



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd
and [tenant name suppressed to protect privacy]

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, for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The parties confirmed receipt of evidence supplied by each.

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.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of October 2014 rent revenue in the sum of \$1,066.00?

Is the landlord entitled to compensation in the sum of \$1,321.80 for damage to the rental unit?

Background and Evidence

The tenancy commenced on September 1, 2000. A security deposit in the sum of \$425.00 was paid. At the end of the tenancy rent was \$1,066.00 due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

On August 23, 2000 a move-in condition inspection was completed and signed by the parties. The report was hand-written. The details were then duplicated onto the document used for the move-out condition inspection report. The original move-in report recorded deficiencies in the unit such as burned out light bulbs, snags on flooring and a dirty fireplace. A copy of the report was supplied as evidence. The tenant's written submission indicates that she did not receive a copy of this report during the tenancy.

The landlord has claimed compensation as follows:

October 2014 rent	\$1,066.00
Carpet cleaning	182.70
Cleaning	300.00
Repairs	838.68
TOTAL	\$2,387.38

There was no dispute that the parties communicated via email. An August 9, 2014 email was sent to the landlord from the tenant who said that her daughter's boyfriend was back in the house. The email said that if the owners found out about the boyfriend they would raise the rent, so that the daughter and boyfriend would vacate and the tenant would give notice. The landlord responded by email saying that he assumed that the email was meant as notice to end the tenancy effective September 30, 2014. There was no evidence that the tenant responded to this email.

On August 15, 2014 the landlord issued a letter to the tenant; a copy was supplied as evidence. A move-out inspection was scheduled for September 30, 2014 at noon. This letter mentioned the potential need to show the unit to prospective renters. The letter also scheduled a move-out inspection for September 30, 2014 at noon. Cleaning instructions were included in the letter.

The tenancy did end within the month; however, there was some dispute as to how it ended. The tenant paid rent for September, 2014.

Email evidence shows that on September 30, 2014 the landlord responded to an email from the tenant asking if the inspection could take place on October 1, 2014. The landlord said he would be out of town on that date and not returning until the 10th. The landlord sent an emailing saying that no one else from the office was available and that the tenant would be charged another month's rent if she over-held.

The tenant then asked if they could complete the inspection at 7 p.m. on September 30, 2014. During a telephone conversation the landlord accepted this request. When the landlord went to the unit at 7 p.m. the tenant was not ready. The landlord returned to the unit at 9:30 p.m. and there was still furniture in the unit and little evidence of cleaning.

The landlord then allowed the tenant into the home on October 1, 2014 to complete the move-out and told the tenant she might have to pay October 2014 rent. When the landlord went to the home on the evening of October 1, 2014 the unit was not fully cleaned and repairs were still required.

The landlord then completed the inspection report on October 2, 2014, in the absence of the tenant. The landlord said he changed his travel plans.

The next email from the landlord was sent on October 9, 2014 telling the tenant the home had not been cleaned or properly repaired. A water bill needed to be paid and the landlord needed the tenant's forwarding address. The tenant asked the landlord to send a list of issues found. On the same day the landlord replied with a list and a request they make deductions from the deposit. The landlord estimated a total of \$1,010.00 in costs.

On October 10, 2014 the tenant responded to the landlord that she would be willing to go in and clean and put doors back up. The landlord quickly replied saying he would work with the tenant on doing the clean-up but he required direction in relation to the carpets, counter top, hooks in the ceiling and walls, lamp shade, screen door, shower curtain and water bill.

The tenant responded saying she had no issues with replacing a ceiling lamp and she would remove the hooks from the ceiling and wall, that there was no screen door and shower curtain when she moved into the unit. The tenant was willing to redo the carpets with her cleaner. The tenant said most of the issues were due to wear and tear. The landlord offered the tenant access to the home on October 12, 2014; this was sent via email sent at 11:59 a.m. on October 11, 2014.

The tenant said she did not see the October 11, 2012 email until the next day and on the 12th she emailed the landlord at 9:56 a.m. to say that the house was locked. Later in the day the landlord responded that he was at the home at 9 a.m. and that he had been generous with allowing her time to clean and correct deficiencies in the home.

On October 15, 2014 the tenant replied that the landlord's list of deficiencies was inaccurate and that he had given an unrealistic deadline, over the Thanksgiving weekend. The tenant pointed out there had been rent increases that were not valid. The tenant provided her address in this email.

The landlord supplied invoices for work completed in the home.

- \$300.02 October 14, 2014 for 10 hours of cleaning, removal of 25 hooks from living and dining room ceiling, removal of discarded belongings, clean kitchen, bathroom, laundry room, blinds, replace light bulbs as needed
- \$838.68 October 20, 2014 included \$400.00 for numerous repairs such as tightening a cable at the front door, replace light fixture in bedroom, install shower curtain, sink plug, closet doors in bedrooms, clear kitchen sink drain, install new kitchen counter top, new blind and screen on living room window and patio door, new smoke alarm, remove personal property, replace light bulbs in dining room, range hood and kitchen.

