Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on September 12, 2014, to obtain a Monetary Order for: damage to the unit, site or property; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, and one Tenant, G.B. Each person gave affirmed testimony and confirmed receipt of evidence submitted by the Landlord. The tenancy agreement listed two co-tenants; therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation under the Residential Tenancy *Act* (the *Act)?*

Background and Evidence

The Landlord submitted undisputed evidence that the Tenants entered into a written month to month tenancy agreement that began on October 1, 2013 and the Tenants were given early possession on September 29, 2013. Rent of $1,200.00 was due on or before the first of each month and on October 1, 2013 the Tenants paid $600.00 as the

security deposit. The Tenants vacated the property by August 31, 2014 and provided the Landlord with their forwarding address sometime around September 10, 2014.

The Landlord testified that on September 29, 2013 she conducted the walk through inspection with the female Tenant, S.G. while the male Tenant was moving their possessions into the rental unit. She initially stated that the female Tenant signed the condition inspection report form. After the Tenant argued that no move in inspection had been completed the Landlord changed her testimony to say the form was completed during move in and was left with the Tenants to sign at a later date, which was never done. The Landlord asserted that the Tenants were not able to move any of their possessions into the upper level until the second day because the carpets had just been cleaned and were still damp.

The Landlord submitted evidence that on August 25, 2014, she informed the Tenants of the cleaning requirements for the end of their tenancy and notified them that the inspection would be conducted on August 31, 2014 prior to 1:00 p.m. The Tenants responded via email, which was also provided in evidence, refusing to participate in the inspection. A copy of a notice of final opportunity to attend the inspection was submitted in the Landlord's documentary evidence; however, there was no submission as to how or when that notice was served upon the Tenants.

The Landlord described the rental unit as being half of a duplex that was built in 1992, which she has owned for approximately 12 or 13 years. She stated that she lived in the half duplex for 19 years and then her daughter resided in the unit until the Tenants took possession. The cloth living room blinds were the original blinds that were installed in approximately 1992 and the unit had been painted about three years before this tenancy began.

The Landlord submitted documentary evidence of scheduling the move out inspection for August 31, 2014. She argued that the Tenants refused to attend the inspection as noted in their August 25, 2014 email. On August 31, 2014 at 11:12 a.m. the Landlord received an email from the Tenants advising that they had vacated the rental unit by 10:00 a.m. that day and left the keys inside. The Landlord stated that she attended the rental unit and found that it had been left unclean and with some damage. She argued that she had to delay her new tenants from moving into the rental unit until after 7:00 p.m. on August 31, 2014, while she and another person spent 5 hours cleaning.

The Landlord now seeks compensation for damages equal to the amount of the $600.00 security deposit. She argued that despite the damages being higher than $600.00 she would not be able to collect the additional amount so she would like to simply keep the security deposit as compensation for:

$207.43	to replace the damaged cloth window blinds with aluminum blinds that cost $414.85. The cloth blinds were installed in approximately 1992

$148.37	Carpet cleaning which was completed on approximately September 18, 2014, although no receipts were submitted into evidence and the amount claimed here was an estimate based on an invoice which the Landlord said she had from prior to the start of this tenancy;
$150.00	Labor for two people to conduct the cleaning on August 31, 2014
$500.00	to repaint the living room and entrance based on an estimate because the Tenants had painted without the Landlord's permission. The Landlord argued that the house had been painted approximately 3 years prior to the start of this tenancy;
$19.50	Plus the cost to remove the rubbish that had been left behind

In support of the claim, the Landlord submitted documentary evidence which consisted of, among other things, copies of: the tenancy agreement; condition inspection reports; various emails between the parties; 10 Day Notice; 1 Month Notice; a written submission; photographs of the rental property and unit taken on August 31, 2014; pictures of the crumpled notice of final inspection and move out cleaning document; and receipts.

The evidence included an email sent by the Tenant on August 25, 2014 at 10:20 a.m. which included the following:

> *…You cant do a walk around if you have nothing to compare it to!...*
>
> *….Your place here at [address of rental unit] was a complete and utter mess when we moved in!!...*
>
> *…Not to mention you leaving the mudding on the walls unpainted and grunge on the floor and walls.. I took those blinds in the livingroom down so I could paint as it was a depressing sight those disgusting pale green walls with patches of different greens and mud showing thru…*
>
> *…There will be no walk around!*
>
> *[reproduced as written].*

The Tenant argued that no move in inspection was ever completed and that the rental unit had not been cleaned when they first moved into the unit. He argued that the Landlord and her daughter were still moving their own furniture out of the unit as they were trying to move into the unit and that the Landlord did not clean the unit prior to their arrival. He asserted that they had left the rental unit in better condition than what it was in at the beginning of their tenancy.

