Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This was a hearing with respect to applications by the landlords and by the tenants. The hearing was conducted by conference call. The landlords and the tenants called in and participated in the hearing. The tenants applied for the return of their security and pet deposits, including double the amount. The landlords applied for a monetary order for cleaning and repairs to the rental unit and to retain the deposits. At the hearing the parties acknowledged that they each received evidence submitted by the other party in respect of the applications.

Issue(s) to be Decided

Are the tenants entitled to the return of their deposits, including double the amounts?

Are the landlords entitled to a monetary award for cleaning and repairs to the rental unit and if so, in what amount?
Are the landlords entitled to retain all or part of the deposits in satisfaction of their claims?

Background and Evidence

The rental unit is a strata title apartment in Port Coquitlam. The tenancy began on March 1, 2012 for a one year fixed term and thereafter on a month to month basis. The monthly rent was $1,340.00. The tenants paid a $650.00 security deposit and a $650.00 pet deposit at the start of the tenancy.

The tenants gave notice and moved out of the apartment at the end of December, 2013. The landlord attended at the rental unit and conducted a move-out inspection of the rental unit on December 31, 2013. The tenants took part in what they said was an extensive inspection that took 1 ½ hours. The condition inspection report prepared by

the landlord contained a comment that the flooring required repair or replacement in several locations in the rental unit. At the move out inspection there was a discussion about the repairs to the laminate flooring. As a result of the discussions the landlord agreed to keep $500.00 from the security deposits to pay for the floor repairs and return $800.00 to the tenants. The landlord gave the tenants a cheque for $800.00; however, on January 2nd the landlord sent the tenants an e-mail in which he said that he had put a stop payment on the cheque because he said that he and his wife found that additional cleaning and repairs were necessary. The landlord said an additional 8 hours of cleaning was needed and there was mould and an odour problem in the condo. The tenants replied to the landlord's message the next day. They disputed the landlord's claims and said that, apart from some damaged floor boards and perhaps a bathtub that needed some cleaning or caulking, the parties had agreed that the rental unit was in good condition.

The landlord responded by an e-mail dated January 11th in which he stated various amounts that he claimed for cleaning and repairs. He concluded his message as follows:

> The security + pet deposit of $1300 less the above expenses leaves a negative balance of $489. Please advise how you will be paying this balance.

The tenants sent a letter to the landlord after this e-mail but neither party submitted a copy of the letter. The landlord sent a further e-mail dated January 17, 2014 in which he said in part:

> During the inspection I made it very clear that I was initially withholding $500 for the damage to the floor. I clearly stated that I wanted to be fair, and that I would request more money if the repairs exceeded the $500 which they clearly do. I also clearly stated that the apartment was filthy, and the main bathroom was disgusting.

The landlord concluded the message by again asking how the tenants would be settling the outstanding balance of $489.

The tenants sent their application for dispute resolution to the landlords by registered mail on January 17, 2014. It was delivered on January 20, 2014. In the application the tenants claimed double the amount of their security and pet deposits for a total of $2,600.00. The tenants said that they were not given a copy of the condition inspection report within 15 days after they moved out and only received an altered copy of the report with the landlords' documents sent after the landlords filed their application for

dispute resolution on April 22, 2014. The tenants said that during the extensive move out inspection, they agreed with the assessment that there was some water damaged floor boards and “some decayed caulking and some weathering in the main bathroom”, but otherwise the apartment was clean and in good condition. It was at the move out inspection that the landlord proffered and the tenants accepted a cheque for $800.00 on the basis that the landlord would retain $500.00 to pay for floor repairs, but this was not noted in writing on the condition inspection report.

At the hearing the landlord maintained that the tenants agreed to let the landlord keep $500.00 from the security deposit and also agreed to pay more, if necessary, to pay for the floor repairs and other damage to the rental unit.