The October 20, 2014 invoice included a fee of \$6.50 for shop supplies, \$53.37 purchasing fees, GST and \$355.82 for supplies purchased.

The landlord submitted a copy of the invoice issued on August 7, 2000 for carpet cleaning in the home at the start of the tenancy. An invoice issued on October 21, 2014 in the sum of \$182.70 for carpet cleaning at the end of the tenancy was submitted by the landlord. The carpets had been cleaned at the start of the tenancy and were not even vacuumed at the end. Photos taken of the carpet in the bedroom, dining room and living room showed marks on the carpet.

The landlord submitted a number of photographs taken in the home after the tenant vacated.

The landlord has claimed the loss of October 2014 rent revenue as the tenant over held to October 4, 2014. The landlord said they advertised on multiple web sites but that there were very few showings. The area where the home is located is not as popular as others and most units turn over at the start of a year.

The landlord said the tenant had been very clean during the tenancy and had kept the home to a high standard. Toward the end of the tenancy the landlord believes it was the tenant's daughter who caused issues with the state of the home.

A cable plate at the front door was left loose, a lightshade and the shower curtain and a plug for a sink were missing.

Bedroom doors had been removed and had to be reinstalled.

A photo of the fixture where the light shade was missing and doors removed were supplied as evidence.

The tenant left some Velcro on a wall by the patio door.

The kitchen drain was gummed up with what the landlord said was "normal stuff." The kitchen counter was original to the 1970's home; a photo showed the counter had slices on the surface.

The blind and screen were missing from the living room; a photo of the missing items and a screen in the outdoor shed were supplied as evidence.

The smoke alarms were left in the home but 1 was not working. These were provided at the start of the tenancy and regularly checked.

The landlord had to purchase light bulbs.

The landlord was not sure what the purchasing fee in the October 14, 2014 invoice represented and he thought it was a fee charged by contractors. The charge included on the invoice for supplies did not include a break-down and the landlord thought this would include the light shade and a face plate.

The landlord submitted photographs of a bike, screen and ladder left in a shed and 7 nail holes in walls; dirty areas in the fridge, a dirty kitchen drawer, several kitchen cabinets, some cobwebs under a sink, dirty areas behind the dryer and fridge and photos of nice hooks in the ceiling.

The tenant provided a response to the landlord's claim. The tenant said she felt pressured to vacate the home, but she did accept the end of the tenancy and left the keys to the unit in the mail box on October 1, 2014. When the landlord had come to the unit at noon on September 30, 2014 the inspection report could not be completed as there were still belongings in the home.

The tenant was late going to the home on October 12, 2014 as she did not see the email sent by the landlord the day prior, until the 12th.

In relation to re-renting the home, the landlord had 3 people who she knew showed interest. Several did not follow through with viewing and on one occasion the landlord was not present to show the unit. The tenant said the rent sought had been increased to \$1,500.00 per month.

The tenant said she cleaned the walls and cabinets but did not move the appliances out from the walls. New lino had been installed in 2014 so the areas behind appliances should not have

been dirty. The tenant cleaned the appliances as best she could. The landlord replied that the appliances were on skids.

The cable plate was installed by Shaw. The tenant agreed to pay for the light shade and estimated she could find one for ten dollars. A shower curtain and sink plug was not supplied at the start of the tenancy.

The closet doors were not installed as they kept coming out of the tracks. The kitchen sink had previous issues and the tenant had used cleaning products and a snake; she did not recall ever reporting it to the landlord.

The kitchen counter was old and worn so the tenant painted it. The resulting scratches in the surface are the result of wear and tear on the paint.

The living room screen kept falling off so it was placed in the outdoor shed and can be seen in the landlord's photo. The patio door never had a screen. The tenant had replaced the patio vertical blind. The landlord said the screen in the shed had been damaged and could not be reused.

The tenant said the smoke alarms were original from 2000.

The tenant said she inadvertently left a bike and wheel barrow in a shed on the property.

The tenant does not know how much light bulbs actually cost or what kind of supplies were purchased. A plate cover would be no more than \$2.00.

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. Verification of loss would include submission of professional estimates of expected costs or other reasonable submissions that demonstrate costs were established through an independent party.

I have also considered Section 37 of the Act, which requires a tenant to leave the rental unit reasonably clean and free from damage, outside of normal wear and tear. Residential Tenancy Branch (RTB) policy suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

RTB policy (#40) suggests that in a claim for damage to the unit caused by a tenant the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item.

