbage left on the rental property belonged to the Tenant rather than the upstairs tenant.

I also find that the Landlords are entitled to recover rent for the period, February 1 – 8, 2012 in the pro-rated amount of **$179.31**. Although the Landlords made a claim for a loss of rental income to the end of the month, I find that they are not entitled to do so. Section 7(2) of the Act says a party who suffers damages must take reasonable steps to minimize their damages. This means a Landlord must try to re-rent a unit as soon as possible to minimize any loss of rental income. However the Landlords admitted that they did not try to re-rent the rental unit.

2. **Aggravated Damages**:

RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

The Landlord, K.Z., claimed that the Tenant caused a number of problems during the tenancy and that when he tried to evict him, the Tenant threatened to do him physical harm and to "drain him financially" by dragging him through litigation. K.Z. said the Tenant also made a false allegation to the RCMP on February 8, 2012 that he threatened to kill the Tenant. The Tenant denied these allegations. K.Z. claimed that his conversations on February 8, 2012 were heard by his witness who he said passed away recently. K.Z. also claimed that the upstairs tenant also overheard the Tenant on February 8, 2012 threaten to damage the rental property. However, the upstairs tenant did not attend the hearing to be questioned on his statement and for that reason, I cannot give his statement any weight.

Consequently, I find that it is a matter of K.Z's word against the Tenant's. In the absence of any reliable corroborating evidence to resolve this contradiction, I find that there is insufficient evidence to make out the Landlords' claim for aggravated damages and it is dismissed without leave to reapply. As a result, I find that the Landlord is entitled to a total monetary award of **$809.31**.

<u>The Tenant's Claim</u>:

1. **Aggravated Damages**:

The Tenant claimed that K.Z. started peering though his window in mid-January 2012 in an attempt to get him to move which was denied by K.Z. The Tenant also claimed that K.Z made false accusations about threats allegedly made by the Tenant to him.

For the same reasons set out above, I find it is the Tenant's word against K.Z's word and in the circumstances, I find that there is insufficient evidence to conclude that the malicious conduct complained of by the Tenant occurred. Although the Tenant encouraged me to make adverse findings about the Landlord's lack of credibility in these and other proceedings, I cannot do so for a number of reasons. Firstly, this matter is decided on its merits alone without regard to conduct of the parties for which no finding was made in the Decisions that were issued. Secondly, I find that there is no clear and convincing evidence that the Landlords lied in this proceeding as the Tenant claimed. Thirdly, the Landlords also claim that the Tenant was not credible on a number of issues in these proceedings (eg. contradictory evidence from the Tenant about smoking) and in other proceedings. Finally, in the absence of any corroborating evidence by either party, it difficult to find one party more credible than the other. Consequently, the Tenant's claim for aggravated damages is dismissed without leave to reapply.

2. Security Deposit and Pet Damage Deposit:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the tenancy ended on February 8, 2012 and that the Landlords received the Tenant's forwarding address in writing on April 10, 2012. I find that the Landlords did not return the Tenant's security deposit and pet damage deposit and did not have the Tenant's written authorization to keep them. As set out above, I find that there is insufficient evidence that the Landlords completed a move in condition inspection report with the Tenant at the beginning of the tenancy and therefore pursuant to s. 24(2) of the Act, the Landlords' right to keep the deposits for damages to the rental unit was extinguished. However, this did not affect their right to keep the deposits in satisfaction of other damages such as unpaid rent and a loss of rental income. I find that the Landlords filed their application for dispute resolution on February 20, 2012 and therefore were entitled to hold the deposits in trust pending the outcome of this hearing.

Consequently, I find that the Tenant is not entitled pursuant to s. 38(6) of the Act to recover double the amount of the security deposit of $325.00 and pet deposit of

$325.00 but only the actual amounts he paid. As a result, I find that the Tenant is entitled to a total monetary award of **$650.00**.

Notwithstanding s. 24(2) of the Act)referred to above), I find that sections 38(4), 62(3) and 72(2) of the Act when taken together give the director the ability to set off monetary awards where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order that the Parties' respective monetary awards in this matter be set off with the result that the Landlords will receive a Monetary Order for the balance owing of $159.31. As each of the Parties would be entitled to recover the filing fees they paid, I find that any order for that relief would be offsetting and therefore that part of their respective applications is dismissed without leave to reapply.

During the hearing the Landlords claimed that the Tenant and the upstairs tenant had an agreement whereby the Tenant would pay his share of the utilities for the rental property to the upstairs tenant. The Landlords claim that the Tenant has utility arrears of approximately $220.00 however, their application did not include a claim for that relief and they provided no evidence such as invoices in support of it. Consequently, the Landlords will have to make a separate application on behalf of the upstairs tenants for any unpaid utilities.

Conclusion

A Monetary Order in the amount of **$159.31** has been issued to the Landlords. A copy of the Order must be served on the Tenant and may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 14, 2012.

Dispute Resolution Officer