Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord applied on July 11, 2014 requesting compensation for damage to the rental unit, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee cost from the tenant.

The tenant applied requesting return of the security deposit and to recover the filing fee from the landlord.

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 sum claimed by the landlord indicated on the application differed from that shown on a monetary worksheet supplied as evidence. The tenant confirmed she understood the total claim was in the sum of $911.69; the sum included in evidence.

There was no claim for damage or loss under the Act.

The tenant confirmed she wished to have the Act applied to the value of the security deposit; in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $911.69 for damage to the rental unit?

Is the landlord entitled to retain the security deposit or should the deposit be returned to the tenant?

Background and Evidence

The tenancy commenced on September 1, 2010. Rent was $1,300.00 per month, due on the 1st day of each month. A security deposit in the sum of $600.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The parties agreed that a move-in condition inspection report was completed on a non-standard, hand-written document. The tenant was given a copy of the report; which was submitted as evidence.

The tenant gave proper notice ending the tenancy effective June 30, 2014. The parties agreed to meet on June 29, 2014 to complete an inspection of the unit. The landlord told the tenant if they were to meet on June 29, 2014 the tenant must agree to relinquish possession on that date.

The parties walked thought the unit together on June 29, 2014. The landlord said that they had a copy of the standard Residential Tenancy Branch (RTB) inspection report with them and told the tenant they wanted to complete a more detailed inspection; which they did in the absence of the tenant several days later.

The landlord confirmed they received the tenant`s forwarding address on June 29, 2014.

On July 10, 2014 the parties met to discuss the inspection report that had now been completed by the landlord. The tenant was presented with the report and refused to sign the report, as she disagreed with the content setting out a claim for items the tenant did not accept as her responsibility.

Each party supplied photographs taken of the rental unit at the end of the tenancy.

The landlord has made the following claim:

Telus reinstallation	$75.00
Repair hardwood (laminate)	150.00
Repair lattice	30.00
Replace bathroom lino	320.00
Carpet chemical remediation	100.00
Repair TV cable hole	10.00
Repair bedroom /2 79 holes in wall	30.00
Repair Bedroom /3 39 holes	15.00
Replace bark mulch	89.91
Replace perennial plants	91.78
TOTAL	$911.69

The tenant had been given permission to install Wi-Fi in the unit. A photograph was supplied of the hole drilled through the flooring by Telus. The landlord supplied a copy of a July 2, 2014 invoice for repair in the sum of $150.00. The landlord said it will cost $75.00 to reinstall the service as it has to be moved. No evidence of this cost was supplied.

The tenant confirmed she had Telus install Wi-Fi and that the hole was drilled in the floor. The tenant could have filled the hole with plastic wood, but the landlord told her

they would deal with Telus. The tenant contacted Telus and was told there would not be an additional $75.00 cost to install the service, as it was already in the home.

The landlord submitted a photograph taken of the fencing placed on a deck at the back of the home. The top of the fence has lattice. The lattice was broken at the end of the tenancy and not repaired by the tenant. The landlord submitted photographs of the lattice before and after the tenant vacated. The fence was just under 4 years old.

The tenant said that the landlord repaired the fence before the tenancy ended, without her knowledge. The photograph supplied by the landlord shows children's furniture on the deck; items that were removed at the end of the tenancy. The tenant said this showed that the photograph of the completed repair was taken during the tenancy, while the furniture was on the deck. The tenant said she did not know how the fence had been broken, but that her children did play in the area. The landlord did not make any request for repair of the lattice and if they had she would have repaired the lattice herself. The landlord responded that the tenant must have left the furniture when she moved out and then retrieved it later.

The bathroom lino had a small tear at the start of the tenancy. The landlord said the lino was new when they purchased the home in 2005. When the tenant vacated there were 5 nicks in the lino, .5 to 1 cm. in size, down to the sub-floor. The landlord said this was not the result of normal wear and tear. A close-up photograph of the nicks in the flooring was supplied as evidence. A July 8, 2014 quote in the sum of $320.00 plus GST was supplied as evidence of the cost of repair.

The tenant said that there was a small tear in the floor at the start of the tenancy and that the close up photographs taken by the landlord show small nicks that occurred throughout the almost 4 year tenancy. The tenant stated that these were surface nicks, not cuts. The tenant took pictures of the unit at the end of the tenancy, several of which showed portions of the bathroom flooring. The pictures were not close-ups, like those taken by the landlord. A few very small marks could be seen in the tenant's pictures.