I have considered how the tenancy ended. There was no evidence the tenant ended the tenancy and I find she just accepted the landlord's email assuming she was ending the

tenancy. There was no evidence of a response to the landlord's assumption but the tenant did accept the scheduling of a move-out inspection on September 30, 2014. Given the evidence before me it appears that the parties moved toward a mutual agreement to end the tenancy.

Therefore, in the absence of proper notice given in writing, signed and dated by the tenant in accordance with section 45 of the Act I find pursuant to section 44(f) of the Act that the tenancy ended on September 30, 2014. The tenant had paid rent to this date.

In relation to the move-out inspection; the inspection had been scheduled for noon on September 30, 2014. The landlord agreed to meet at 7 p.m., on the tenant's request, but the tenant was not ready at 7 p.m. I find that this satisfied the landlord's obligations under section 35 of the Act.

The tenant provided her forwarding address on October 15, 2014 and the landlord applied claiming against the deposit within the required 15 days. Therefore, I find there is no basis for doubling the deposit. The landlord scheduled the inspection, agreed to a time proposed by the tenant and it was the tenant who was then not prepared to complete the report.

The landlord advertised the rental unit and had no interested parties. In fact the landlord has testified that it was not an easy time of year to locate new renters. I find that the lack of potential renters was not the fault of the tenant. There was no evidence before me that the tenant thwarted attempts made by the landlord to locate new renters for October 1, 2014.

From the evidence before me I find that the landlord had possession of the rental unit by October 1, 2014 but that the landlord allowed the process for inspection and cleaning to carry on beyond the end of the tenancy. This occurred in the hope that all deficiencies the landlord believed were outstanding could be rectified by the tenant. From the evidence before me I find that the landlord was not impeded by the need for vacant possession as there were not any interested new renters.

I find, on the balance of probabilities that it is likely that the tenant had returned the keys by October 1, 2014. There was no evidence before me that the landlord checked for the keys prior to October 2 and no reason the inspection would have been completed before October 4, 2014 if the landlord believed the tenant was still occupying the unit.

Therefore, I find that the tenant did not over-hold in the rental unit and that there is no basis to support a claim for loss of a month's rent. There was no evidence before me that the landlord was not able to install new renters and then complete whatever updates they wished to complete in the unit. The landlord has testified there was little interest in the rental unit. In the absence of proof of a loss of rent revenue, such as new renters who were ready to take possession on October 1, 2014, I find that the claim for October 2014 rent revenue is dismissed.

First I will establish the items for repair and cleaning that I find are supported. I will then address the amount of compensation due to the landlord.

From the evidence before me I find that the landlord is entitled to compensation for the ceiling light fixture, removal of the hooks from the ceiling, reinstalling the closet doors, removal of personal property and carpet cleaning as claimed. The tenant acknowledged the need for these items to be addressed and offered to clean the carpets again. This leads me to find that the tenant knew the carpets were not sufficiently clean.

The home was built in the 1970's and there was no evidence before me that the remaining claim was for items that were not original to the home. Therefore I find that the claim for new kitchen counter, sink plug, shower curtain, blinds, smoke alarms, range hood and screens are dismissed. RTB policy sets a maximum useful life for building elements of 25 years and there was no evidence before me that these items were not original or, as in the case of smoke alarms, ready to be replaced.

I have considered the cleaning and repair invoices and find the cost of light bulbs appears to be duplicated. Both reference replacement of light bulbs. The October 20, 2014 invoice does not provide a breakdown of time spent on each repair and there is no explanation for the shop supply and purchasing fees imposed. In order to respond to a claim a party must be given adequate information and I find that the repair invoice fails to meet that standard.

From the evidence before me I find that the tenant did not leave the rental unit reasonably clean, as required by the legislation. There was evidence that areas behind appliances, a drawer, cabinets and fridge were not cleaned. However, the landlord may have had the unit cleaned to a level beyond that of reasonably clean. Therefore, I find that the landlord is entitled to compensation in the sum of \$120.00 for cleaning, representing four hours of time. The balance of the claim for cleaning is dismissed.

In relation to repairs I find that the landlord is entitled compensation in the sum of \$100.00. I find that the balance of the repairs were due to the age of the items rather than wear and tear.

Therefore, the landlord is entitled to \$182.70 for carpet cleaning, \$120.00 for cleaning and \$100.00 for repairs totaling \$402.70. The balance of the claim is dismissed.

As the claim has merit I find the landlord is entitled to recover the \$50.00 filing fee from the tenant.

The landlord is holding a security deposit in the sum of \$475.00 plus interest of \$32.19.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$452.70 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.

Based on these determinations I grant the tenant a monetary Order for the balance of the security deposit and interest in the sum of \$54.49. In the event 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 for damage to the rental unit as set out above totalling \$402.70. The balance of the claim is dismissed.

The claim for loss of rent revenue is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit in satisfaction of the claim.

The tenant is entitled to return of the balance of the security deposit in the sum of \$54.49.

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: April 23, 2015

