Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Claymore Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, 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 to the unit, damage or loss under the Act, to retain deposits 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 the testimony provided.

Preliminary Matters

The tenant's brother was present throughout the hearing, acting as an advocate for the tenant. At one point during the hearing he wished to make a submission. I told the parties that I would place appropriate weight on that testimony; given his presence during the hearing. The tenant's brother was then affirmed.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $3,300.00 for damage and damage or loss under the Act?

May the landlord retain the pet and security deposits in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2004. A security deposit of $362.50 and pet deposit in the sum of $100.00 were paid. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was completed.

The tenant gave proper notice ending the tenancy effective May 31, 2013 and on May 31 2013 the tenant's brother acted as agent for the tenant and completed the move-out inspection report with the landlord. The tenant's agent did not agree with the claim made by the landlord and provided the tenant's forwarding address on the inspection report.

The landlord submitted their application on June 14, 2013.

A copy of the inspection reports were supplied as evidence.

The landlord has made the following claim:

Paint and labour	$250.00
Replace blinds	450.00
Replace carpet	2,500.00
Suite cleaning	180.00
TOTAL	$3,380.00

The detailed calculation contained in the application indicated a claim totalling $3,300.00; with the same individual costs as set out above.

The landlord supplied copies of the following invoices:

Paint July 9, 2013	$209.75
Primer sealer paint June 25, 2013	63.85
Paint and supplies July 4, 2013	146.36
Paint labour invoice July 7, 2013	266.50
Carpet and lino invoice July 25, 2013	1,893.15
TOTAL	$2,579.61

The landlord said that they supply the blinds from in-house stock; verification of the cost was not submitted. Cleaning was completed by the landlord's agent, who charged the time to the tenant; a record of this charge was not submitted.

The tenant was not prohibited from smoking in the unit. There was no dispute that the tenant is a heavy smoker and that the walls and ceiling were left with a noticeable

coating of nicotine stains. The landlord supplied 4 photographs of the walls and ceiling, showing the stains that were left on the walls.

The landlord said that the ceilings needed 3 coats of primer and that the tenant had not properly cleaned the walls. The tenant agreed that some nicotine was left on the walls and that she had never cleaned the ceilings. The tenant's brother said that the landlord's failure to paint the unit at any time during the tenancy contributed to the need for extra coats of paint at the end of the tenancy. If the unit had been painted mid-tenancy the need for paint at the end of the tenancy would have been minimized.

The tenant said the unit was not painted at any time during the almost 8.5 year tenancy; the landlord does not know when it was last painted as she has worked for the employer for only the last 2 years.

The landlord has claimed the cost of new blinds; the age of the plastic blinds is unknown. The level of nicotine on the blinds was so severe that the landlord replaced them from stock they keep on hand. Blinds of the same vintage in other units have not required replacement.

The tenant said that throughout the tenancy she was told the blinds would be replaced as they were old. First she was told that they did not have them in stock; then the blinds arrived but were damaged; then due to turn-over in other units the blinds were not available for the tenant's unit; then the maintenance person was too busy to install blinds. The tenant asked if she could install them herself, but was never given blinds, so she stopped asking for replacements.

There was no dispute that the flooring age was unknown; the tenant said it was not new when she moved in, although the carpets had been cleaned at move-in. The tenant had initially viewed a different unit and first saw the 1 she rented on the day of move-in. She said that the lino flooring had what was thought to be nail polish on it, but this was not recorded on the inspection report. The toilet also had to be replaced and the new toilet did not properly cover the existing lino. The landlord chose not to repair that lino.

The tenant said that during the tenancy there had been 7 floods, one from the bathroom ceiling and others that had caused damage to the carpets. From the start of the tenancy the carpets did not have consistent underlay throughout and after floods the landlord would lift the carpet, replace some of the underlay and dry the carpets. The carpets became stained as a result of the flooding. The tenant acknowledged that she did cause some burns to the carpet, as indicated in several photographs supplied as evidence by the landlord. The landlord was not aware of the age of the carpets but said that many other suites had carpet that appeared to be of the same age that was in good condition.

The landlord completed cleaning of the cupboards and surfaces that were nicotine covered. The landlord said that the $180.00 charge was reasonable.

Analysis

As the application did not include a claim for damage caused by a pet, and, as the pet deposit was not returned within fifteen days of May 31, 2013, I find that the landlord is holding a pet deposit in the sum of $200.00. Section 38(7) of the Act allows a landlord to claim against a pet deposit only for damage caused by a pet. As there was no claim in relation to damage caused by a pet the landlord was required, within fifteen days of May 31, 2013, to return the pet deposit to the tenant. As this did not occur, section 38(7) of the Act determines that the pet deposit must then be doubled.

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 policy suggests that a rental unit should be painted once every 4 years. There was no evidence before me that the unit was freshly painted in 2004 and it was clear that it was not painted at any time during this approximately 8.5 year tenancy. In this time it is expected that the unit would have been painted by 2008 and again by September 2013; three months after the end of the tenancy.

The Act requires a tenant to leave a unit reasonably clean. I find, from the photographs supplied that the unit was left with very obvious signs of nicotine stains and that this is the result of the tenant's actions. I have then considered the failure of the tenant to remove the nicotine against the landlord's responsibility to paint the unit at least once every 4 years.

As the landlord did not incur costs to paint at the 4th year of the tenancy I find that the additional cost incurred at the end of the tenancy is set off by the savings to the landlord when they did not paint mid-tenancy. Therefore, I find, on the balance of probabilities, that the claim for painting costs is dismissed. If the landlord had mitigated by painting mid-tenancy it is likely that the number of coats required at the end of the tenancy would have been minimized and that cost would also be borne by the landlord as another 4 years would have passed.

There was no dispute that the tenant burned the carpet with cigarettes. There was also no dispute that during the tenancy the unit had flooded on a number of occasions, which damaged the carpet. The age of the carpet was unknown and I find, based on the tenant's submission that it was not new at the time the tenancy commenced. RTB policy suggests a useful lifespan of 10 years for carpet and tile flooring and I find this is a reasonable stance.

Therefore, despite the damage caused to the carpet by the tenant, I find that by the end of the tenancy the carpets would be deemed to be aged and beyond their useful

lifespan. While other units may have older carpet that remains for use I find that the standard is one that anticipates the fact that some units will experience heavier use than others and I have decided to apply that standard. Further, in this case the tenant has described floods that stained the carpet and a toilet replacement that resulted in lino not meeting the base of the toilet. Therefore, I find that as a result of the age of the flooring, the stains and lino that was not replaced when the toilet was installed, that the claim is dismissed.

From the testimony before me I find that the blinds were older and likely not new when the tenancy commenced. The landlord could not say how old they were. It is likely that the blinds were outside of the 10 year lifespan expected, particularly plastic blinds. Therefore, I find that the blinds would be expected to require replacement and that the claim for replacement is dismissed.

In the absence of any verification of the claim made for the cleaning costs, such as an invoice or other itemized record of the amount claimed against the tenant, I find that the claim for cleaning is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, as the landlord's claim is dismissed I find that the tenant is entitled to return of the $200.00 pet deposit, the $362.50 security deposit plus interest of $12.84.

Based on these determinations I grant the tenant a monetary Order in the sum of for the balance of $575.34**.** 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.

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: September 19, 2013

Residential Tenancy Branch