Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the security deposit paid and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord did not submit a claim for unpaid rent; however that section of the application was completed.

Issue(s) to be Decide

Is the landlord entitled to compensation in the sum of $587.57 for damage to the rental unit?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in May 2012, rent was $1,125.00 due on the 1st day of each month. The parties agreed that the tenancy did not include water, sewer and garbage costs. A copy of the tenancy agreement was not supplied as evidence. The tenant vacated the unit at the end of November 2012. Condition inspection reports were not completed.

On December 4, 2012 the landlord received the tenant's forwarding address via the tenants of the lower unit. The landlord applied claiming against the deposit on December 17, 2012. The landlord used the tenant's forwarding address for service purposes.

The landlord has made the following claim:

Water, sewer, garbage	$298.80
Plumbing	88.77
Damaged wall and carpet cleaning	120.00
Garbage removal	60.00
TOTAL	$567.57

The tenant said she was not aware of the share she was expected to pay for utilities; the tenancy agreement did not include any notation explaining how utilities were to be paid. There was no dispute that the tenant was not given copies of bills throughout the tenancy.

The landlord said that the tenant was to pay 60% of the utility costs as the home had only 1 meter. The landlord supplied a copy of a City of Kelowna tax bill in the sum of $494.21 as evidence of the utility costs. The bill did not break down the charges; it only provided a notation that the charge was for outstanding user rates. The landlord has claimed $298.00 as the tenant's share of the charge.

The landlord supplied a copy of an October 12, 2012 invoice for plumbing repair in the sum of $88.77. The invoice indicated that a facecloth had gone down the drain. The tenant agreed that this had occurred and said that the cross-piece in the tub was missing, which allowed the face cloth to enter the drain.

The tenant did not clean the carpets at the end of the tenancy; the tenancy agreement did not require the tenant to have them cleaned. The tenant said she used the landlord's steam cleaner at the start of the tenancy, as the carpets were dirty.

The landlord stated that the tenant did not clean the walls, that they had scuff marks that he had to remove. The tenant said that she cleaned the home prior to vacating.

The tenant agreed that some garbage and a chair were left at the unit after the last day of the tenancy. The landlord used his own time to remove these items from the property. The tenant said she would have done so, but after the tenancy ended the landlord did not allow her to enter the property. The landlord said he had new tenants move into the unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord

Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
> > *(a) the term is inconsistent with this Act or the regulations,*
> > *(b) the term is unconscionable, or*
> > *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

In the absence of evidence that set out the percentage the tenant was to pay for utility costs I find that the imposition of a 60% rate is unenforceable. I find that the term in relation to utility costs was not expressed in manner that clearly communicated the obligations of the tenant. The tenancy agreement was absent any details of the amount the tenant was to pay and bills were never given to the tenant. Therefore, as there was no dispute that the tenant should pay some utility costs I find that the landlord is entitled to a nominal amount of compensation in the sum of $100.00.

Even though the bath tub did not have a drain cross-piece I find that the tenant is responsible for the cost of removing the facecloth that went down the drain. There was no evidence supplied by the tenant asking the landlord to make a repair to the bathtub drain. Therefore, I find that the tenant is responsible for the cost of repair and that the landlord is entitled to compensation.

In the absence of condition inspection reports and any term of the tenancy referencing carpet cleaning I find that the claim for cleaning and wall repair is dismissed. A tenant is

required to leave a rental unit in a reasonably clean state; there was no evidence before me that this did not occur.

The tenant confirmed that she did not remove some garbage and an old chair from the residential property. By the time the tenant offered to remove the items, after the end of the tenancy, the landlord had removed them. Therefore, I find that the landlord entitled to compensation in the sum of $60.00 for the time he spent taking the items to the dump. The tenant had a responsibility to ensure all of her belongings and garbage were removed by the last day of the tenancy.

Therefore, the landlord is entitled to following compensation:

	Claimed	Accepted
Water, sewer, garbage	$298.80	$100.00
Plumbing	88.77	88.77
Damaged wall and carpet cleaning	120.00	0
Garbage removal	60.00	60.00
TOTAL	$567.57	$248.77

In relation to the security deposit that was paid by the tenant, I have considered the Act and the impact the absence of condition inspection reports has on the deposit.

Section 23 of the Act requires a landlord to schedule and complete a move-in condition inspection with the tenant. A copy of the report must be signed and a copy given to the tenant. This did not occur.

Section 24 of the Act sets out consequences that result when the landlord fails to meet the requirement to schedule and complete the move-in condition inspection report. If a landlord fails to scheduled and complete a report at the start of the tenancy the landlord’s right to claim against the security deposit for damage to the unit is extinguished.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant’s forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit.

Further, section 38 provides, in part:

> *(5)* ***The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished*** *under section 24 (2) [landlord failure to*

meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case the landlord did not have the tenant's written permission to retain the deposit and he did not have an Order allowing him to retain the deposit; in accordance with section 38(4) of the Act.

Therefore, I find that the landlord was given the tenant's written forwarding address via the tenants of the lower unit, no later than December 17, 2012, when the landlord completed his application using the forwarding address provide by the tenants.

As the landlord failed to complete a move-in condition inspection report I find, pursuant to section 24 of the Act, that the landlord's right to claim against the security deposit was extinguished.

Therefore, once the landlord received the tenant's forwarding address, he was required to return the deposit within 15 days. Even though the landlord had a claim against the tenant, his right to hold the deposit against a claim for damage to the unit had been extinguished. When the landlord failed to return the deposit in within 15 days section 38(6) of the Act determines that the deposit must be doubled. The landlord had indicated a claim for unpaid rent, but in fact there was no submission made for unpaid rent owed.

Therefore, I find that the landlord is holding a deposit in the sum of $1,200.00.

Therefore, I find that the tenant is entitled to return of double the $600.00 deposit, less the sum owed to the landlord, $248.77.

Based on these determinations I grant the tenant a monetary Order in the sum of or $951.23**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As each application has merit I find the filing fee costs are set off against the other.

Conclusion

The landlord is entitled to compensation for damage to the rental unit.

The tenant is entitled to return of double the security deposit, less the sum owed to the landlord.

The filing fee costs have been off against the other.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 19, 2013

Residential Tenancy Branch