



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Providence Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage of loss under the Act, compensation for unpaid rent, 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 tenants supplied a memory stick as video evidence. The landlord said that they did not receive that memory stick. The tenants did not contact the landlord in advance of the hearing to ensure the landlord had access to the digital evidence; which is a requirement set out in the Rules of Procedure. Therefore, in accordance with the Residential Tenancy Rules of Procedure the digital evidence was set aside. The tenants were at liberty to provide oral testimony in relation to the content of the digital evidence.

At the start of the hearing the landlord testified that the claim included damage caused by a pet.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,015.00?

Is the landlord entitled to compensation in the sum of \$83.88 for loss of rent revenue?

May the landlord retain the security and pet deposits totalling \$1,300.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 15, 2013; rent was \$1,300.00 per month. A move-in condition inspection report was completed on April 11, 2013.

On January 17, 2014 the tenants vacated and the move-out inspection report was completed the next day.

Copies of the tenancy agreement and condition inspection reports were submitted as evidence.

The landlord has made the following claim:

Flooring materials	\$55.00
Baseboard	50.00
Labour for floor repair	560.00
Remove and install baseboard in living room and paint 2 walls	250.00
Wall repair large hole in dining room, hallway	125.00
Paint dining room, hallway and 1 wall in bedroom	450.00
Suite clean-up, debris removal	300.00
Clean curtains	100.00
Administrative costs	125.00
January 15 – 17, 2014 rent	83.88
TOTAL	\$2,098.88

The move-out condition inspection report included notations as follows:

- Holes in entry wall;
- Dog hair on living room window covering;
- Items left in bathroom;
- Screws and scrape on master bedroom wall; and
- Utility room not cleaned; cabinets.

The landlord made a notation on the move-out inspection report indicating there was damage to the living room floor, holes in walls, painting and drapes needed cleaning. The tenants signed the report, disagreeing with the content; specifically the floor damage.

The landlord said that by signing the report and not disputing the claims made that relate to the damage outside of flooring, the tenants are then responsible for the costs as claimed.

On December 23, 2013 the landlord entered the unit in response to the tenant's report of floor damage. He observed several circular areas that were damaged, several feet from the kitchen counter where the sink is located. The landlord could not find any source of water and determined that the damage was not the result of dog urine. The floor appeared "fogged" and there was some minor lifting at the end of the flooring joints. The landlord said he thought that the dog's water bowl could have caused the damage. The landlord said that bikes were stored in a tiled area of the unit and that the dogs would not have been fed there. The landlord believed the tenants used water to

clean the floor. The landlord told the tenants the floor should not wet mopped, as laminate cannot withstand moisture.

The landlord provided some photographs of the flooring; as did the tenants. The tenant's photos were close-up views and clearly showed 2 small circular areas where it appears the flooring was deteriorating.

The landlord was able to locate a bundle of flooring and repairs were completed after the tenants vacated. The landlord stated the flooring in the living room had to be removed and then pieces replaced. This resulted in the need to remove composite baseboards which were easily damaged. New baseboards then had to be installed. The walls required painting as the baseboard removal caused some damage. It took 2.5 days to repair the floors.

The landlord said that on the inspection report the tenants acknowledged the holes in the walls and are responsible for paying the sums incurred to repair and paint. The landlord could not describe the holes; he did not know how large they were or how many holes were made. He said the person who completed the report is learned in assessing damage and that there was no damage at the start of the tenancy. The landlord accepted the inspection report and the signature of the tenants as proof of the need to repair in the sums claimed. The inspection report did not indicate any possible costs for repair.

The landlord supplied 2 photographs which showed the area where shelving had been mounted in the living room and a whole and small scratch in another wall.

The landlord stated the tenants left a cabinet, computer, TV, table and a number of other items in the unit. The landlord hired a 3rd party to remove these belongings. These were not notated on the inspection report.

There was no dispute that the window covering required cleaning, the tenants accepted this portion of the claim.

The landlord stated that the administrative costs claimed refer to the time staff spent picking up materials, supervising the work completed, advertising, photographs and showing the unit when the tenants gave notice terminating a fixed term tenancy.

The tenants paid \$650.00 for January 2014 rent. The landlord has claimed compensation for the balance of the time the tenants spent in the unit; to January 17, 2014.

The tenants said that within 1 month of moving into the unit they noticed the floor was starting to show damage. The tenants contacted the landlord and someone came to look at the floor. No steps were taken by the landlord and no advice was provided to the tenants. Several months later the tenants again reported the floor as the marks were getting larger. The landlord sent someone to investigate; they thought this might be caused by water and suggested the dogs had something to do with the problem.

The tenants stated that they fed and watered the dogs on a carpet where the bikes were stored on tiled flooring, that they did not place water bowls on the laminate. The tenants thought the damage was an eyesore, but there was not much they could do about the problem. There was no further contact made by the landlord in relation to the flooring.

At one point the agent who was present at the hearing, A.N., was in the unit to inspect the balcony. The tenants asked him to look at the flooring. The agent could not recall the tenants asking him to look at the floor but said he would then have asked someone to investigate the issue.

When the tenants gave notice to end the tenancy they again reported the flooring problem and then it "became a bid deal." The landlord again said that the damage must have been the result of pet urine or that the male tenant had been spilling water.

The tenants spoke with a laminate flooring company representative, who, from the description provided, thought the problem could be the result of moisture. The tenants then spoke to an engineering firm who suggested the bubbling in the laminate could be from water coming up from below the floor. The tenants then spoke to a salesperson at a well-known home supply company. That person viewed the photographs of the floor and suggested moisture was coming from below and that the joints looked as if there was some sort of moisture problem from below.

