Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

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, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

One of two co-tenants, W.C., applied for dispute resolution requesting return of the security deposit, compensation for damage or loss under the Act, and to recover the filing fee cost.

The landlord named two co-tenants as respondents.

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 included evidence and testimony provided.

Preliminary Matters

The landlord provided testimony that on September 30, 2014 co-tenant M.Z. was served with Notice of this hearing via registered mail. The landlord used the forwarding address the tenant provided on September 30, 2014. The landlord provided a tracking number for the registered mail. The mail was returned marked by Canada Post as “unknown”. The landlord applied for dispute resolution on October 14, 2014. As this mail was sent prior to the time the landlord made the application it is not possible for service of the hearing documents to have been completed via registered mail sent on September 30, 2014. Therefore I find that the female tenant has not been served with Notice of this hearing.

The landlord did not receive the documents that the tenant submitted with his application. The tenant did not present any evidence that these documents had been served to the landlord. That evidence was set aside and the tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $2,158.56 for damage to the rental unit?

Is the landlord entitled to compensation for loss of rent revenue in the sum of $1,800.00?

May the landlord retain the security deposit or should it be returned to the tenant?

Is the tenant entitled to compensation for a floor payment made to the landlord that should be returned?

Background and Evidence

The tenancy commenced on May 1, 2014 as a fixed term ending April 2015. Rent was $1,750.00 per month due on the first day of each month. A security deposit in the sum of $875.00 was paid. The unit was furnished. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was not completed.

There was no dispute that the tenants gave verbal notice in September 2014 to end the tenancy September 30, 2014, prior to the end of the fixed term. The tenants provided written notice on the last day of the tenancy.

A move-out condition inspection report was completed on September 30, 2014 and signed by the tenant, who disagreed with the repairs set out by the landlord. The tenant provided a forwarding address and the landlord applied claiming against the deposit within 15 days.

The landlord has made the following claim:

Light bulbs	$58.56
Broken chair	100.00
Repair bathroom glass door slider	400.00
Carpet replacement	200.00
Replace laminate flooring	1,050.00
Loss of rent revenue	1,800.00
Repair washing machine	70.00
Garbage removal – strata fine	200.00
Cleaning	150.00
TOTAL	$4,028.56

There was no dispute that the tenants vacated without replacing burned out light bulbs that had been functional at the start of the tenancy. The landlord supplied an October 4, 2014 receipt in the sum claimed for light bulbs.

The landlord supplied a picture of a broken dining chair. The tenant confirmed that a friend of his sat in the chair and that it broke. The landlord did not provide any evidence of the age or cost of the chair; she estimated the value at $100.00. The tenant said the chairs became loose at the joints and were inexpensive IKEA chairs.

There was no dispute that the sliding glass door in the shower was missing a part that allowed the door to slide easily. The tenant said he had told the landlord the door was malfunctioning; the landlord said the tenant did not inform her of the problem. A part is missing and the landlord

has guessed at the cost for repair. The landlord said that she had no time to submit evidence of cost with her October 14, 2014 application.

The landlord supplied photographs taken of the carpeting that showed it dirty and stained. The landlord said the carpet was three years old. The carpet was replaced and the landlord has requested compensation for part of the replacement cost. The landlord paid cash for the carpet and supplied no verification of the expense claimed. The tenant confirmed that he did cause stains to the carpet. The tenant said the landlord told him not to clean the carpets as they would be replaced.

There was no dispute that the tenant's air conditioning unit caused some damage to the flooring. The flooring was three years old. When the landlord first saw the damage she did not think it would cost more than $400.00. The tenant paid the landlord $400.00 and believed the matter was settled. The landlord has now claimed additional costs for replacement. Photographs of the flooring that had been removed were supplied as evidence. The landlord did not obtain an invoice and paid cash for floor replacement.

The tenant has requested return of the $400.00 paid for floor repair.

The floors were replaced at the end of the tenancy. The landlord supplied a copy of a tenancy agreement signed by the new tenants for a tenancy commencing October 3, 2014. Rent was $1,800.00 per month. The new tenants were unable to move into the rental unit until October 6, 2014 as the flooring was not completed as planned. The landlord has claimed compensation in the total sum of monthly rent to be paid by the new tenants. The landlord said that the new tenants did pay $1,200.00 for October 2014 rent in compensation for the two days of delay. The landlord said the new tenants may sue her for the delay that was caused as a result of the floor repairs, so she has claimed based on this possibility.

The landlord has a washing machine repairperson checked the machine. A knob was loose. The landlord said the tenants turned the knob backwards and should pay the bill. The landlord provided proof of payment made on May 22, 2014.

The tenant said that he vacated the unit on September 20, 2014 although all of his furniture was not moved. Rent had been paid to the end of September. The co-tenant had vacated earlier in the month. The landlord had entered the unit and began making repairs to the floor before the tenancy legally ended. The landlord also cancelled the tenant's key fob, so he could not access the unit.

The parties met at the rental unit on September 30, 2014 at which time a condition inspection was completed. The tenant confirmed that he signed the report disagreeing with the contents. The landlord did not submit a copy of the inspection report as evidence.

The landlord supplied a copy of an October 16, 2014 letter from the strata imposing a fine as the result of dumping garbage in the bins that was not basic household garbage. The strata provided the landlord with a photograph of someone taken by security cameras who is throwing items into the bin on September 30, 2014. The landlord sent this information to the tenants as it was the tenants who had dumped a TV and furniture in the bins. The landlord provided proof of payment of a $200.00 fine imposed by the strata for the improper disposal of items.

