



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: MND, MNDC, MNSD, FF
For the tenants: MNSD, FF

Introduction

This was the reconvened hearing dealing with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The original hearing was adjourned due to the length of the landlord's testimony.

The landlords applied for a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The tenants applied for a monetary order for a return of their security deposit and for recovery of the filing fee.

The hearing process was further explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed and considered relevant evidence submitted in a timely manner prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Are the landlords entitled to a monetary order, authority to keep the tenants' security deposit and to recover the filing fee?

Are the tenants entitled to a monetary order for a return of their security deposit and to recover the filing fee?

Background and Evidence

This 1 year, fixed term tenancy began on or about July 27, 2009, continued thereafter on a month to month basis, monthly rent was \$1800.00 and the tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The landlords stated that the tenancy ended on January 31, 2012, and the tenants stated that the tenancy ended on January 20, 2012. The condition inspection report shows that the move out and inspection dates were January 27, 2012.

Landlords' application:

The landlords' monetary claim is as follows:

Stove protectors	\$5.60
Filing fee	\$100.00
Carpet replacement	\$1823.33
Cost of estimate for mantle repair	\$98.60
Estimate for mantle repair	\$324.80
Hydro costs	\$180.68
Cleaning of rental unit	\$789.60
Damage repairs to rental unit	\$1245.78
Landlord expenses	\$629.59
Copying costs for dispute resolution	\$43.18
Cost of service of documents	\$29.96
Loss of revenue due to condition of rental unit	\$1800.00
Total	\$7092.78

The landlord's relevant evidence included copies of photographs of the rental unit receipts for household items, a receipt for registered mail expense, a receipt for a carpet installation, a statement from the carpet installer, a receipt for damage repair, an estimate for the mantle repair and a bill for the cost of the estimate, a hydro bill for a billing period of January 29 to March 1, 2012, a listing of landlord expenses concerning the rental unit, an email to the tenant, with an attached condition inspection report, the tenancy agreement, a move-in condition inspection report and move-out condition inspection report and attachment to the move-out condition inspection report, a cleaning receipt, a repair receipt and a receipt from carpet installation in February 2009.

The landlord provided lengthy testimony as to the state of the rental unit, making consistent cross reference to the many copies of the photos, but in no particular order.

In summary form, as to the alleged damages and repairs, the landlord stated that the tenants left the rental unit in a state of disrepair, which required the landlords to make the repairs themselves or hire someone to perform repairs.

Additionally, the landlords stated that the tenants did not adequately clean the rental unit, which required additional time and money in cleaning the rental unit and hauling away garbage.

The landlord stated that the back of the stove was discoloured and that the tenants had not properly cleaned behind the stove/oven, and refrigerator, and did not clean the blinds, light fixtures or window tracks.

The landlord submitted that he had to replace some curtains and a toilet seat and refinish the bath tub. When questioned, the landlord stated that the curtains were at least 10 years old and he was not sure of the age of the toilet seat, but was perhaps 4 years old.

When questioned as to what he expected of the tenants when vacating, the landlord stated that he expected the rental unit to be move-in ready for the next tenants and that they should just be able to move in without the landlords providing any cleaning.

Due to the disrepair and uncleanliness, the landlords were unable to rent the rental unit for the month of February 2012 until the rental unit had been cleaned and repaired, which caused them a loss of revenue, according to the landlords. The landlord submitted that they put the rental unit back on the market as quickly as possible after the clean and repair.

Some items of particular note for the landlord were the amount of nail holes, which he claimed were excessive, and damage to the mantle, which appeared to have been scratched. The landlord also pointed out that the nail holes were not at picture height.

The landlord also stated that the carpet was beyond repair and had to be replaced. As proof, the landlord referred to his evidence of the statement from the carpet installer. I note that the only photograph of carpet was a long shot of a bedroom.

The landlord stated that the carpet was new in February 2009, and that the installer submitted that the condition was beyond repair when he viewed the carpet at the end of the tenancy.

The landlord submitted that the tenants also caused damage to an electrical outlet by using an improper heater.

In response, the tenant stated that everything in the house was very old; however they thoroughly cleaned the rental unit prior to moving out and that the rental unit was in order.

The tenant stated that he had several issues with the carpet during the tenancy, which caused him to have to tape the carpet. The tenant also stated that he and his family could not walk on the carpet due to exposed nails.

The tenant also stated that the windows did not keep out the cold, which caused him to resort to using the heater.

The tenant argued that the reason the rental unit could not be rented out at the end of the tenancy, if that was true, was due to the age of the appliances, not due to the tenants' damages.

In support of his application, the tenant stated that their security deposit has not been returned.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on both parties to prove damage or loss.

Landlord's application-

Carpet replacement-Without further proof, I cannot conclude that the landlords took reasonable measures to mitigate their loss by having the carpet professionally cleaned

for stain removal, said stains being noted on the move-out condition inspection report. I also could not rely on the one statement by the person who installed the carpet three years prior, without further proof that the carpet could not be cleaned. I also could not rely on the carpet installer's note as the move-out condition inspection report shows that some of the carpet was stained, but there was no mention made of carpet which showed such damage to indicate a replacement was necessary. I find it unreasonable given the detailed nature of the landlords' evidence that if the carpet was so severely damaged as alleged by the landlords, that there is no particular mention of it made on the move-out condition inspection report.

