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 or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenants 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

On May 30, 2013 the landlord submitted an application requesting compensation in the sum of $2,962.50 for the cost of utility charges from January 1, 2010 to May 31, 2013. This application, file 808372, was set to be heard on September 5, 2013.

On June 14, 2013 the landlord submitted a 2nd application, file ######; requesting an additional $1,900.00 in compensation. This application was scheduled to be heard at the same time as file 808372 and was essentially an amendment of that application; these applications have been joined.

File ###### did not include a detailed calculation of the claim. The tenant's confirmed that on August 24, 2013 they received the 25 page evidence submission the landlord had given to the Residential Tenancy Branch on August 20, 2013. That evidence submission included a letter which indicated a number of items that required replacing or expenditures made, with estimated costs. The landlord was informed that the detailed calculation was to be submitted and served as part of the application; however, I determined we would review the claim and details provided in August. The tenants did not oppose my decision to proceed.

The parties were informed that only those emails that were referenced during the hearing would be considered. The parties were given an opportunity to reference the numerous emails that had been submitted, during and at the conclusion of the hearing.

The parties confirmed receipt of the applications and evidence submitted by each.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $2,962.50 in utility costs?

Is the landlord entitled to compensation in the sum of $1,900.00 for damage to the property?

May the landlord retain the security deposit?

Is the landlord entitled to the filing fee cost?

Background and Evidence

The tenants referenced a decision, file 806818, issued on April 17, 2013. That decision determined the terms of the tenancy:

> *This tenancy commenced originally as a one-year fixed term tenancy for the period from January 1, 2010 until December 31, 2010. Monthly rent at that time was set at $1,800.00, payable in advance on the 15th of each month. When the initial term ended, the parties signed a new 2-year fixed term tenancy for the period from January 1, 2011 until December 31, 2012. Since then, the tenancy has continued as a periodic tenancy. Monthly rent is currently set at $1,900.00, payable in advance on the 15th of each*

The parties agreed that the details of the tenancy provided in the April 17, 2013 decision were correct, with the exception of the rent due date, which was the 1st day of each month.

The parties agreed that a move-in condition inspection report was not completed at the start of either term of the tenancy.

The landlord stated that the tenants gave written notice on the night of April 31, 2013, that they would vacate on May 31, 2013. The notice ending tenancy included the tenant's forwarding address, which was used by the landlord for service of the applications.

The parties did not agree on the events that occurred in relation to a move-out condition inspection; the landlord said that on May 27, 2013 he asked the tenants when he could obtain the keys; the tenants said that they asked the landlord to meet with the at 1 p.m.

on May 31, 2013 but that the landlord did not attend. A move-out inspection was not completed by the landlord.

File 808372 – Utilities Claim

The landlord has made a claim in the sum of $2,962.50 for the cost of utilities; from January 1, 2010 to May 31, 2013.

The decision issued on April 17, 2013 contained the following findings and orders:

> *Since this tenancy will continue and in accordance with the powers granted to me under section 62 of the Act, I make the following order to establish clarity on the existing tenancy and so as to prevent future disputes regarding the interpretation of the terms of the Agreement. I find that paragraph 17 of the Agreement requires the landlord to pay for property tax, insurance for the property, and water and sewage. In reaching this finding, I note that both the landlord and the tenants submitted arguments with respect to this major point of contention as it applies to this tenancy. Since the landlord believed that he was somehow entitled to recover additional water and utility charges beyond those specified in the Agreement, I believe it is necessary to provide this determination so as to enable this tenancy to continue. For this reason,* ***I order the landlord to comply with the above cited provisions of paragraph 17 of the Agreement and take full responsibility for property taxes, insurance for the property, water and sewage, as his responsibility under the terms of the Agreement he drafted and signed to govern this tenancy.***
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> (Emphasis added)

The landlord was informed that I could not change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision made by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

While the hearing held on April 17, 2013 did not include a claim made by the landlord for utility costs; the arbitrator issued an order that the landlord was responsible for utility costs; thus barring the landlord from succeeding in any future claim for those costs. To my knowledge the landlord did not request a clarification or correction of the April 17, 2013 decision, nor did he pursue judicial review; thus indicating his acceptance of the findings and order previously issued. Therefore, I find that the principle of res judicata applies in this case.

Damages Claim

A June 5, 2013 letter supplied as evidence included a list of items the landlord claimed the tenants damaged, stolen or left behind at the end of the tenancy. The landlord

supplied eighteen photographs taken at the end of the tenancy. No invoices, estimates or other verification of the sums claimed were supplied.

The landlord referenced clause 12 of the tenancy agreement, which prohibited the tenants from making any alterations or decoration without written approval of the landlord.

The unit was last painted in December 2009.

The landlord said that the tenants did not:

- Clean the carpets, cut the lawn;
- Failed to remove garbage from under the deck;
- Stole pool equipment and failed to clean the pool;
- Took stove manuals, tools and pans;
- Took the landlord's gardening tools, hose and hose reel;
- That a vertical blind panel is missing;
- That the valance clips on 2 bedroom blinds are broken;
- The garage keys are missing;
- A shelf and shoe rack was taken from the entry and side closet; and
- 1 garbage can is missing and 2 others are damaged.

The landlord stated he hired individuals to complete garbage removal, cleaning and that he paid to replace tools. The landlord repaired and painted the walls.

