Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rovax Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, MNSD, FF
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Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located within a strata complex. The landlords purchased the unit in September 2007, and resided there for approximately 2 years before the subject tenancy began.

Pursuant to a written tenancy agreement the initial term of tenancy was from August 1, 2010 to July 31, 2011. Monthly rent of $1,675.00 was due and payable in advance on the first day of each month, and a security deposit of $837.50 was collected on June 25, 2010. A move-in condition inspection report was completed.

A second written tenancy agreement was negotiated for the term from August 1, 2011 to July 31, 2012. Monthly rent remained unchanged.

A third written tenancy agreement was negotiated for the term from August 1, 2012 to July 31, 2013. The agreement provides that at the end of the fixed term, tenancy may continue on a month-to-month basis. A pet damage deposit of $837.50 was collected on August 22, 2012. Effective November 1, 2012, rent was increased to $1,725.00.

By letter dated July 3, 2013, the tenants gave notice to end tenancy effective July 31, 2013. In their letter the tenants also informed the landlords of their forwarding address. Enclosed with their letter the tenants included a cheque made payable to the landlords in the amount of $300.00, which reflected the agreement reached between the parties arising, in part, from the late notice given to end tenancy. By way of their signatures on a "tenancy agreement amendment" on July 4, 2013, the parties formalized their agreement concerning the $300.00 payment.

During the hearing the landlords explained that as a result of ending their own tenancy with short notice, the landlord assessed a "penalty" of $600.00. The landlords considered it fair and reasonable to have their own tenants compensate them for 50% of this penalty and, accordingly, the amount of $300.00, as above, was agreed upon.

The tenants finished moving their possessions out of the unit by July 21, 2013. The last key in their possession was not returned to the landlords until August 1, 2013. A move-out condition inspection report was completed on July 31 and August 7, 2013 with the participation of both parties.

The landlords moved back into the unit on August 2, 2013, and filed an application for dispute resolution on August 13, 2013. Thereafter, the tenants filed an application for dispute resolution on August 14, 2013.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the testimony of the parties, and the documentary evidence which includes, but is not limited to, email exchanges, third party letters, receipts and photographs, the various aspects of the respective claims and my findings around each are set out below.

TENANTS

$300.00: *reimbursement of rent settlement for August 2013*

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

> 45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 5 of the Act provides that **This Act cannot be avoided**:

> 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Despite the agreement reached between the parties concerning a $300.00 payment for August 2013, following from all the above, I find that the tenants have established entitlement to recovery of the full amount claimed. Specifically, while the tenants' manner of giving notice does not comply with the above statutory provisions, the landlords suffered no loss of rental income as they took possession of the unit as their principal residence after the subject tenancy ended. In the circumstances, neither was it necessary for the landlords to attempt to mitigate any loss of rental income. In short, I find that the tenants ought not to bear any portion of the penalty assessed against the landlords by their own landlord.

$1,678.33: *the double return of the original security deposit plus interest*
$1,678.33: *the double return of the original pet damage deposit plus interest*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and / or the pet damage deposit, and must pay the tenant double the amount of the security deposit and / or the pet damage deposit.

I find that in the circumstances of this dispute, tenancy ended July 31, 2013. Specifically, the tenants gave notice that tenancy would end on July 31, 2013, rent was paid to the end of July 2013, and the last key to the unit was returned to the landlords on August 1, 2013. While the landlords continue to retain the tenants' security deposit and pet damage deposit, I find that the landlords filed their application for dispute resolution on August 13, 2013, which is within the 15 day period referred to in section 38 of the Act. Accordingly, I find that the doubling provisions of the Act do not apply, and this aspect of the application is therefore hereby dismissed.

Further, I note that the on-line "Deposit Interest Calculator" provides that no interest has accrued on either the security deposit or the pet damage deposit.

