Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; and to keep the security deposit as partial satisfaction of their claim.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on December 15, 2011 and switched to a month to month tenancy after June 30, 2012. Rent was payable on the first of each month in the amount of $1,350.00 and on October 27, 2011 the Tenants paid $675.00 as the security deposit. On May 27, 2013, the Tenants provided written notice to end their tenancy effective June 30, 2013 and on July 13, 2013 the Tenants provided their forwarding address by e-mail. No move in or move out condition inspection report forms were completed.

The Landlord testified that the Tenants failed to pay their share (50%) of the final utility bills of $331.03 which is comprised of $134.10 for water and sewer from February 7, 2013 to June 30, 2013, plus $133.88 for hydro, and $14.93 for natural gas. The Landlord provided the actual utility bills in question in her evidence.

The Landlord argued that the Tenants left the rental unit with damage to the kitchen floor and without cleaning the carpets. The Tenants were allowed to have pets and had two small dogs. The Landlord stated that the Tenants had not had the carpets professionally cleaned at the end of the tenancy and that the new tenants were complaining that the carpets smelled like dog urine. The Landlord arranged to have the carpets cleaned on July 15, 2013, and provided an invoice for this claim in the amount of $310.80.

The Landlord pointed to her evidence which included proof that the kitchen floor had suffered some damage in February 2011 and was replaced in September 2011. She also provided written testimony from her agents and a real estate agent which confirms the floor was not damaged at the beginning of this tenancy. She pointed to a photo provided in her evidence which was taken at the end of this tenancy and which clearly shows a large damaged area to the flooring. She has not had the flooring replaced as of yet because she cannot afford to do so until she is paid for the damage. She provided a quote to replace the floor which is $1,240.93.

The Tenants' Agent testified that the Tenants were not disputing that they had to pay 50% of utilities in accordance with the tenancy agreement. She indicated that they were not provided with copies of the final bills prior to receiving this evidence and noted that they had made payments to the utilities companies as provided in their evidence.

The Agent argued that she had knowledge that the Tenants cleaned the carpets in May 2013 and again in June 2013. They argued that the carpet was old and worn to begin with and they had issues with smells all throughout their tenancy. She confirmed that they had two small dogs (Yorkie crossed with Pomeranian) and a cat. She also confirmed that they had no receipts to prove the carpets were cleaned, just payments made from their bank to different companies.

The Agent stated that she had visited the property in March and June 2013 and at no time did she see damage to the linoleum flooring. Also, both Tenants deny having any knowledge of a hole in the floor and certainly had no knowledge of the floor being damaged during their tenancy. They were shocked when the Landlord first e-mailed them about the damage to the floor.

In closing, the Landlord pointed to her evidence (15c) which included an e-mail from the Tenants arguing that the floor damage "predated" their tenancy; therefore, they knew about the damage. Furthermore, some of the utility invoices arrived prior to the end of the tenancy; therefore, the Tenants had knowledge that payment was due.

The Agent argued that the Tenants were speaking about the flooding issue from the dishwasher that occurred in 2011 and not the hole in the floor.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, ***unless either the landlord or the tenant has a preponderance of evidence to the contrary*** [emphasis added].

I favor the evidence of the Landlord, who stated that the floor was damaged during the Tenants' tenancy, over the testimony of the Agent who argued that neither she nor either Tenant had knowledge of damage caused to the floor. The Agent also stated that at no time did she see damage on the floor. The Landlord provided evidence to prove when the floor had previously been repaired as well as statements to indicate the condition of the floor around the time this tenancy began. The Landlord also pointed out that there was e-mail evidence where the Tenants were speaking to the floor damage; after which the Agent attempted to change her testimony to say the Tenants were

speaking about pre-existing damage that was caused by an incident of flooding prior to their tenancy in 2011. The Agent also argued that the carpets had been cleaned yet the Tenants provided no actual receipts to support such statements.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Agent's explanation that they had no knowledge of damage to the floor to be improbable given the circumstances discussed in the Tenants' written submissions and during this proceeding. Therefore, I accept the Landlord's submission that this floor was damaged during this tenancy and that the Tenants did not have the carpets cleaned at the end of this tenancy as required by #18 in the tenancy addendum.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I

have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Linoleum flooring has the normal useful life of approximately ten years. In this case the floor was new in September 2011 and was therefore 21 months old at the end of this tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **$1,443.15** ($1,132.35 which is $1,240.93 x 219 mo/240 mo depreciated value of floor + $310.80 carpet cleaning).

In this case the undisputed testimony was the Tenants were required to pay 50% of the utilities (hydro, natural gas, water and sewer).

Notwithstanding the Tenants evidence which shows they made payments to two of the three utility companies up to May 9, 2013, I accept the Landlord's submission of the amount outstanding for utilities as of June 30, 2013, as supported by the actual bills provided in evidence. Accordingly, I award the Landlord unpaid utilities in the amount of **$331.03.**

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The Landlord received the Tenants' forwarding address on July 13, 2013, by e-mail. The evidence supports that the normal manner of communication between these parties was by written e-mails. Therefore, I find the Landlord was required to return the security deposit within 15 days of July 13, 2013, which she did not do.

Because the Landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the Tenants' security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the Landlord pay the Tenants double the amount of the deposit.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damaged flooring and carpet cleaning	$1,443.15
Unpaid utilities	331.03
SUBTOTAL	**$1,774.18**
LESS: Security Deposit $675.00 x 2	- 1,350.00
+ Interest 0.00	- 0.00
Offset amount due to the Landlord	**$ 424.18**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$424.18**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be 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: October 28, 2013

Residential Tenancy Branch