Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND,MNR, 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 unpaid rent, damage to the rental unit, damage or loss under the Act, to retain the security and pet deposits 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

The application was amended, to correct the male tenant's surname and given name.

The landlord served the female tenant with Notice of the hearing and evidence, to the address on the application. The documents were sent by registered mail on November 13, 2013. The tenant present at the hearing testified that the female co-tenant did receive the hearing package and evidence. That mail is also deemed served on the 5th day after mailing.

The application did not include an itemized list outlining the details of the claim made; however, the tenant confirmed that he did understand the claim. A list of charges was supplied to the tenants as part of the evidence served in November 2013.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid October 2013 rent in the sum of $62.50?

Is the landlord entitled to compensation in the sum of $310.00 for damage to the unit?

May the landlord retain the deposits paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 1, 2012; rent was $750.00 due on the 1st day of the month. A security deposit of $375.00 and pet deposit in the sum of $200.00 was paid.

A move-in condition inspection report was completed; a copy was provided as evidence.

The tenants gave proper written notice to tend the tenancy effective October 31, 21013 which included their written forwarding address.

The tenant said that the landlord did schedule a move-out condition inspection report but that the landlord did not attend. The tenants telephoned the landlord but could not reach him. The landlord said that he could not recall when or if an inspection had been scheduled.

The landlord entered the unit on November 1, 2013 and completed a "Move in/Move out/Charge Analysis" document. This document provides a list of items that are included as fixtures in the unit and has corresponding fixed fees for any cleaning that may be required to those items. The landlord made a claim as follows:

Fixture	Pre-determined fee charged
Stove/oven	$40.00
Fridge	30.00
Dishwasher	5.00
Sink/counter top	10.00
Floor covering kitchen	15.00
Sink/vanity	15.00
Tub	30.00
Toilet	30.00
Floor covering bathroom	15.00
Floor covering living room	25.00
Floor covering bedroom	20.00
Keys	50.00
Garbage removal	25.00
TOTAL	$310.00

The landlord provided copies of eighteen photographs taken of the unit. The photos showed drawers and several cupboards that were not cleaned, a small fryer on the counter, 3 jars under the kitchen sink, a dirty fridge, and a wall in need of cleaning, the stove and a missing light bulb.

The landlord charges a minimum pre-set amount for cleaning of items and each item claimed was indicated on the charge analysis form. The landlord explained that the set fee for garbage removal was justified as the tenant is supposed to remove all garbage.

The tenant said that several pictures showed damage to a door, which he acknowledged had occurred; but the landlord had not made a claim for damage to the door.

The tenant said they had vacated the unit in mid-October and returned to the unit up to the end of the month, to complete cleaning. The tenant suspected photographs may have been taken prior to the end of the month, as several items in a photograph of the kitchen were removed at the end of the tenancy. The tenant said the landlord has claimed floor cleaning but provided no pictures of dirty flooring. The tenant agreed that several light bulbs may have been missing.

The landlord said the tenants did not return the keys. The tenant said that he put several keys through the door slot, as directed by the landlord and that several keys were left on a window ledge in the unit.

The tenant agreed that $62.50 was owed for October 2013 rent; a misunderstanding had occurred as a result of a rent increase.

Landlord S.L. was called into the hearing to testify in relation to the move-out inspection report; he then exited the conference call. The landlord remaining in the hearing, T.L. did not view the rental unit at the end of the tenancy and supposed that the photographs were taken on November 1, 2014. T.L. stated they would not enter the unit until the end of the month.

The landlord confirmed that the claim did not include any damage caused by a pet.

Analysis

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.

I have considered the tenant's submission that the date of the photographs were taken could not be established. I found this compelling, as the tenants were present to complete an inspection report at the end of the tenancy, but the landlord failed to attend. I find that to accept the photographic evidence after the tenants had attempted to inspect the unit with the landlord runs counter to the claim for cleaning. I found the tenant's submissions consistent and credible. The landlord could not answer specific questions about the photographs, such as when they were taken, as she was not present when they were taken and did not have that information before her. The landlord could only assume the date the photos were taken. Therefore, I have not placed any weight on those photographs.

I find the claim for predetermined damage charges assumes the level of cleaning that might be required. For example; a $30.00 fee for cleaning a toilet appears to be at a high wage rate for 1 hour of cleaning. I find it unlikely that a toilet would require cleaning for any more than a matter of minutes; not for a period of time equivalent to $30.00. The pre-set charges, combined with a lack of evidence and the failure to complete a condition inspection report call into question the veracity of the claim.

Therefore, based on the disputed testimony, I find that outside the agreement in relation to rent, that the balance of the claim is dismissed. If a move-out inspection had been

completed the tenant's would then have been given an opportunity to agree in writing to a reduction from the deposit for the unpaid rent; a sum the tenant did not dispute at this hearing.

The Act requires a tenant to leave the rental unit in a reasonably clean state and I find there was no evidence before me that this did not occur.

Section 38(1) of the Act provides:

> *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> > *(a) the date the tenancy ends, and*
> > *(b) the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*
>
> > *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> > *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

Section 38(4) of the Act allows a landlord to retain a sum from the deposit if the tenant agrees at the end of the tenancy, in writing; or if the landlord has obtained an Order allowing a deduction. The tenants did not agree to deductions, an Order had not been issued and there was no claim for damage caused by a pet.

Section 38(6) and (7) of the Act provides:

> *(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.***
>
> *(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*
>
> (Emphasis added)

In this case the landlord did submit an application against the security deposit for unpaid rent, within the required time-frame, but did not have a claim against the pet deposit, for damage caused by a pet. Therefore; the pet deposit should have been returned within 15 days of October 31, 2014. When the pet deposit was not returned to the tenants, section 38(6) of the Act determines the pet deposit must be doubled.

Therefore, I find that the tenants are entitled to return of the $375.00 security deposit plus double the pet deposit in the sum of $400.00; less $62.50 agreed owed for October 2013 rent.

As this matter could have been resolved through a condition inspection report, where the tenants could have agreed in writing to a deduction from the deposit, I decline filing fee costs to the landlord.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposits in the sum of $712.50**.** 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 tenants agree rent was owed; the balance of the claim is dismissed.

The tenants are entitled to return of double the pet deposit, the security deposit; less an agreed upon amount for rent owed.

Filing fees are declined.

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: February 28, 2014

Residential Tenancy Branch