The landlord said that the tenant did have the basement carpet professionally cleaned but that afterward the carpet required chemical remediation, due to the tenant's cat having urinated on the carpet. The landlord supplied a copy of an estimate to replace the carpet in the basement and a quote for sanitizing the carpet. The landlord said the tenant had commented on the smell when they walked through the unit at the end of the tenancy. The tenant said there was no smell; other than that from the litter box and that her cat did not urinate on the floors, but used the litter box that was in the basement. Any smell at the end of the tenancy could have originated from the litter box. The tenant supplied evidence that the carpets had been professionally cleaned at the end of the tenancy at a cost of $183.75.

The tenant confirmed that she made a hole in the wall for the TV cable. She also hung art and posters in the bedrooms. The landlord said that there were multiple holes made in the walls. Two photographs showed small areas that had been puttied, repairing small holes that had been made in the walls. The tenant said she had been given permission to hang picture, curtain rods and shelves and was told she could hang anything she wished. Prior to moving out the tenant used compound filler to fill the larger holes. The tenant provided photographs that showed walls, with some small areas she had repaired. The landlord stated that there were one hundred and ten holes in the walls.

The landlord had placed bark mulch in the back garden at the start of the tenancy. Three years and 10 months later the mulch was gone. The landlord wants the tenant to pay for replacement of the mulch. The tenant said that the bark naturally disintegrated over the years she was living in the home and had never been told she must replace the mulch. The landlord supplied a photograph showing remnants of mulch in the back yard and a picture showing new mulch.

The landlord had some perennials growing in a small flower bed at the front of the home. Photographs of the beds taken before the landlord replanted the bed and after replanting were supplied as evidence. The landlord said the tenant thought the plants were weeds and removed them. The tenant submitted that there were flowers in the bed when she moved into the home. Neighbouring children would run through that bed during the winter, which created an icy pathway; killing the flowers. The front yard is strata property, so she could not keep the neighbouring children out of that area. The landlord had been told the children were running through this area. The landlord supplied a receipt in the sum of $91.78, which included perennials and a plant stand in the sum of $71.98. The tenant did not destroy a plant stand; there had not been a plant stand in the bed.

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.

In relation to the move-out condition inspection report completed in the absence of the tenant, I have placed no weight on that report. A landlord is required to complete condition inspection reports, in accordance with the Regulation and the Act. At the start of the tenancy the landlord did make efforts to complete a report; however that report did not meet all requirements set out in the Regulation. The report was missing required detail, such as:

- the legal address of the rental unit;
- the date the report was completed;
- the landlord's service address; and
- appropriate space allowing the tenant to agree or disagree with the details of the report, including the required statement of agreement or disagreement.

The report did reference a number of deficiencies and the need for some repairs. However, I find that the report failed to comply with section 20(2) of the Regulation which requires a report to include details absent in the hand-written form created by the landlord.

Section 35 of the Act requires the landlord and tenant to sign the move-out inspection report; a copy must then be given to the tenant in accordance with the Regulation. The landlord and tenant did walk through the unit together, but the report was not completed and the tenant was not given the opportunity to sign the report at the time of the

inspection. Rather, the landlord took additional time to inspect the unit, in the absence of the tenant and then, days later presented the tenant with a report that was in the approved form. I find that the tenant was reasonable in her refusal to sign an inspection report that she was not given the opportunity to complete at the time the inspection was carried out at the rental unit.

Section 35(2) of the Act sets out the consequences for any failure to complete a condition inspection report; as required by the Regulation. When a report does not comply with the Regulation the landlord's right to claim against the deposit for damage to the property is extinguished.

I find that the landlord failed to complete a report in the approved form at the start of the tenancy; extinguishing the right to claim against the deposit. Further, when the landlord failed to provide the tenant an opportunity to complete the inspection report on the day the move-out inspection was completed with the tenant, I find that the landlord breached section 35 of the Act. I find, on the balance of probabilities that completion of an inspection report after the inspection has occurred and, in the absence of the tenant, does not comply with the intent of the legislation.

While the landlord made attempts to complete an inspection report at the start and end of the tenancy, neither met the requirements of the legislation. When a landlord extinguishes the right to claim against the deposit section 38(1) of the Act requires a landlord to return the deposit within fifteen days of the end of tenancy or the date the forwarding address is given; whichever date is later. When a landlord fails to return the deposit within the fifteen day time period section 38(6) of the Act determines that the landlord may not make a claim against the deposit and must pay the tenant double the deposit.

Therefore, pursuant to section 38(6) of the Act, I find that the landlord is holding a security deposit in the sum of $1,200.00. The landlord had extinguished the right to claim against the deposit and was required to return the deposit within fifteen days of June 29, 2014. The landlord was able to submit a claim for compensation, but did not have the right to continue to hold the security deposit.

