



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MNSD, MNR, FF

For the tenants: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit, a monetary order for damage to the rental unit, and for recovery of the filing fee.

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

The hearing process was 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, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenants’ security deposit, to a monetary order and to recover the filing fee?

2. Are the tenants entitled to a monetary order, which would include their security deposit, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began on July 1, 2009, ended on October 31, 2012, monthly rent was \$1150.00 and the tenants paid a security deposit of \$575.00 at the beginning of the tenancy, on or about June 25, 2009.

Landlord's application-

The landlord's monetary claim is \$705.65, comprised of repairs to walls, door, trim and baseboard in the amount of \$394.17, labour for other repairs for \$46.48, cleaning for \$60.00, depreciation for a pink carpet stain for \$40.00, depreciation for damage to the kitchen laminate for \$80.00, depreciation for a washing machine dent for \$40.00, depreciation for a microwave cracked vent for \$20.00, depreciation for a scratched baseboard heater for \$20.00 and depreciation for a transition strip for \$5.00.

The landlord's relevant evidence included the tenancy agreement, condition inspection reports, move-in and move-out, tenants' notice to end the tenancy, email correspondence, copies of an invoice for painting, repairs and cleaning and electronic evidence with 87 pictures of the rental unit.

The landlord said that the rental unit, which was new at the beginning of the tenancy, required repairs at the end of the tenancy, due to the actions of the tenants during the tenancy, which went beyond reasonable wear and tear. Some items requiring repair was due to chips or cracks in the walls, doors, and trim, necessitating a cost of labour for painting as well.

The landlord also said that there was damage to other items which were not replaced, but were assigned a depreciated value by the landlord. Those items included the washing machine, carpet, laminate, microwave vent, baseboard heaters and a transition strip.

In response, the tenant submitted that there was no damage to the rental unit other than reasonable wear and tear, considering the age of the rental unit and the length of the tenancy. The tenant also submitted that other issues mentioned by the landlord were general maintenance.

The tenant did admit that a wall in one bedroom was left dirty.

Tenants' application-

The tenants' monetary claim is in the amount of \$550.00, which is a request for a return of their security deposit. I note that the security deposit was \$575.00.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements pursuant to sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

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

Landlord's application-

The Residential Tenancy Branch Regulations state that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In reviewing the landlord's other evidence, particularly the photographic electronic evidence, I accept that some, but not all damage was above reasonable wear and tear. For instance, there were what appeared to be scuff marks, thinning paint, and nail holes, which I find to be the results of everyday living, especially given that the tenancy was in excess of three years.

Other items depicted in the photographs appear to be more than reasonable wear and tear, such as damage to the wall, door latches removed, significant paint chips, a hole in the laminate floor, and deep indentions in the wall.

Repairs to walls, door, trim and baseboard-As I have determined that some, but not all damage claimed by the landlord was beyond reasonable wear and tear, I find that the landlord is entitled to partial compensation listed in their monetary claim. I therefore find a reasonable amount to be half of the request \$394.17, in the amount of \$197.09.

Labour for other repairs-In reviewing the invoice supplied by the landlord, I find the items listed, such as replacing a broken bi-fold door, a broken door stop and a bathroom fan switch, to be beyond reasonable wear and tear. I therefore find the landlord is entitled to a monetary award of \$46.48.

Depreciation for the listed items-The landlord affirmed not having incurred a financial loss, which is the third step of their burden of proof. I find that the items claimed by the landlord to be of an aesthetic nature, but their use has not been impacted. I therefore decline to award the landlord compensation for depreciation to the carpet, kitchen laminate, the washing machine, the microwave, the scratched baseboard heater, and transition strip and dismiss their claim for \$205.00.

Cleaning-In reviewing the landlord's electronic evidence, I find that the rental unit required cleaning, with items of note being dirt, dust, and debris under appliances, dust on the blinds and carpet cleaning. I find the amount of \$60.00 as claimed by the landlord to be reasonable and I find they are entitled to a monetary award of \$60.00.

I therefore find the landlord has proven a total monetary claim of \$303.57, comprised of \$197.09 for repairs, labour for other repairs for \$46.48, and cleaning for \$60.00.

Tenants' application-

In the case before me, I find the landlord made a timely application for dispute resolution claiming against the tenants' security deposit, or within 15 days of the end of the tenancy as required under section 38 of the Act, and the tenants are not entitled to double their security deposit.

However, I find the tenants are entitled to a return of their security deposit. Residential Tenancy Branch Policy Guideline 17 allows any amount awarded to the landlord when the applications of the respective parties are heard together to be set-off against the tenant's security deposit.

As I have found that the landlord has proven a monetary claim of \$303.57, I have off-set the landlord's monetary award with the tenants' security deposit of \$575.00, and find that the tenants are entitled to a monetary award of \$271.43.

I have not awarded either party recovery of the filing fee as I have found merit with both applications.

Conclusion

The landlord has proven a monetary claim of \$303.57.

I have off-set the landlord's monetary claim with the tenants' security deposit of \$575.00 and I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$271.43, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of such enforcement may be recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: February 27, 2013

Residential Tenancy Branch