The tenants thought that there could be moisture coming from the plumbing, which could be accessed through a cupboard at the end of the kitchen counter where the sink was located. The tenants said that the landlord pointing fingers at them as being the cause of the damage did not make sense. The tenants said they did not cause the floor damage and had informed the landlord of the problem early in the tenancy but were "brushed off." The tenants do not see what they did to cause that damage; they did not clean with a wet mop and did not spill water or feed the dogs in the area of damage.

The tenants agreed that there were 4 screw holes left in the dining room wall. They had installed a shelf and removed it when they vacated. The tenants also had art hanging down the hallway and in the bedroom. They are not sure about the scrape mentioned on the report, but recall making approximately 9 nail holes for art. The tenants did not dispute the presence of the holes at the time the inspection report was completed as they did not think the landlord would claim the cost of painting walls when they had only hung a small number of items on the walls.

The tenants said they left a toothbrush in the bathroom. They did not leave any furniture and that the notation regarding the cabinet was the result of their failure to clean the utility room cabinet before they vacated. It did not reference any cabinet that was left in the utility room. The tenants said that the only picture supplied by the landlord demonstrating items left in the unit was of an iron they inadvertently left behind. The tenants asked to have the iron returned to them.

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.

The landlord has claimed costs related to staff hours, preparing for repairs and preparing for the hearing. No detailed calculation of this portion of the claim was

provided. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing and preparing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim was denied during the hearing; the landlord is at liberty to write it off as a business expense.

The landlord submitted that by signing the inspection report at the end of the tenancy, acknowledging some damage, the landlord is then entitled to the sums claimed. Despite the signatures on the inspection report the landlord must prove, on the balance of probabilities that the costs claimed relate to the degree of any damage caused by the tenants. A tenant is required to leave the rental unit reasonably clean and free from damage, outside of normal wear and tear.

In relation to the flooring; I have considered the evidence before me and find, on the balance of probabilities that the landlord has failed to prove the tenants caused damage to the floors. I found the tenant’s testimony consistent and reliable and considered their attempts to have the landlord address the flooring issue early in the tenancy. Laminate flooring, as stated by the landlord and the flooring personnel contacted by the tenants, is vulnerable to moisture. There was only conjecture provided by the landlord; that the tenants must be giving the dogs water on the floor or that they were using excessive water to wash the floor.

Given the tenants attempts to have the flooring inspected early in the tenancy I find, on the balance of probabilities, that whatever was causing the flooring to become damaged in the 2 small areas was not the direct result of the actions of the tenants. The landlord became aware of the damage early on but took no steps to mitigate the problem that was emerging. Therefore, in the absence of evidence that the tenants are responsible for the damaged laminate I find that all costs claimed related to the flooring are dismissed.

Residential Tenancy Branch policy references nail holes made by tenants; acknowledging that tenants have a right to place items on the walls. A landlord may set rules as to how art may be hung and a tenant must pay for repairs when there have been an excessive number of nail holes or large nails, screws or tape have been used and left wall damage.

In the absence of any evidence that the tenants left an excessive number of holes in the walls, or that the holes caused wall damage beyond that which would result from hanging a reasonable number of objects on the walls, I find that by signing the inspection report the tenants were simply acknowledging the nail holes.

The landlord has failed to prove, on the balance of probabilities, that there were an excessive number of holes, large holes or any damage outside of that reasonably expected when tenants hang items on a wall using nails. The landlord relied on a report completed by another person, who did not notate the number of holes or provide any detail on the size of the holes. The photographs supplied showed what I find to be reasonable nail holes, given a tenants right to hang items on walls. The scratch on the bedroom wall was minor and I find would result in nominal costs of \$25.00 to repair.

The tenants did acknowledge they used 4 screws in the living room wall. Therefore, I find that the landlord is entitled to a nominal sum of \$75.00; one-half of that claimed for the dining room and hallway painting. The balance of the claim for painting is dismissed.

In the absence of evidence that any items, besides an iron, were left in the unit, I find that the claim for removal is dismissed. The landlord supplied a picture of an iron left behind, yet the items that would result in costs to remove were not indicated on the inspection report, nor were photographs of those items supplied. This led me to accept the tenant's testimony that only an iron was inadvertently left in the unit. Further, the inspection report detailed only a reference to a cabinet, which I find indicated that the utility room cabinet had not been cleaned.

The tenants did not dispute the portion of the claim made for curtain cleaning; therefore, I find that the landlord is entitled to costs claimed for the curtains.

The tenants paid rent for January in the sum of \$650.00; they were in the unit for 17 days. I calculate the daily rate for the unit at \$43.82. The tenants owed \$744.94 for the seventeen days. Therefore, I find that the landlord is entitled to compensation in the sum of \$83.88; the amount claimed by the landlord.

	Claimed	Accepted
Flooring materials	\$55.00	0
Baseboard	50.00	0
Labour for floor repair	560.00	0
Remove and install baseboard in living room and paint 2 walls	250.00	0
Wall repair large hole in dining room, hallway	125.00	75.00
Paint dining room, hallway and 1 wall in bedroom	450.00	25.00
Suite clean-up, debris removal	300.00	0
Clean curtains	100.00	100.00
Administrative costs	125.00	0
January 15 – 17, 2014 rent	83.88	83.88
TOTAL	\$2,098.88	\$283.88

As the landlord's application has some merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$283.88, in satisfaction of the monetary 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.

Therefore, I find that the balance of the pet and security deposits, in the sum of \$966.12 must be returned to the tenants. Based on these determinations I grant the tenants a monetary Order in the sum of \$966.12. 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 \$283.88 plus the \$50.00 filing fee which may be retained from the deposits.

The balance of the claim is dismissed.

The landlord must return the balance of the deposits to the tenants. A monetary Order has been issued to the tenants.

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: May 12, 2014

Residential Tenancy Branch

