Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 damage to the rental unit, to retain the pet and security 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, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

The tenant confirmed that her co-tenant received Notice of the landlord's hearing that had been delivered by registered mail.

Preliminary Matters

The landlord supplied a detailed calculation of the claim made. The calculation included a claim in the sum of $450.00 for the "pet damage deposit." There was no detailed calculation of a claim made against the pet damage deposit. The landlord said this portion of the claim was to cover costs for flooring and cupboards. The tenant said she had been confused by the claim and that she did not know what the $450.00 represented.

The landlord stated that she believed she would have an opportunity to set out her claim during the hearing and that her evidence showed damages to the areas of the rental unit that should be covered by the pet deposit.

When making a claim Residential Tenancy Branch Rules of Procedure, section 2.5 requires the applicant to submit a detailed calculation of the claim made. Natural justice and administrative fairness are not served when a respondent is not given an opportunity to know what the claim entails. An absence of a detailed calculation of the claim denies the respondent an opportunity to properly prepare their response.

Therefore, as the details of the claim against the pet deposit were not provided I determined I would consider only the balance of the matters set out in the detailed calculation.

The tenant served the landlord with evidence sent via registered mail to the landlord's service address. The landlord has not received that mail as she is out of the country and the person who is looking after her home has not retrieved the registered mail. During the hearing the tenant checked the Canada Post web site and discovered that attempts at delivery have been made for mail sent on December 4, 2014. The mail has not been retrieved.

The landlord said she called the RTB in mid-December and was told the tenant had not made any evidence submission. The tenant's evidence was received by the RTB on December 4, 2014.

The tenant's evidence did not include any submissions that could not be presented via oral testimony. Therefore, the tenant's evidence was set aside and she was at liberty to make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $435.00 for damage to the rental unit?

May the landlord retain the deposit in satisfaction of the claim?

Background and Evidence

The 1 year fixed-term tenancy agreement commenced on July 1, 2013. Rent was $900.00 per month, due on the 1st day of each month. The landlord supplied a copy of the tenancy agreement; the page recording the deposit payments was missing. The parties agreed that a security deposit in the sum of $500.00 and pet deposit in the sum of $450.00 was paid.

At the start of the tenancy the landlord left a number of items in the home including window coverings and a wool rug. The landlord also left her cat for the tenant's to care for, while the landlord lived elsewhere. The cat was retrieved by the landlord in November, 2014. The tenant said the cat was not happy and spent a lot of time under the bed.

The landlord issued a 2 month Notice ending tenancy for landlord's use and the tenant's vacated on the effective date of the Notice; June 30, 2014.

A move-in condition inspection report was completed at the start of the tenancy. The tenants had presented the landlord with the form. Neither party could recall if the tenant's had been given a copy of that report.

The landlord said that she communicated with the tenant's in the time leading up to the end of the tenancy, to arrange a move-out inspection, but she could not recall how or when that communication occurred or the date and time an inspection was scheduled.

There was no dispute that on June 30, 2014 the landlord emailed the tenants to thank the tenants for vacating on that date and that she would inspect the property and be in touch. No date or time for an inspection was provided on June 30, 2014.

The landlord agreed that she received the keys and the tenant's forwarding address on June 30, 2014. The landlord applied claiming against the deposits on July 15, 2014.

The tenant said that the first request to complete an inspection came from the landlord on July 14, 2014. On July 14, 2014 the landlord contacted the tenants, asking if they could come to the property. The landlord was seeking the tenant's permission to make deductions from the deposits. The tenants responded that the inspection should have been completed before they vacated and that the landlord was required to use the inspection form, where the tenants could sign agreeing to any deductions. The tenant's told the landlord she had 1 day in which to return the deposits.

Three hours after the tenants sent the landlord a message on July 14, the landlord replied asking if they could meet that night. The tenants responded that they would both like to be present and one of them was working that evening, but they could be available on July 15, 2014.

