



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

This was the reconvened hearing dealing with the landlords' applications for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

This hearing began on August 8, 2014, and the hearing proceeded with the landlord supplying testimony in support of his application. At the conclusion of the landlord's testimony, the tenants submitted that they had not received the landlord's evidence. The landlord submitted that his evidence was included with the application served on the tenants. Out of an abundance of caution, the parties were informed at the original hearing that the hearing would be adjourned in order to allow the landlord to transmit his evidence to the tenants, and to allow the tenants an opportunity to respond to the evidence. I note that the tenants did not supply any responsive documentary evidence during the period of adjournment, but supplied responsive documentary evidence prior to the hearing and oral evidence at the adjourned hearing.

At both hearings, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the landlords entitled to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this tenancy began originally for a 2 month fixed term ending on October 31, 2013, the tenants signed another fixed term agreement, for the period of November 1, 2013, ending on April 30, 2014, the tenancy actually ended on March 31, 2014, monthly rent was \$990, and the tenants paid a security deposit of \$495 and a pet damage deposit of \$247.50.

The landlord's monetary claim is as follows:

Paint supplies	\$42.08
Flooring/baseboard	\$147.83
Carpentry work	\$273
Cleaning	\$90
Landlord's labour for repairs	\$200
Living room floor replacement	\$950
Repair to bedroom/living room door	\$40
Loss of rent revenue, 1 month	\$90

In support of his application, the landlord submitted that the tenants caused damage to the rental unit during their tenancy, such as damage to the living room and bedroom wall, including the baseboard, as shown in the photographs he provided. The landlord submitted further that the tenants had a dog and he discovered urine on the floor as well as damage to the trim in the entrance way. The landlord submitted further that the flooring was damaged during the tenancy, and that as the flooring could not be matched, it would require replacing at some point. The landlord submitted that the laminate flooring was not warped when the tenants moved in.

In response to my question, the landlord confirmed that the flooring had not been replaced as of yet.

The landlord submitted further that there was obvious misuse by the tenants in the bathroom, as the trim was still wet when he removed it. The landlord estimated the cost of repair to be 10 hours at \$20 per hour.

The landlord confirmed that the doors have not been repaired as of yet, but estimates 2 hours of time to repair.

The landlord submitted that the tenants did not properly clean the rental unit, and he hired a cleaner. The landlord submitted further that he expects a rental unit to be in immaculate condition when a tenant vacates.

As to the loss of rent revenue of \$90, the landlord submitted that he began advertising the rental unit as soon he knew the tenants were moving, two months in advance, but was unable to find a new tenant for the same rent. The landlord submitted further that

he suffered a loss of \$90 for the month of April 2014, as shown by the subsequent tenancy agreement supplied into evidence.

The landlord's additional relevant evidence included, but was not limited to, the move-in and move-out condition inspection report, receipts, and the written tenancy agreement with these tenants.

Tenant's response-

The tenant admitted that they were responsible for the damaged door trim, from their dog.

The tenant denied the water damage on the living room floor, as they had their couch over this spot the entire tenancy. The tenant submitted further that they began kenneling their dog immediately and there was no opportunity for the dog to urinate on the living room floor, as she was confined to either the kennel or the kitchen when she was alone.

As to the damage to the door, the tenant submitted further that the previous tenants' cat was most likely responsible as the door was damaged when they moved in.

As to the alleged water damage in the bathroom, the tenant submitted that the baseboard was not properly caulked, causing water seepage, and that they, the tenants, constantly had towels or a bath mat to prevent leakage.

The tenant denied that the rental unit was fully clean when they moved in and that this landlord was not present for the inspection.

The tenants' relevant documentary evidence included photographs of the rental unit and an email between the parties.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Cleaning, repairs, and associated costs-

Taken as a whole, I did not find the condition inspection report completely convincing to establish that the tenants failed to leave the rental unit reasonably clean and undamaged. A tenant is entitled to reasonable wear and tear during the tenancy and the landlord noted instances where some of the elements in the rental unit were not clean at the move-in. The landlord noted that some blinds and windows were not cleaned at the

move-in, as well as a door was scuffed. The landlord noted at the move-out that behind the stove and refrigerator were not cleaned; however, there was no indication of the state of the rear of those appliances at the move-in.

In the case before me, the landlord's standard of a vacating tenant, that the rental unit be in immaculate condition, in other words, move-in ready for the next tenant, is much greater than required under the Act and contradicts his requirement for the condition of this rental unit at the beginning of the tenancy.

I also could not rely on the carpentry receipt, as there was not an itemized list of repairs or the time taken for each item.

I also examined the photographs of the rental unit at the end of the tenancy supplied by the landlord and found that they did not depict the overall state of the rental unit, only the items of concern for the landlord. As to the landlord's photographs of the alleged damage in the bathroom, I find this evidence unconvincing. The baseboard clearly looks old and contained deeply set rusty stains, which I find suggests a long term condition, much longer than this tenancy lasted. In other photographs, the landlord shows an area of what appears to be mould, but under the surface of the wooden flooring. I find that unless the landlord took up the flooring for the move-in inspection, there would be no way to determine damage attributable to the tenants.

I also considered that the landlord has yet to repair or replace the flooring, even though a new tenant now occupies the rental unit, and as such, there is no evidence that the landlord will ever sustain a loss as to the floor. I therefore decline to award the landlord costs for alleged floor damage.

Taken in totality, I find it reasonable to grant the landlord a portion of his monetary claim, for the damage to the wood trim by the tenants' dog, as acknowledged by the tenant, and for cleaning the inside of the oven, the ceiling fan, and the bathroom. I find a reasonable amount for cleaning, repairs and supplies to be \$250.

Loss of rent revenue-

Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy, in this case the end of the fixed term being April 30, 2014. The tenants therefore were responsible to pay rent through that date, subject to the landlord's requirement to minimize his loss.

In this case, I find the landlord sufficiently minimized his loss as he secured a new tenant beginning the next and final month of this tenancy, and I accept that to be able to minimize his loss, he was compelled to accept a lower monthly rent.

Residential Tenancy Policy Guideline #3 states that, as to damages, a landlord may be compensated for the difference between what he/she would have received from the

defaulting tenant and what he/she was able to re-rent the premises for the balance of the un-expired term of the tenancy.

I therefore find the landlord has proven his claim for loss of rent revenue for the month of April, in the amount of \$90.

I grant the landlord recovery of this filing fee paid for this application, or \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$390, comprised of compensation for cleaning, repairs, and supplies for \$250, loss of rent revenue of \$90, and for recovery of the filing fee paid for this application for \$50.

Conclusion

The landlord's application for monetary compensation is granted in part.

I direct the landlord to retain the amount of his monetary award of \$390 from the total of the security deposit and pet damage deposit held, in this case \$742.50, and I order that he return the balance of the two deposits to the tenants forthwith, or the amount of \$352.50.

I further grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$352.50, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from 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 3, 2014

Residential Tenancy Branch