$1,725.00: *compensation pursuant to section 51 of the Act which speaks to* ***Tenant's compensation: section 49 notice***

Section 51(1) of the Act provides as follows:

> 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I acknowledge the tenants' claim that they understood their tenancy would soon end as a result of the landlords' intent to move back into the unit. However, in the absence of the landlords' issuance of a 2 month notice to end tenancy pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, I find that the tenants have not established entitlement to the amount claimed. Accordingly, this aspect of the application is hereby dismissed.

TENANTS' Entitlement: $300.00

LANDLORDS

$500.00: *insurance deductible*

The landlords testified that a claim was made on their insurance policy in relation strictly to repairs required as a result of water damage. On a balance of probabilities I find that water damage was the result of an overflowing toilet, that the tenants are responsible for the overflowing toilet and, therefore, that the tenants are responsible for the resulting cost of repairs to damage. In part, I make this finding in the absence of any evidence that the toilet was defective, and in part, on documentary evidence concerning third party involvement with the tenants to remedy a plugged toilet. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

$53.49: *van rental for disposal of floor coverings*

Below, as I find that the carpets were likely near at the end of their useful life of 10 years, possibly even beyond, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the application. Accordingly, it is hereby dismissed.

$89.25: *plumber inspection of toilets & plumbing*

I find that steps taken by the landlords to determine the status of the toilet and plumbing reflect the due diligence undertaken by owners, and that the tenants ought not to bear the related costs. This aspect of the application is therefore dismissed.

$46.00: *disposal of carpet / underlay & laminate flooring*

I find that the landlords have established entitlement limited to **$23.00**, or half the amount claimed. This finding reflects consideration of the age of the carpets (10 years of age or more), in addition to what I consider on a balance of probabilities was urine damage of carpet, underlay and laminate flooring from the tenants' pets' urine.

$28.00: *moisture meter rental*
$89.88: *moisture meter rental*
$180.32: *rental of dehumidifier*
$89.43: *carpet dryer rental re: subfloor*
$114.24: *carpet dryer rental*

Sub-total: $501.87

I find that these costs arise more or less tangentially from the tenancy, and that the landlords have therefore established entitlement limited to **$150.00**.

$622.41: *labour & materials for repairs / replacement of subfloor in living room*

I find on a balance of probabilities that the work required arose from damage created by the tenants' pets' urine, and that the landlords have therefore established entitlement to the full amount claimed.

$1,878.92: *labour & materials for miscellaneous repairs to subfloors, stair risers, stair treads, drywall, bedroom & bathroom doors*

On a balance of probabilities I find that this cost arises variously from reasonable wear and tear, unreasonable wear and tear, and the landlords' desire to renovate / upgrade. I am persuaded that the labour and materials arise, in part, from damage created by the tenants' pets – gnawed baseboards and urine damage to carpets, underlay and subfloors, for example. In the result, I find that the landlords have established entitlement limited to **$626.00**, or approximately one third of the amount claimed.

$44.17: *plywood / glue / screws*
$80.69: *wood for stair treads / clamp / tape / mold spray*

Sub-total: $124.86

Following from the findings set out immediately above, I find that the landlords have established entitlement limited to **$41.62**, or one third of the amount claimed.

$1,478.00: *average of 2 quotes for painting within unit*

The landlords testified that the interior of the unit was last painted prior to when they purchased the unit in 2007. Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of interior paint is 4 years. With the exception of certain painting undertaken by the tenants during the tenancy, I find that the useful life of interior paint had well been exceeded by the time tenancy ended on July 31, 2013. Further, the landlords testified that they have not painted the interior of the unit since the end of tenancy and, therefore, no actual cost has been incurred. In the result, this aspect of the application is hereby dismissed.

$928.00: *estimate for new carpet in living room, stairs, upstairs hallway, master bedroom*

The landlords testified that they have not presently replaced the carpets. Further, various testimony and evidence leads me to conclude that the carpets were approaching 10 years of age, if not older. Residential Tenancy Policy Guideline # 40 (as above) provides that the useful life of carpet is 10 years. In consideration of all the foregoing, I find that this aspect of the application must be dismissed.