The Tenant pointed to the fact that the blinds were very old and did not work. He submitted that the neighbours told him that the blinds had not been opened for almost ten years. The Tenant confirmed that they did not have the carpets cleaned at the end

of the tenancy. He noted that the new tenants moved into the rental unit the same day they had move out and argued that the Landlord could not have painted and could not have had the carpets cleaned like she is claiming. He stated that they did not leave garbage at the rental unit; rather, they left two cedar planters which the Landlord threw out and some fruit.

In closing, the Landlord stated that she did not complete the painting because she could not afford to do so. The blinds worked fine at the beginning of the tenancy, opening and closing at move in. She pointed to the evidence where she said the Tenant informed her that she removed them when she had painted the unit.

The Tenant provided his new mailing address, as listed on the front page of this Decision.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 35(5) of the *Act* provides that the landlord may conduct the move out inspection and complete and sign the report without the tenant if the landlord has complied with the *Act* in scheduling the inspection and if the tenant does not participate.

In this case I accept that the Landlord complied with section 35 of the *Act* when scheduling the move out inspection and that she complied by completing the move out report in absence of the Tenants. In addition to the move out report, the Landlord submitted photographic evidence to prove the condition the rental unit had been left in at the end of the tenancy.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Based on the evidence before me, I find the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some minor damage at the end of the tenancy.

As per the foregoing I find there to be sufficient evidence to prove the Landlord and one other person had to spend at least five hours to clean and ready the rental unit for her new tenants. Accordingly, I grant the Landlord's application for cleaning costs as claimed, in the amount of **$150.00**.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the

depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

The Landlord has sought $207.43 to cover part of the cost to install new aluminum blinds to replace cloth blinds that were from 1992 and were approximately 23 years old. The normal useful life of window blinds is 10 years, as per Policy Guideline # 40. Accordingly, I conclude that the depreciated value of the existing cloth blinds were zero. As noted above awards for damages are intended to be restorative; therefore, I find the Landlord has not proven she has suffered a loss nor has she proven that the original item had been replaced with an item of similar quality or value; therefore, the claim for window blinds is dismissed, without leave to reapply.

In her oral submission the Landlord submitted that she was seeking to recover the costs of taking debris to the landfill. She submitted a receipt for the landfill in her documentary evidence which was dated September 1, 2014 in the amount of $19.50. The Tenant did not dispute that they had left two planters behind and there was photographic evidence of some other debris that was left at the rental unit. Accordingly, I find the Landlord has proven entitlement to claim for landfill fees and I award her **$19.50.**

The remainder of the Landlord's claim was for $500.00 for painting plus $148.37 for carpet cleaning, which the Landlord testified were based on estimates for painting and receipts for carpet cleaning that was completed prior to the start of this tenancy. The Landlord failed to provide invoices or receipts for the work which was done, and furthermore, the Landlord testified that the painting had not been completed.

In an instance where a party is relying on estimates for work not yet performed, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost $500.00 to repaint the living room and entrance in the rental unit, yet there is no evidence, such as a quote from a painter to support this estimate. Also, if the rental unit carpet had been cleaned, there was no evidence submitted to prove when the cleaning was conducted or how much that cleaning cost.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the above, I accept that the Tenant's acknowledged in their August 25, 2014 e-mail that they had painted the rental unit and there was evidence that the Tenants had not cleaned the carpets at the end of the tenancy. That being said, there was insufficient evidence to prove the actual amount, if any, that the Landlord had lost as a result. Therefore, I conclude that the Landlord is entitled to nominal damages of $10.00 each for painting and carpet cleaning in the amount of **$20.00.**

The Landlord has only partially succeeded with their application; therefore, I award partial recovery of the filing fee, in the amount of **$25.00.**

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Cleaning costs	$ 150.00
Landfill fees	19.50
Nominal Damages	20.00
Filing Fee	25.00
SUBTOTAL	$ 214.50
LESS: Security Deposit $600.00 + Interest 0.00	-600.00
Offset amount due to the Tenants	**$ 385.50**

Based on the above, I hereby order the Landlord to pay to the Tenants **$385.50** forthwith.

Conclusion

The Landlord has been awarded $214.50 in damages which has been offset against the amount owed to the Tenants for the return of double their security deposit, leaving balance due to the Tenants in the amount of $385.50. In the event that the Landlord does not comply with the above Order to pay the Tenants **$385.50**, the Tenants may serve the Landlord with the enclosed monetary order. The Monetary Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court if the Landlord fails to comply.

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: April 13, 2015

Residential Tenancy Branch