I therefore find that the landlords submitted insufficient evidence to meet steps 1 and 4 of their burden of proof and I dismiss their claim for carpet replacement in the amount of \$1823.33.

Cost of an estimate for mantle repair-I find the landlords submitted insufficient evidence to prove step one of their burden of proof and I therefore dismiss their claim for the cost of an estimate, in the amount of \$98.60.

Estimate for repair of the mantle-While I accept that the tenants or the tenants' children caused some scratches to the mantle, the landlords submitted insufficient evidence that this damage resulted in a loss as of the day of the hearing, which is step 2 of their burden of proof. I therefore dismiss their claim for \$324.80.

Hydro costs-The bill produced by the landlords showed a billing period after the tenancy ended. I find that the tenants are not responsible for electricity bills after the tenancy has ended. I therefore dismiss the landlords' claim for \$180.68.

Cleaning of unit-When viewing the photographs submitted by the landlords into evidence, I find that the rental unit was left reasonably clean by the tenants, the standard under the Act required of a vacating tenant at the end of a tenancy. In some cases, I find the tenants exceeded their requirement in cleaning the rental unit.

A tenant is not required under the Act to have the rental unit ready for the next tenant to just move in, contrary to the assertion of the landlords.

In reviewing the landlords' invoice for cleaning of the rental unit, I find the only item for which the tenants could be responsible was for the removal of tape on the walls in the large bedroom, small bedroom, upper bathroom and stairwell and landing. However, the move-out condition inspection report makes no mention of tape on the walls. I therefore find I could not rely on the landlords' evidence to determine the tenants' responsibility, due to the contradictions. Additionally, the invoice does not break down the cost of tape removal, which would make sufficiently clear a charge which could be assessed against the tenants.

I therefore find that the landlords submitted insufficient evidence to prove their claim for cleaning and I dismiss their claim for \$789.60.

Damage repairs to the rental unit-A tenant must pay for repairing walls where there are an excessive number of nail holes and which have caused damage.

I find the landlords submitted sufficient evidence that the tenants left excessive nail holes, which caused damage for which they should be responsible. I therefore find that the landlords have established their monetary claim of \$1245.78.

Landlord expenses-The landlords submitted a detailed listing referring to repairs and cleaning, which included travel costs. The landlords also claimed for traveling to pick up the new curtains and install them, as well as for the costs of the curtains themselves. Additionally, the landlords are claiming for items such as a replacement of a range hood vent, a broken light fixture and shower head.

As to these claims, Residential Tenancy Branch Policy Guideline number 40 provides a table for the useful life of building elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Stoves, plumbing fixtures and light fixtures have a useful life of 15 years. Curtains have a useful life of 10 years. At the hearing landlords should provide evidence showing the age of the item at the time of replacement or repair. In this case, the landlords confirmed that the house was built in 1986 and did not submit evidence to show that any of the items mentioned were newer than 15 years of age. Additionally, the landlord stated that the curtains were 10 years old.

I therefore find that the items mentioned by the landlords for repair and replacement in the rental unit had fully depreciated and dismiss their claim for landlords' expenses, with the exception of garbage removal expenses, in the amount of \$42.42 as I find the tenants were responsible for removal of their garbage.

Copying costs and registered mail expenses- Landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the act. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the Act. I find that I do not have authority to award any other costs related to a dispute resolution proceeding and I therefore dismiss the landlords' claim to recover costs related to preparing for hearings.

Loss of revenue for February 2012-I find the landlords' evidence was not sufficiently clear to establish that the rental unit was required to remain empty during February. In reaching this conclusion, I relied upon the evidence of the landlords, such as the repair invoice, which contained no specific date or dates as to when the repairs occurred. The cleaning invoice showed that the cleaning occurred on February 2, 2012 and that the garbage removal occurred on February 7, 2012. The receipts for the curtains showed a purchase prior to the end of the tenancy, which suggested that the curtains were scheduled to be replaced at the end of the tenancy no matter what condition they were in. I also find there was no clear evidence as to why the carpet could not be installed until February 22, 2012.

Due to the above, I find the landlords submitted insufficient evidence of mitigating their claimed loss and I therefore dismiss their monetary claim of \$1800.00.

I find the landlords' application had some merit and I award them recovery of the filing fee of \$100.00.

I find the landlords have established a total monetary claim of \$1388.20, comprised of \$1245.78 for wall repair, \$42.42 for garbage removal and \$100.00 for recovery of the filing fee.

Tenants' Application-As I find that the landlords filed for dispute resolution within 15 days of the end of the tenancy and have proven a claim for damage or loss exceeding the amount of their security deposit \$900.00, I dismiss the tenants' application for a return of their security deposit.

As I have dismissed the tenants' application, I find that they are not entitled to recover their filing fee.

Conclusion

The landlords have established a monetary claim of \$1388.20. I allow the landlords to deduct the amount of the tenants' security deposit of \$900.00, at their request, in partial satisfaction of their claim and I grant the landlords a monetary order for the balance due in the amount of \$488.20 pursuant to section 67 of the Act.

I am enclosing the monetary order for \$488.20 with the landlords' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenants fail to comply with this monetary order.

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 28, 2012.

Residential Tenancy Branch