$460.00: *estimate for limited baseboard replacement*

Based mainly on the comparative results of the move-in and move-out condition inspection reports, photographs, and evidence concerning the presence of pets in the unit, I find on a balance of probabilities that the landlords have established entitlement to compensation. However, the landlords testified that as the subject baseboards have not yet been replaced, no cost has presently been incurred. In the result, I find that the landlords have established compensation in the limited amount of **$230.00**, or half the amount claimed.

$25.00: *estimate for replacement of dryer lint trap*

During the hearing the parties agreed to resolve this aspect of the dispute. Specifically, the tenants agreed to be responsible for **$12.50**.

Landlords' miscellaneous labour

While the landlords have made their calculations on the basis of a $25.00 hourly rate, I find in the circumstances of this dispute that a reasonable hourly rate is $15.00.

$200.00 (8 hours): *cleaning kitchen, stove, floor, windows*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

I note on the move-out condition inspection report that there is an emphasis not so much on a need for cleaning, as on repairs to various damage. I find on a balance of probabilities that the landlords have failed to meet the burden of proving that the

particular items identified as in need of cleaning, were left other than “reasonably clean” by the tenants. This aspect of the application is therefore hereby dismissed.

$400.00 (16 hours / 2 persons): *removal of carpet / underlay / laminate*

As previously noted, the estimated age of carpet (and underlay) has contributed to a finding which precludes entitlement to compensation related to replacement of carpet. I find, however, that removal of laminate was required, in part, as a result of pet urine damage. Accordingly, I find that the landlords have established entitlement limited to **$120.00**, calculated on the basis of 1 person, 8 hours @ $15.00 per hour.

$400.00 (16 hours / 2 persons): *removal of staples / gripper rods / scrubbing floors*

I find that the landlords have established entitlement limited to **$120.00**, calculated on the basis of 1 person, 8 hours @ $15.00 per hour.

$75.00 (3 hours): *sanding / painting master bedroom floor*

I find that the landlords have established entitlement limited to **$45.00**, calculated on the basis of 1 person, 3 hours @ $15.00 per hour.

$500.00 (20 hours): *removal of drywall sections / stair risers / stair treads / recreation room / master bedroom / bathroom / hallways*

I find that the landlords have established entitlement limited to **$165.00**, calculated on the basis of 1 person, 11 hours @ $15.00 per hour. This finding is reached for reasons that are similar to reasons set out above under *“labour and materials for miscellaneous repairs to subfloors, stair risers, stair treads, drywall, bedroom & bathroom doors.”*

$200.00 (8 hours): *compensation for day off to let handyman complete assessment and provide quote*

I find that this aspect of the claim derives too indirectly from the tenancy, and it is therefore hereby dismissed.

$75.00 (3 hours): *cleanup & disposal of feces / bark mulch*

In the absence of clear documentation concerning such a requirement on the move-out condition inspection report, this aspect of the application is hereby dismissed.

$37.50 (1.5 hours): *testing walls, floors, stairs to identify urine affected areas*

I find that this aspect of the claim derives too indirectly from the tenancy, and it is therefore hereby dismissed.

$132.37: *printing of photos for hearing*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

LANDLORDS' Entitlement: $2,655.53

The respective applications to recover the filing fee are both hereby dismissed.

Offsetting the respective entitlements, I find that the landlords have established a net claim of **$2,355.53** ($2,655.53 - $300.00). I order that the landlords retain the security deposit of $837.50 and the pet damage deposit of $837.50 [**total: $1,675.00**], and I grant the landlords a **monetary order** for the balance owed of **$680.53** ($2,355.53 - $1,675.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **$680.53**. Should it be necessary, this order may be served on the tenants, filed in the 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: December 4, 2013

Residential Tenancy Branch