Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenants.

The landlord's application filed March 6, 2013 and amended April 29, 2013 seeks:

1. A monetary Order for compensation for damage and/or loss;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee.

The tenants' application filed May 16, 2013 seeks:

1. A monetary Order to recover double the security deposit; and
2. Recovery of the filing fee.

Both parties appeared at the hearing of this matter and gave evidence under oath.

The female tenant testified that the spelling of her surname is in error on the landlord's application and should be that which is set out in her own application.

The landlord testified that her surname is in error on the tenants' application and should be that which is set out in her own application.

The spelling of the applicable names in the style of cause has therefore been amended to correct these errors.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

Tenancy started November 1, 2012 although the landlord's daughter says the tenants moved in three days earlier. Rent was fixed at $2,300.00 per month and the tenants paid a security deposit of $1,150.00. The Tenancy Agreement sets out that this tenancy was set for a fixed term of 1 year and should have ended on October 31, 2013 although it ended on February 27, 2013 by way of a Mutual Agreement to End Tenancy.

The Mutual Agreement to End Tenancy was submitted in evidence indicating that the tenancy would end on February 28, 2013. The landlord's daughter submits that her mother was forced by the tenants to sign this document in the parking lot of the rental unit complex. The landlord's daughter says her mother was harassed into signing and had no idea what she was signing. The landlord's daughter says she should have been present when her mother signed.

The landlord agrees receiving the tenant's forwarding address on February 27, 2013. The landlord did not return the deposit but did file an application seeking to retain the deposit on March 6, 2013. In that application the landlord sought $577.00 and later amended her application on April 29, 2013 to seek $957.00 as follows:

Carpet cleaning – receipt provided	112.00
BC Hydro – Invoice provided	100.00
Backyard grass – estimate only	200.00
Mattress removal – receipt provided	35.00
Fix water tank – receipt for supplies provided	30.00
Floor & wall damage repairs – estimate only	100.00
Subtotal (original application)	*577.00*
Ceiling repairs – estimate only (amended application)	380.00
Total Sought	957.00

The landlord provided the move-in and move-out Condition Inspection report which was not signed by the tenants at move out.

The landlord says the tenants had 2 dogs that urinated on the carpets and they required a further cleaning after move-out.

The landlord says the tenants were responsible for part of the hydro invoice and they agreed to pay $100.00 but did not do so.

With respect to the mattress, the landlord says that another resident, KW, saw the tenants leave a mattress by the garbage container and he reported the matter to the strata council. The landlord provided a form purportedly signed by all of the other residents in the townhome complex indicating that they did not leave a mattress by the garbage container therefore it must have been the tenants who did this and, in any event, they were observed to have done this by occupant KW.

The landlord says there was a bad smell emanating from the hot water tank and they purchased supplies to repair the tank. The landlord believes the tenants kept their 2 dogs in the room with the hot water tank and the dogs urinated in that area in addition to the carpets.

The landlord says the tenants scratched the laminate floors and left marks on the walls.

The landlord says they later discovered that there was some damage to the ceiling in the rental unit and they amended their claim on April 29, 2013 to add the estimated cost of repairs of $380.00.

The tenants say they do not agree with any of the charges except the charge for hydro although they say they originally offered $76.00 which the landlord refused to accept. They acknowledge that they later agreed to pay $100.00 in an email discussion.

The tenants pointed out they have only been properly served (by registered mail) with the landlord's application but they have not been properly served with the landlord's evidence. The tenants say the landlord sent her evidence by way of email and this form of delivery is not allowed under the Act.

With respect to the carpets the tenants say they obtained a steam cleaner from a friend and steam cleaned the rental unit carpets themselves before vacating.

With respect to the yellow spots on the backyard grass the tenants say they do have a pet dog and they spread some grass seed prior but due to rainfall the seeds did not take. The tenants say on February 26, 2013 they cut out the damaged area and replaced it with sod. The tenants say they advised the owner that sod takes 7-10 days to take root and the landlord agreed that this would be okay. However on March 7, 2013 she sent an email stating the grass was still not repaired. The tenants commented that in the photograph of the grass provided by the landlord in evidence indicates it was taken February 28, 2013 even though the landlord should have waited 7-10 days. In any event the tenants say the landlord has failed to supply receipts for any sums expended to repair the grass.