The tenants acknowledged that they had installed an awning off of the patio and that the awning was removed at the end of the tenancy. The landlord had given permission for the installation and the tenants had agreed to give the landlord the opportunity to purchase the awning at the end of the tenancy. As the relationship had soured the tenants removed the awning without speaking to the landlord. There was no dispute that the removal of the awning left holes in the exterior of the home; this was supported by photographic evidence.

The landlord did not dispute that he had given permission for the awning to be installed, but had expected to be given the opportunity to have the awning remain at the end of the tenancy. The landlord claimed $250.00 for repair to the exterior of the home; no repair has occurred and no estimate of the cost was supplied.

The tenants acknowledged that they did run a computer cable to a hall in the lower portion of the home and that a hole was made in the wall for this cable. When the tenants vacated they placed a face plate over the hole. The landlord claimed $100.00 for repair and painting of this wall as the tenants made the hole without the landlord's permission.

The tenants agreed that they replaced an older towel rail with a new, more modern rail. This resulted in the need to fill several holes in the wall. The tenants filled the holes and left paint, for touch-up. The landlord claimed $100.00 for this repair.

The tenants did change the blinds in one of the bedrooms and when they reinstalled the blind the plastic valance clips broke. The tenants said these clips can be purchased for $1.97 each.

With the exception of the items acknowledged by the tenants, the tenants disputed the balance of the landlord's claim. The garbage left under the deck was from the previous owner; the tenants cut the lawn and had their own garden hose and reel. The tenants had purchased their own pool skimmer, which did break. They did not take the garbage cans or any of the landlord's tools or belongings. The tenants had the carpets cleaned at the end of the tenancy and were told by the carpet cleaner that the rug had previously had wax spilled on it; this occurred prior to the tenancy. The tenants said that the keys were returned to the landlord.

Photographs supplied by the tenants showed the missing vertical blind section hanging on the fireplace mantle. The tenants said they could not have taken the shoe rack or shelf as they are built into the closet.

The tenants stated that the landlord's claim was excessive and not supported by any verification of costs that he indicates were incurred.

Analysis – Damages Claim

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.

In relation to the $900.00 security deposit that was paid by the tenants, I have considered the Act and the impact the absence of a move-in condition inspection report had on the deposit.

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 deposit or make an application for dispute resolution claiming against the deposit.

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.***
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> (Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposit and he did not have an Order allowing him to retain the deposit; 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 deposit for damage to the unit was extinguished.

I find, based on the acknowledgement of the landlord, that he received the tenant's written forwarding address on April 31, 2013.

Therefore, once the landlord received the tenant's forwarding address, he was required to return the deposit within 15 days. Even though the landlord had a claim for damages against the tenants, his right to hold the deposit against a claim for damage to the unit had been extinguished. When the landlord failed to return the deposit in within 15 days of May 30, 2013, the date the tenancy ended, section 38(6) of the Act determines that the deposit must be doubled.

Therefore, I find that the landlord is holding a deposit in the sum of $1,800.00.

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 Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord

At the end of a tenancy a tenant must leave the unit reasonably clean and undamaged, with the exception of normal wear and tear.

Despite the landlord’s submission that he hired individuals to complete some of the work and that he had replaced tools; the landlord did not supply any verification of the amounts claimed; no invoices, estimates or proof of payment.

The landlord failed to establish the state of the home at the start of the tenancy by completing a condition inspection report. There was no evidence before me that the landlord gave the tenants a final written notice to complete a move-out inspection. I have relied upon the evidence supplied by the landlord and have taken into account the disputed testimony of the parties and find, on the balance of probabilities, that the majority of the claim made by the landlord is dismissed. There was no verification of the costs claimed by the landlord, which leads me to find that the claims are unsubstantiated. I also found the tenant’s testimony consistent and reliable; they did acknowledge some damage that had occurred; while the landlord’s claim was bereft of evidence.

The tenants have acknowledged that they did leave holes in the exterior of the home, above the patio, and, in the absence of any estimate for repair or invoice indicating repair has been completed I find that the landlord is entitled to compensation in the nominal sum of $50.00. Even thought the tenants placed silicone in the holes; they did not provide the landord with an opportunity to have the awning remain in place as had been agreed, which resulted in holes being left in the exterior of the home.

As the tenants installed a towel rail without the written permission of the landlord, which resulted in the need for wall repair, I find that the landlord is entitled to nominal compensation in the sum of $25.00.

The tenants confirmed that they made a hole in the hallway and, as this was completed without written permission I find that the landlord is entitled to nominal compensation in the sum of $25.00

As removal and reinstallation of the blinds resulted in the valance clips breaking I find that the landlord is entitled to nominal compensation in the sum of $5.00.

The balance of the landlord’s claim is dismissed.

As the landlord's application has some merit I find that he is entitled to the $50.00 filing fee paid on the 1 application.

Therefore, the landlord has established a monetary claim, in the amount of $155.00, which is comprised of $105.00 in damage and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining $155.00 from the tenant's security deposit of $1,800.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary Order for the balance of the security deposit, in the sum of $1,645.00**.** 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.

Conclusion

The landlord is entitled to compensation in the sum of $105.00; the balance of the claim for damages is dismissed.

The claim for utilities cost has been previously decided.

The landlord is entitled to the $50.00 filing fee.

The tenants are entitled to return of double the security deposit; 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: September 06, 2013

Residential Tenancy Branch