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 to the rental unit; 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

At the start of the hearing the parties confirmed receipt of each others' single evidence package.

The tenant supplied digital evidence to the Residential Tenancy Branch (RTB) and landlord. The landlord received that evidence but did not attempt to view it as she was not sure if it contained a virus. The tenant did not contact the landlord at least 5 days prior to the hearing, to ensure the landlord had viewed the digital evidence; a requirement set out in section 10 of the Residential Tenancy Branch Rules of Procedure; therefore, that evidence was set aside.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for damage or loss under the Act?

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 parties agreed that the tenancy commenced on August 1, 2012. Rent was $2,000.00 per month, due on the 1st day of each month. The tenant was to pay $200.00 per month for utilities which would be reconciled every 6 months in order to establish an over or under payment. The landlord said that she currently owes the tenant $182.15 for utility overpayment made by the tenant. The tenant has not made a claim requesting compensation.

A security deposit in the sum of $1,000.00 and pet deposit in the sum of $1,000.00 was paid.

The landlord had lived in the unit and moved out just prior to the tenant taking possession.

A move-in condition inspection report was not completed with the tenant.

The tenancy ended with proper notice effective June 30, 2013.

The landlord and tenant met at the unit on July 3, 2013 to walk through the unit. The landlord supplied a copy of a hand-written note outlining items that required further attention, as a result of her assessment of the unit completed on July 2, 2013. The list was presented to the tenant on July 3, 2013 and was then signed by the landlord and tenant. The tenant wrote her forwarding address on the list. This list indicated, among other items, that the carpets were not cleaned.

The landlord has made the following claim for compensation:

Repair screens	$35.00
Broken door-sweep and damaged front door weather-stripping	16.78
Flea spray	40.32
Landlord's labour	75.00
Exterminator fee	275.00
Replace carpets	700.00
TOTAL	$1142.10

The landlord had requested utility costs, but has since established that there was an over-payment made by the tenant. The landlord had also requested the cost of boarding 2 pets; that portion of the claim was withdrawn.

The landlord said that she purchased screen to replace the screen in 2 windows and a door that were damaged by the tenant. When she met with the tenant on July 3, the

tenant's older daughter was present and said she had fallen through a screen. The tenant said that her daughter did not say this and that at the start of the tenancy there were some small holes in screens.

The landlord had installed a new main door which had a sweep at the bottom. The tenant damaged the sweep and it was replaced by the landlord. The tenant said that the sweep was plastic and did have a chip as the result of normal wear and tear.

After meeting on July 3, 2013 the tenant hired a professional carpet cleaning company to clean the unit carpets. A copy of the July 4, 2013 invoice was supplied as evidence. The invoice indicted the rugs were cleaned, deodorized and that some make-up was removed. The tenant had not realized she was required to have the carpets professionally cleaned and pointed to a 2012 receipt provided by the landlord, which showed the landlord had rented a cleaner herself and not had the carpets professionally cleaned in 2012.

After the carpets had been cleaned some stains appeared; the landlord sent the tenant an email message that the tenant did not receive immediately as she was in Alberta. The tenant said they had always sent text messages and she would have quickly seen a text. On July 11 the tenant contacted the landlord and said she would have the professional company look into the problem and on July 12 she sent a message telling the landlord her cleaning company would return for possible warranty work. On July 9 and 10th the landlord had used a rented cleaner, in an attempt to remove the stains. The tenant contacted her professional company, as did the landlord, and both were told any warranty was void as the landlord had used a rented steam cleaner.

The tenant said that the carpet cleaning company said it was possible that professional cleaning could cause old or deep stains to wick back and they were willing to return to spot clean; as they guaranteed their work.

The landlord provided 4 photographs taken of the carpet after it had been cleaned; some marks and at least 1 stain could be seen. The landlord has not replaced the carpets and said that they are still useful, but she believes the tenant should be responsible for the loss of value, as the carpets were only 2 years old when the tenancy started.

On July 5, 2013, when a new occupant moved into the rental unit, the landlord saw fleas on the floor of the lower bedroom. The next day the landlord emailed the tenant to tell her the carpet had stains and that fleas were present in the home. On July 7 the landlord sprayed the unit for fleas and on July 9 and 10 fleas were seen in the unit again. The landlord then emailed the tenant to tell her that the home would need to be fumigated.

The landlord sprayed the unit on 2 occasions and then hired a professional pest control company to spray the unit for fleas. The landlord said there were no fleas in the 2nd unit of the home and that there had not been fleas at the start of the tenancy.

On July 15, 2013 the exterminator attended and sprayed the unit; the landlord paid cash for this service.

The landlord has made a claim to compensate her for the time she spent repairing the screens, spraying the unit and cleaning the carpets.

The tenant supplied evidence that she is a professional dog trainer and that the health of her dog is important. The tenant's smooth-coated, small dog and cat were treated for fleas regularly and the tenant never saw any fleas in the unit or on her pets. The tenant checked with a vet, who told her fleas could lay dormant for up to 2 years. The tenant denied that the unit showed any sign of fleas at the time she vacated.

The tenant supplied 8 photographs taken of the unit at the end of the tenancy; showing the stove, oven, bathroom, kitchen and fridge. The photographs indicated that those areas were well cleaned.

The tenant supplied a letter from a witness who stated that the unit was not clean at the start of the tenancy and that the unit was left in better condition than at the start.

During the hearing the disposition of deposits was discussed with the parties. The landlord said she had called the RTB when making her application and was told she could retain the deposits until the hearing. I explained that if the landlord had failed to mention she had not completed a move-in condition inspection report, the information given to her would not have considered all relevant details.