The landlord said that the rental unit was freshly renovated before the tenancy began. The landlords said that it was only a few days after the inspection that they became aware of a horrible odour of dog and cat urine in the rental unit and of the extensive amount of cleaning that was necessary. It was then that the landlord stopped payment on the $800 cheque given to the tenants. The landlord said that his message requesting payment of a further sum of $489 in addition to the deposits was intended as part of a discussion that the landlord said was ongoing until the tenants filed their application demanding the return of their deposits.

The landlords submitted photographs of the rental unit showing the damaged flooring as well as pictures of some other areas that showed what they submitted were damage or cleaning deficiencies. The landlord submitted quotes for flooring repairs. One quote for labour only was in the amount of $735. The landlord quoted a further amount of $289 for the laminate flooring material and another $100.00 to purchase and drop off the flooring. The landlord submitted a second quote in the amount of $1,630.81 for the supply and installation of new flooring in the family room and hall.

The landlords included in their claim the following:

- 9 hours of cleaning by landlords at $50 per hour = $450
- 4 hours to remove and replace bathtub caulking = $200
- Caulking supplies = $15
- Labour to remove and replace flooring = $735
- 250 sq. ft (13 boxes) of flooring = $289
- Time and labour to purchase and deliver flooring = $100

Total: $1,789

The tenants maintained that, apart from the floor damage, the rental unit was properly cleaned and the matters complained of by the landlords were viewed during the inspection and constituted normal wear and tear.

Analysis

Section 38 of the *Residential Tenancy Act* is a mandatory provision; it states that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

The tenants provided their forwarding address in writing on December 31st when they wrote it on the condition inspection form. The tenants did not give the landlord written consent to retain any part of the security deposit as required by the *Act*, although they appear to have acquiesced to the retention of $500.00 by the landlord, when they received and accepted a cheque from the landlord for $800.00 on December 3st. That arrangement was abrogated by the landlord when he stopped payment on the cheque and demanded retention of the deposits plus payment of a further amount. The tenants filed their application to claim payment of the deposits on January 16th and the application was sent to the landlord by registered mail on January 17th. I am satisfied that the tenants provided the landlords with their forwarding address in writing, and I find that the tenants served the landlords with documents notifying the landlord of this application as required by the *Act*. It was not until April 22, 2014 that the landlords responded by filing their own application for a monetary award.

The tenants' security and pet deposits were not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the landlord did not make a claim to retain them within 15 days; as well the landlord did not have written consent to retain the deposits, the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of $2,600.00. The tenants are entitled to recover the $50.00 filing fee for this application for a total claim of $2,650.00.

With respect to the landlords' claims for compensation for cleaning and repairs, I find that the landlords have a legitimate claim for the cost to repair the flooring. The tenants submitted that the landlords' claim was excessive because only a few boards needed to be replaced; I do not agree. Because the flooring was laminate I accept the landlords' evidence that individual pieces could not be replaced and an acceptable repair required more extensive replacement as claimed. I allow the landlords' claims for labour to remove and replace the flooring in the amount of $735.00 and the cost of flooring materials in the amount of $289.00. I allow $50.00 for the time and labour to purchase and deliver flooring materials.

With respect to the landlords' claims for cleaning and re-caulking, I accept the landlords' evidence that the rental unit was not properly cleaned at the end of the tenancy and work was required both to clean and to replace the bathtub caulking; I find that the landlords' evidence, including the photographs shows that this cleaning was necessary, however, I find that the amounts claimed by the landlord and the hourly rates are too high. I allow the claim for cleaning in the total amount of $250.00 and I allow $140.00 for that bathtub caulking, including the cost of materials. The total amount awarded to the landlords is the sum of $1,464.00. The landlords are entitled to recover the $50.00 filing fee for their application, for a total award of $1,514.00.

Conclusion

Pursuant to section 72, I set off the amount awarded to the landlords against the amount I have found to be due to the tenants. This leaves a net amount due to the tenants of $1,136.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered 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: May 30, 2014

Residential Tenancy Branch