Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

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

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 Matters

The application indicated a claim for damage or loss under the Act; however, the details of the dispute set out a claim for damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $1,000.00 for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 1, 2012; a deposit in the sum of $497.50 was paid. A move-in condition inspection report was completed.

The tenancy ended on December 31, 2012, in accordance with the Act. A move-out inspection was scheduled but the tenant did not feel well so asked the landlord to complete the inspection and report in his absence. The tenant sent the landlord a text message providing her with permission to enter the unit.

The unit was painted 1 year ago; the carpets are 1.5 years old.

The landlord received the tenant's forwarding address on December 31, 2012 and applied claiming against the deposit on January 15, 2013.

After inspecting the unit the landlord sent the tenant a message to tell the tenant that the unit looked good, but that there was a smell throughout the suite from oils the tenant had used. The landlord suggested this smell could be an issue with new occupants and wanted the tenant to let her know what he thought. The tenant responded that there should not be any oil smells and that the odor might be from the carpet cleaning product he used. The landlord replied saying that she did not think the smell was from cleaning products and that she would air the unit for several days and see if it improved.

The landlord supplied a copy of a March 14, 2013 letter issued by a property restoration company, outlining the steps taken to deal with the odour in the unit. On February 18, 2013 a large ozone generator was used, but a mechanical error caused the treatment to fail. On March 5, 2013 two smaller ozone generator units were used for twenty-four hours, which minimized the odour for a limited period of time. The landlord said within several days the smell returned. On March 14, 2013 the property restoration company noted the odour was again present and suggested the landlord pursue remedies as set out in an estimate dated January 11, 2013.

The landlord supplied a copy of the estimate issued by the property restoration company which suggested the following treatments:

- Ozone generation - $125.00; followed by
- Carpet cleaning - $200.00; followed by
- Washing walls and ceilings - $600.00.

The estimate indicated an additional 15% "profit and overhead mark-up" plus HST would be added to the bill. The landlord did not know what the mark-up represented. The estimate indicated that the restoration company representative had been at the unit and found a strong odour present; likely caused by the previous occupant using aromatherapy-type products on a regular basis.

The landlord has yet to be billed for the ozone treatment and has carpet cleaning scheduled for next week. If the carpet cleaning does not eliminate the odour, the landlord will then have the restoration company wash the walls and ceilings. During the hearing the landlord asked the tenant if he would like to assist in dealing with the issue.

The landlord said that 2 prospective occupants have declined the unit due to the strong smell that is present.

The landlord's witness said that he was at the unit on several occasions during the tenancy and found the smell of the oils used by the tenant quite intense. Once the tenancy ended he would leave the windows open, in an attempt to air the unit, but this would not work. The smell seemed to be of eucalyptus or menthol. To this time the odour lingers in the unit and when the windows are not opened the smell is strong.

The tenant acknowledged that he had regularly used an essential oil vapor diffuser in the unit. The vapor diffuser used water, with several drops of oil; a citrus based product which he believes would not have left any lingering odour. The tenant also had numerous oils that he used for massages and acupressure services. The tenant said that when he left the unit it did not smell of these oils, and that the landlord has pointed to the smells that might have be produced by the massage oils, which were only used in the unit on 3 occasions.

The tenant said that on several occasions during the tenancy he had treated the witness' knee with oils while he was visiting in the unit. There had not been a complaint in relation to the smell of the oils at that time. The landlord said that when the tenant's bathroom fan was on she could smell the products outside.

The tenant supplied a letter from his mother and a friend, both of whom helped the tenant to move out of the unit. The letters indicated that no offensive or strong odours were noticed and that no odour were present prior to or after the tenant cleaned the carpets.

The tenant did not return to the unit after December 31, 2012 and declined the landlord's suggestion he now assist with eliminating the odour.

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.

There was no dispute that the tenant regularly used a vapor diffuser that utilized some sort of oil; the tenant submitted that the oils did not cause a lingering odour. However, I find, on the balance of probabilities that the landlord has proven that the use of the tenant's vapour diffuser did result in an odour which has not yet been eliminated from the unit.

I found the restoration company estimate supported the landlord and her witness testimony that the unit has a strong odour which can be attributed to the tenant's use of the diffuser. When weighed against the tenant's submission I find that there is no other likely explanation for the odour in the unit and that the odour has resulted in damage to the rental unit. Section 37(2) of the Act requires a tenant to leave the unit reasonably clean and undamaged at the end of the tenancy. The unit was properly cleaned; however, damage did occur as a result of the use of the vapour diffuser.

The ozone generator used did not achieve the desired outcome; and as a first response to the odour, I find that the landlord is entitled to compensation in the estimated cost in the sum of $125.00 plus HST in the sum of $15.00.

Even though the tenant did clean the carpets himself, I find that the landlord is entitled to the cost of the upcoming professional carpet cleaning in the sum of $200.00 plus $24.00 HST. The landlord is hoping that professional cleaning will eliminate the odour; what I find to be a reasonable step before the more costly option of washing all walls and the ceilings.

In the absence of an explanation of the mark-up fee charged by the restoration company I have dismissed that portion of the claim.

I find that the balance of the landlord's claim is premature. The landlord has acknowledged that she hopes the professional carpet cleaning will be successful in eliminating the odour. Therefore, I find that the claim for wall and ceiling washing is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to compensation in the sum of $364.00.

As the landlord's application has merit I find that the landlord is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $497.50**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance owed in the sum of $83.50**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to compensation in the sum of $364.00.

The landlord is entitled to retain the deposit.

The landlord is entitled to filing fee costs.

The claim for wall and ceiling washing is dismissed with leave to reapply.

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 25, 2013

Residential Tenancy Branch