After the hearing had proceeded for approximately 25 minutes the landlord said that she had supplied additional evidence to the RTB and tenant in July, shortly after she submitted her July 14, 2013 on-line application. That initial evidence package included copies of receipts, in support of the monetary claim. The tenant said she did not receive any evidence with the Notice of hearing package sent to her in July 2013; that she did not have any receipts sent as evidence.

There was only 1 evidence submission before me that had been supplied by the landlord. The landlord could not say how many pages were included in her missing evidence submission, but she was sure she had sent it via express post to the RTB on July 17, 2013.

At the end of the hearing the landlord raised the issue of her evidence again and I offered to allow her to serve the RTB and tenant with copies of 4 receipts she claimed to have supplied; the tenant would then be allowed to make a rebuttal submission. Agreement was then reached between all parties that verification of the landlord's claim did exist and did not need to be served to the RTB and tenant.

Analysis

Residential Tenancy Branch policy suggests when a landlord claims against a deposit, any balance that may remain should be ordered returned to the tenant. I find this is a reasonable stance.

In relation to the security and pet deposits that were paid by the tenant, I have considered the Act and the impact the absence of a move-in condition inspection report had on the deposits.

Section 23 of the Act requires a landlord to schedule and complete a move-in condition inspection with the tenant. A copy of the report must be signed and a copy given to the tenant. This did not occur.

Section 24 of the Act sets out consequences that result when the landlord fails to meet the requirement to schedule and complete the move-in condition inspection report. If a landlord fails to schedule and complete a report at the start of the tenancy the landlord's right to claim against the security deposit for damage to the unit is extinguished.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposits or make an application for dispute resolution claiming against the deposits.

Further, section 38 provides, in part:

> *(5)* ***The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished*** *under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
>
> ***(6) If a landlord does not comply with subsection (1), the landlord***
>
> > ***(a) may not make a claim against the security deposit or any pet damage deposit, and***
> >
> > ***(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***
>
> (Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposits and he did not have an Order allowing her to retain the deposits; in accordance with section 38(4) of the Act.

As the landlord failed to complete a move-in condition inspection report I find, pursuant to section 24 of the Act, that the landlord's right to claim against the security and pet deposits for damage to the unit had been extinguished.

Therefore, I find that the landlord was given the tenant's written forwarding address on July 3, 2013, when the parties met at the unit, and that no later than and pet deposits to the tenant. As the right to claim against the deposits had been extinguished, the landlord could not retain those deposits beyond July 18, 2013.

Therefore, once the landlord received the tenant's written forwarding address, she was required to return the deposit within 15 days. Even though the landlord had a claim against the tenant, her right to hold the deposits against a claim for damage to the unit had been extinguished. When the landlord failed to return the deposits in within 15 days section 38(6) of the Act determines that the security and pet deposits must be doubled.

Therefore, I find that the landlord is holding deposits in the sum of $4,000.00.

I found that the landlord's testimony was consistent and credible; it is doubtful that the landlord would have fabricated the detailed discussion she had with the landlord's daughter at the end of the tenancy. The tenant's testimony was also consistent; however, in relation to the screens I find, on the balance of probabilities that it is likely some damage, beyond that at the start of the tenancy, occurred. Therefore, I find that the landlord is entitled to the sum claimed for screen repair plus $25.00 labour.

There was no dispute that the door and door sweep were new. I find that normal day-to-day use of the door would not reasonably result in a new sweep to be damaged. Therefore, I find that the tenant is responsible for repair of the door sweep, in the sum claimed. I find that the landlord is entitled to nominal labour in the sum of $10.00, for repair of the sweep.

In relation to the carpets, there was no dispute that the tenant had the carpets professionally cleaned and that, afterward, the landlord used a rental cleaner. There was also no dispute that the tenant's professional cleaner then informed the tenant that their warranty was voided. Based on the landlord's actions, denying the tenant the opportunity to have her company return to attempt to remove any stain, I find the landlord failed to mitigate the loss she has claimed. If the tenant's company had been allowed to return, to assess the stain that had emerged, it is possible the origin of any stains could have been established. Further, the invoice issued by the carpet cleaning company did not reference any stains that had been present, but did reference the removal of makeup. Therefore, I find that the claim for carpet replacement is dismissed.

I find that the claim for flea treatment is dismissed. There was no evidence before me that the tenant caused fleas to be present in the rental unit. The tenant's carpet cleaning company did not issue any alert to the presence of fleas, even though they had

cleaned all of the carpets on July 4, 2013. The landlord has assumed that the fleas originated from the tenant's pets, but there was no evidence before me to support this assumption. I find it is just as likely, as stated by the tenant, that conditions in the unit could have allowed dormant fleas to emerge in the unit. The landlord provided no submission to counter this, other than to deny that fleas could lay dormant. The tenant had talked with a vet, who advised dormancy was possible and I found this was convincing.

Therefore, I find that the landlord is entitled to the following compensation:

	Applied	Accepted
Repair screens	$35.00	$35.00
Broken door-sweep and damaged front door weather-stripping	16.78	16.78
Flea spray	40.32	0
Landlord's labour $25.00 per hour	75.00	35.00
Exterminator fee	275.00	0
Replace carpets	700.00	0
TOTAL	$1142.10	$86.78

The balance of the claim is dismissed.

As the claim has some merit I find that the landlord is entitled to return of the $50.00 filing fee.

Therefore, I find that the tenant is entitled return of double the pet and security deposits in the sum of $4,000.00; less $136.78 owed to the landlord.

Based on these determinations I grant the tenant a monetary Order for the balance of $3,863.22**.** In the event that the landlord 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.

Conclusion

The landlord is entitled to compensation in the sum of $86.78; the balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the sum owed, from the deposits.

The tenant is entitled to return of double the pet and security deposits; less the sum owed to the landlord.

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: November 25, 2013

Residential Tenancy Branch