The landlord then asked if they could meet on July 15 by 4 p.m.; the tenant's proposed a meeting after 4 p.m. The landlord then responded that it was sad they could not settle and that she would apply, claiming against the deposits. No time was agreed to for an inspection and the landlord did not complete the inspection report. The landlord said she did not meet with the tenants on the evening of July 15, 2014 as she was applying to retain the deposits on that date.

The landlord has claimed:

- $160.00 cleaning $20/hour for 8 hours;
- $150.00 to replace rug;
- $100.00 replace window coverings; and
- $25.00 cleaning materials.

The tenant confirmed that they will pay for the cost of the window covering that was damaged by their cat.

The landlord's witness testified that she had no knowledge of any attempt to reach the tenants to arrange an inspection of the unit on the last day of the tenancy. The witness walked through the unit with the landlord on June 30, 204 and found the unit dirty. The cupboards needed cleaning, the floors were not clean, and the white wool rug was hanging on the back fence and smelled of urine. The tenants had not completed the

usually expected cleaning; especially the cupboards. In the utility room, under a cot, there was dried animal urine.

The witness said she was hired to clean and spent 9 hours in the home. The landlord paid her $160.00 and another $25.00 for the cost of cleaning supplies she provided.

The landlord said that the rug was a wool British India carpet 10 X 8 in size. The tenants had agreed to keep the rug, for their use during the tenancy. The landlord is not sure of the age of the antique carpet and has claimed one-half of the sum she believes it would cost to replace. When the tenancy ended the carpet was found in the garage; it had urine stains on it, so the landlord hung the rug over the back fence.

The landlord provided photographs taken throughout the home showing dust, dirt and the need for some cleaning.

The tenant said she had submitted a witness statement from a friend who helped clean the unit when they vacated. The floors were swept and wiped down, the kitchen was wiped down and all areas of the home were cleaned. The tenant said that the landlord has taken before pictures of some areas and after pictures of different areas of the home.

The tenant said that at the start of the tenancy they rolled the rug up and put it in the garage. She was shocked that the landlord has claimed the cost of the rug as they did not use it during the tenancy. The landlord said that she is disappointed and disgusted with the tenants.

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 tenant has agreed to a deduction in the sum of $100.00 from the pet damage deposit for the cost of window coverings damaged by her cat. Therefore, pursuant to section 63(2) of the Act, I find that the landlord is entitled to make a $100.00 deduction from the pet damage deposit.

In relation to the move-out condition inspection report; the landlord could not provide any evidence of efforts made to arrange completion of the move-out condition inspection report prior to July 14, 2014. The landlord could not provide any evidence of an inspection scheduled for the last day of the tenancy and, when asked, her witness had no knowledge of any attempts made to arrange an inspection. The landlord did

contact the tenants on June 30, 2014 and mentioned she would inspect the home, but did not invite the tenants to complete an inspection with her.

Section 35 of the Act sets out the requirements for a condition inspection report at the end of the tenancy:

> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
>
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
> *(b) on another mutually agreed day.*
>
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
> *(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
> *(5) The landlord may make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
> *(b) the tenant has abandoned the rental unit.*
>
> (Emphasis added)

Section 17 of the Regulation sets out further requirements when scheduling an inspection:

Two opportunities for inspection

> ***17*** *(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*
> *(2) If the tenant is not available at a time offered under subsection (1),*
>
> *(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*
> *(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*
>
> *(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*
>
> (Emphasis added)

The Residential Tenancy Regulation requires the parties to attempt, in good faith, to agree on a date and time for an inspection. The Regulation requires the landlord to first offer a date and time; this occurred on July 14, 2014; asking the tenants to attend at the rental unit that night.

The tenants responded, as required by section 17(2)(a) of the Regulation, that they could not meet on such short notice, but offered to meet the next day after 4 pm.