Based on the photographic evidence and the estimates and verification of repair costs supplied by the landlord I find that the landlord is entitled to the cost of flooring repair, as claimed. The installation of Wi-Fi resulted in a hole, drilled through the flooring. The tenant was responsible for the installation, as anyone would be when a technician is performing work. It is up to the tenant to seek remedy with Telus. In relation to the reinstallation cost I find it is likely, on the balance of probabilities, that there would not be any further installation cost and that this portion of the claim is dismissed. The landlord provided no evidence verifying the cost of installation after an initial installation in the home has occurred.

From the evidence before me I find, on the balance of probabilities, that the lattice was repaired before the tenancy ended. The photographic evidence shows the tenant's property on the deck after the time the landlord states the tenancy had ended; this was raised only after the tenant pointed out her furniture in the photograph supplied by the landlord. This leads me to find, on the balance of probabilities that the repair was made while the tenant was living in the home. There was no evidence before me that the landlord had given the tenant any opportunity to make this repair during the tenancy. Therefore, in the absence of evidence that the tenant was notified of the need to make

this repair during the tenancy, I find she was denied the chance to make this repair before the tenancy had come to an end. Therefore, I find that the claim is dismissed.

Residential Tenancy Branch policy suggests that tile flooring has a useful lifespan of 10 years. As the lino was almost 10 years old when the tenancy ended I find that the wear and tear that occurred was not unreasonable, on this aged flooring. The landlord has flooring that is close to the end of its useful lifespan, as suggested by policy, a stance I find reasonable. Therefore, I find that the claim for bathroom flooring is dismissed. Further, there was no evidence before me that the tenant had been negligent; it is just as likely that the age of the flooring contributed to the ease of marks occurring.

The landlord supplied a quote for the chemical deodorizing of the basement carpet; no verification of this cost having been paid was supplied. If the deodorizing was completed there was no evidence supplied confirming the need for deodorizing; such as a written assessment by the carpet cleaning company. The tenant had the carpets professionally cleaned and, in the absence of evidence that the cat had urinated on the flooring I find that the claim for deodorizing is dismissed.

Residential Tenancy Branch policy suggests that a tenant is responsible for repair of any unreasonable number of holes made in the walls. A tenant is allowed to put up pictures in a rental unit. From the evidence before I find that the repair for the TV cable was not unreasonable; that hole was not created as the result of hanging art. Therefore, I find the landlord is entitled to the repair cost claimed.

In relation to the balance of the holes in the walls, from the photographs supplied as evidence there did not appear to be an excessive number of holes made and 110 holes could not be discerned. It is apparent that after an almost 4 year tenancy the unit would require painting; this is supported by policy. The very minimal amount of putty and sanding required would form a normal part of repainting. Therefore, I find that the claim for bedroom wall repair is dismissed.

I find that it is reasonable to expect bark mulch to have decomposed over an almost 3 year period of time. There is no requirement for a tenant to replace bark mulch or any other ground cover the landlord has chosen. A tenant is expected to complete basic yard maintenance only. Therefore, I find that the claim for bark mulch is dismissed.

In relation to the plants; after an almost 4 year tenancy is it not unlikely that plants could die. It would also not be unreasonable to expect to have to replace perennials from time to time, particularly in a common area where the tenant has no control over who can assess that area. The bulk of the claim made by the landlord appears to include a claim for a plant stand; not plants. There was no evidence before me that the tenant was responsible for replacement of a plant stand. Therefore, I find that the claim for perennial replacement is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Telus reinstallation	$75.00	0
Repair hardwood (laminate)	150.00	150.00
Repair lattice	30.00	0
Replace bathroom lino	320.00	0
Carpet chemical remediation	100.00	0

Repair TV cable hole	10.00	10.00
Repair bedroom /2 79 holes in wall	30.00	0
Repair Bedroom /3 39 holes	15.00	0
Replace bark mulch	89.91	0
Replace perennial plants	91.78	0
TOTAL	$911.69	$160.00

I find that the landlord's application has merit and that the landlord is entitled to recover the $50.00 filing fee from the tenant 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 $210.00, in satisfaction of the monetary claim.

I grant the tenant a monetary Order for the balance of the security deposit in the sum of $990.00. 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 $160.00; the balance of the claim is dismissed.

The landlord is holding a security deposit in the sum of $1,200.00; less the sum owed to the landlord.

The balance of the security deposit is ordered returned to the tenant.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: December 22, 2014

Residential Tenancy Branch