With respect to the mattress the tenants say they did not leave a mattress. They agree they left a desk with drawers and a basket but they returned and removed these items a few days later in the presence of the landlord's daughter. The tenants say they were three of them living in the townhome and they came into the townhome with 3 mattresses and left with 3 mattresses.

With respect to the water tank the tenants say they have no idea what the landlord is talking about. During inspection they did not even open that door. The tenants say the landlord emailed them after the inspection indicating there was something wrong with the water tank; that it appeared to have been moved and there was a bad smell coming from the tank. The tenants say they did not have any problems with the tank when they lived there.

With respect to floor and wall damage the tenants deny floor damage and say they did hang up some pictures using small nails or pins. The tenants say they called the Residential Tenancy Branch and were advised they did not have to make repairs to these items as they are "…normal wear and tear…" however they did buy paste and filled the holes.

With respect to the ceiling repairs the tenants note the landlord amended her application on April 29, 2013 to add this claim and this was 2 months after the tenants vacated and new tenants had already been living there. The tenants say they noted no ceiling issues when they lived there and the last time they occupied the rental unit was February 27, 2013.

With respect to their claim for recovery of double the security deposit the tenants argue that even though the landlord did file her claim within the 15 days required, the deposit was $1,150.00 and the landlord's original application sought only $577.00. The tenants say the landlord should have returned the unclaimed portion of $573.00 and this amount, at least, should be doubled.

Analysis

The party who brings a claim has the burden of proving the claim.

Landlord's Claims

With respect to landlord's claim regarding the carpets the tenants testified that they borrowed a steam cleaner and cleaned the carpets themselves however they did have a pet or pets. I find that it is reasonable that when pets are residing in a rental unit that

professional carpet cleaning may have produced a better result. I will therefore allow the landlord's claim for $112.00 in this regard.

With respect to the hydro charge, the tenants have agreed to the $100.00 charge for hydro and this claim will therefore be allowed.

With respect to the grass the tenants' evidence is that they took steps to repair the grass and the landlord has failed to supply actual invoice evidence of the work to be performed or the cost of that work. I accept the tenants' testimony that they made attempts to repair the damage and I find the landlord has failed to show that they have expended sums to make repairs.

With respect to the mattress removal charges of $35.00 I find that the landlord has failed to bring sufficient evidence to support a finding that it was the tenants who left the mattress near the garbage area in the complex. While the landlords say there was an eye witness to the event, that person did not attend the hearing to give testimony and be cross-examined. The landlord has also supplied a written statement that they say is signed by all the other residents in the complex. In this statement the other residents say they did not dispose of a mattress near the garbage area however, even if this is the case, this does not prove that the tenants disposed of the mattress. The claim is dismissed.

With respect to the water tank charges, floor and wall damage while the tenants admit that they did hang some pictures they also say they filled the holes. I am satisfied that the tenants took steps to repair any damage caused. Further, I am not satisfied that the landlord has supplied sufficient evidence to show the sums she may have paid to make repairs. I therefore dismiss this claim.

Finally, with respect to the landlords claim for the ceiling repair, I agree with the tenants' undisputed testimony in this matter. This claim was made well after the tenancy ended and other tenants had moved into the rental unit and there is insufficient evidence to attribute the damage to these tenants. This claim is dismissed.

Overall I will allow the landlord's claim in the sum of $212.00.

Tenants' Claim

With respect to the tenants' claim for recovery of double the security deposit the evidence shows that the landlord did make application to retain the deposit within the 15 days required by the Act. The tenants argue that the landlord only claimed a portion of

the deposit and should have returned the unclaimed portion, however there is nothing in the Act that says that a landlord must return any unclaimed portion of a deposit in the time between the filing of an application and when the hearing is held. I therefore dismiss the tenants' claim.

As both parties have paid filing fees to pursue their claims I will not order either of them to return this fee to the other.

The landlord is directed to deduct $212.00 from the security deposit and return the balance of $938.00 to the tenants forthwith.

Conclusion

In the event the landlord does not return this sum forthwith the tenants are provided with a formal Order in the sum of $938.00 which is enforceable as any Order of the Provincial 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 29, 2013

Residential Tenancy Branch