The landlord refused to meet after 4 p.m. on July 15, 2014 as it seems she believed she would then be thwarted from submitting a claim against the deposit; she was only willing to meet earlier in the day. However, the landlord was at liberty to submit the claim at any time within fifteen days of the end of the tenancy; that application could then be withdrawn if agreement for deductions and return of the deposits was later made with the tenants.

After the tenants offered to meet on July 15, 2014 the landlord did not issue notice to the tenants, in the approved form, setting another date or time for inspection and an inspection report was not completed. This was the landlord's next required step, as set out in section 17(2)(b) of the Regulation.

The landlord attempted to arrange an inspection on very short notice; 2 weeks after the tenancy had ended. I find that the landlord did not provide the tenants with a reasonable time to attend an inspection and that the tenants were flexible in their offer to meet the next day; July 15, 2014. Expecting the tenants to attend on the same day the request was made, was hopeful, but not reasonable. I find the tenant's offer to meet after 4 p.m. the next day was reasonable, given the landlord's short notice. When agreement failed, the landlord was required to issue a Notice of Final Opportunity to Schedule a Condition Inspection to the tenants. That did not occur.

Section 36 of the Act provides:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> > *(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and*
> >
> > *(b) the tenant has not participated on either occasion.*
>
> *(2) Unless the tenant has abandoned the rental unit, <u>the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord</u>*
>
> > *(a) does not comply with section 35 (2) [2 opportunities for inspection],*

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

(Emphasis added)

Pursuant to section 35 of the Act, the landlord was required to offer the tenants 2 opportunities to complete the inspection; the final opportunity should have been in the approved form. The landlord rejected the tenant's offer to meet after 4 p.m. on July 15, 2014; with no notice given by the landlord in the approved form. The tenants were willing to meet and the landlord rejected that offer.

Therefore, I find, pursuant to section 36 of the Act, that the landlord extinguished her right to claim against the deposit for damage to the rental unit. There was no claim for unpaid rent.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

In this case the landlord did not have a right to claim against the deposits as she breached the condition inspection provisions of the Act and Regulation. In the absence of notice of a move-out condition inspection report, as required by the legislation, the landlord was required to return the deposits no later than July 15, 2014. As the landlord failed to return the deposits I find, pursuant to section 38(6) of the Act, that the deposits must be doubled. Therefore, the landlord is holding deposits in the sum of $1,900.00.

In relation to the claim for cleaning; I find, on the balance of probabilities that the tenants did not leave the rental unit reasonably clean as required by the Act. The tenant said they wiped down the unit, but the evidence before me indicates that those efforts were not sufficient. From the photographs and the testimony of the witness I find that the landlord is entitled to compensation for the cleaning and cleaning supplies claimed totaling $185.00.

There was no evidence before me proving that the tenants did not place the rug in the garage at the start of the tenancy. The landlord had a cat and I find it is just as likely that her cat may have caused damage to the rug prior to the start of the tenancy. Further, the landlord did not supply any estimate verifying the cost of the rug. Therefore, I find, on the balance of probabilities, that the landlord has failed to prove the tenants caused damage to the rug and that the claim is dismissed.

As the landlord's application has some merit I find that the landlord is entitled to recover the $50.00 filing fee from the tenants.

Therefore, I find that the landlord is entitled to retain the tenant's security deposit in the sum of $335.00, in satisfaction of the 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 Order the landlord to return the balance of the security deposit; $665.00 and the $900.00 pet deposit, to the tenants.

Based on these determinations I grant the tenants a monetary Order for the balance of the deposits in the sum of $1,565.00**.** 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 $185.00; $100.00 of which is by agreement of the tenant. The balance of the claim is dismissed.

The landlord is holding deposits double the value paid, as the landlord extinguished the right to claim against the deposits for damage to the rental unit and did not return the deposits within fifteen days of the end of the tenancy and the date the forwarding address was provided.

The landlord is Ordered to return the balance of the deposits to the tenants.

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: January 05, 2015

Residential Tenancy Branch