The tenant did not dispute that items that were not regular household waste had been put in the garbage bins. The tenant said the landlord did not give him time to remove the items as she had to be elsewhere on the September 30, 2014 so was in a hurry. The tenant no longer had a working key fob so had someone from the building let him into the garbage area where the non-household items were disposed of into the bins. The tenant was not given a copy of the bylaws

and did not sign a Form K. The tenant confirmed that he knew putting the furniture and TV in the bins was not proper but felt had had no choice.

The landlord did not respond to the tenant's submission that the key fob had been inactivated or that she denied the tenant adequate time on September 30, 2014 to remove the balance of the belongings that remained in the unit.

The landlord claimed the cost of cleaning the unit. Photographs supplied showed a dirty curtain pull, dirty bathroom fan, shower glass door that needed cleaning, and several drips on two walls. The tenant said he had cleaners go into the unit before he vacated. The landlord paid cash for the cleaning.

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 and 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 is required to prove a claim on the balance of probabilities.

I have 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. I find this to be a reasonable stance.

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. That evidence may be in the form of work orders, invoices or other documentary evidence. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

I find, based on the verified cost that the landlord is entitled to the sum claimed for lightbulbs. The tenant confirmed that bulbs were not replaced.

In the absence of any evidence of the cost of the chair when it was purchased three years ago I am unable to assign depreciation to the value of the chair. Therefore, as there was no dispute the chair was broken I find the landlord is entitled to a nominal sum of $10.00.

There was no evidence before me that the tenant caused any damage to the sliding bathroom door. There is a part missing. The landlord provided no evidence that the tenant is responsible for removal of that part. Therefore, I find that this claim is dismissed.

The tenant confirmed that he caused staining to the bedroom carpet. The landlord has requested partial compensation for the cost of replacement, although no verification of the cost claimed or paid for replacement was supplied. However, from the evidence before me I find that the carpets were stained and that the sum of $200.00 for replacement is not an unreasonable depreciated cost. Therefore I find that the landlord is entitled to the cost as claimed.

The parties entered into an agreement that the tenant would pay $400.00 for laminate replacement. This was confirmed by the landlord, who now wants additional compensation. I find that the matter of the floors was settled when the landlord requested and received $400.00 from the tenant. Further, the landlord provided no verification of the cost of replacement beyond that paid by the tenant in the past. Therefore, I find that the claim for flooring is dismissed. For the same reason I also dismiss the tenant's claim requesting return of the $400.00.

When the tenants gave notice ending the tenancy they did so in breach of the legislation. Section 45 of the Act allows a tenant to end a fixed term tenancy only in specific circumstances that did not apply here. Further, written notice was not given by the tenants until they were vacating. However, the landlord accepted that the tenants would vacate and sought out new tenants.

I find that the landlord effectively mitigated the loss of future rent revenue for the balance of the fixed term tenancy by signing a tenancy agreement on September 14, 2014, to commence October 3, 2014. When the flooring could not be fully repaired on time the landlord provided the new tenants with a rent reduction as compensation for the move-in delay. As suggested by policy, compensation should place the landlord in the same position as if the tenants had not breached the tenancy agreement.

Therefore, as the flooring replacement was the result of the actions of the tenants, I find that the landlord is entitled to compensation for loss of rent revenue based on a per diem amount of $57.53 per day for October 4 and 5, 2014, totaling $115.06. The landlord provided no verification of the sum received from the new tenants, such as a cheque or receipt issued in the amount she states she was paid for October 2014 rent. Therefore, I have calculated the per diem rent payable based on monthly rent of $1,750.00, the sum the tenants were paying. Further, compensation is not given based on something that may occur in the future, as the landlord has suggested. The balance of the claim is dismissed.

There was no evidence before me that the washing machine was damaged due to negligence of the tenants. There was no repair required; only a knob was loose. Therefore I find this claim is dismissed.

There was no dispute that the tenants placed furniture and a TV in the garbage bins that are for household garbage only. The tenant did not dispute that he understood this was not appropriate. I have considered the tenant's submission that he felt pressured to remove the items as his key fob no longer functioned, even though he had paid rent up to the last day of the month. However, the tenant could have placed the items outside of the building and then properly disposed of them.

As the tenants were not given a copy of the bylaws, and did not sign a Form K they were not informed of the possibility of fines. Therefore, I find that the landlord is entitled to a nominal sum of $75.00 for garbage removal costs. The balance of the claim for strata fines is dismissed.

There was no evidence before me that the rental unit was not left in a reasonably clean state as required by the legislation. The carpets were not cleaned but they were being replaced. Therefore, I find that this portion of the claim is dismissed.

Therefore the landlord is entitled to the following compensation:

	Claimed	Accepted
Light bulbs	$58.56	$58.56

Broken chair	100.00	10.00
Repair bathroom glass door slider	400.00	0
Carpet replacement	200.00	200.0
Replace laminate flooring	1,050.00	0
Loss of rent revenue	1,800.00	115.06
Repair washing machine	70.00	0
Garbage removal – strata fine	200.00	75.00
Cleaning	150.00	0
TOTAL	$4,028.56	$458.62

The balance of the claim is dismissed.

As each claim has some merit I find that the filing fee costs are set off against the other.

I find the landlord is entitled to retain $508.62 from the $875.00 security deposit in satisfaction of the claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the security deposit in the sum of $416.38. 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 for damage and loss of rent revenue totalling $458.62. The balance of the claim is dismissed.

The landlord may retain the security deposit in the sum of $458.62.

The landlord is Ordered to return the balance of the security deposit to the tenant.
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: May 22, 2015

Residential Tenancy Branch