Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by a landlord to retain the security deposit as compensation for the costs of cleaning and repairs to the unit incurred by the landlord after the end of the tenancy. Both the landlord's agent DL the tenant and his son attended the conference call hearing.

Issues(s) to be Decided

Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?

Background and Evidence

Service of the application was admitted.

Based on the evidence of the landlord's agent DL, I find that this month-to-month tenancy started on December 1, 2013 and ended on February 3, 2105 when the tenant moved out and returned the keys to the landlord. Pursuant to the tenancy agreement, the rent was $ 5,000.00 per month payable in advance on the 1st day of each month. The tenant paid a security deposit of $ 2,500.00 on November 13, 2013.

DL admitted that the landlord failed to complete written move in or move out condition inspection reports as required by the Act. DL admitted receiving the forwarding address of the tenant on December 5, 2014. DL testified that the tenant moved out on January 31, 2015 and he received the keys for the unit on February 3, 2015. The landlord brought the application on February 18, 2015 claiming for the retention of the security deposit.

DL testified that the tenant failed to weed the yard during the tenancy, or clean the unit sufficiently at the end of the tenancy and that the landlord retained a professional to do so costing $ 819.00 for both services. DL testified that the interior of the unit was over 5,000 square feet which would take a fair bit of time to vacuum and dust. DL admitted that he was not privy to any discussions between the owner/landlord and the tenant regarding the weeding and apart from the tenancy agreement it was not entirely clear what the tenant's obligations were. DL was relying upon the tenancy agreement and the

tenant's obligation to weed the yard.

DL claimed that the tenant gouged the wall in a stairwell and improperly repaired and painted it. DL claimed that it cost the landlord $ 1,785.00 to repair the damage and repaint the stair well. He testified that the area required to be painted was about 4 x 10 feet. He also testified that the home was exceptional; valued at almost two million dollars and therefore the landlord required a very high quality painting and repairing.

The tenant and his son testified that they cleaned the unit as best they could. They testified that although they tenancy agreement required them to maintain the yard, they were not responsible for any gardening costs as the landlord promised that he would hire a professional gardener in the spring of their tenancy and they would maintain it thereafter. They submit that the landlord never fulfilled his promise and therefore they are not responsible for the weeding. The tenant claimed the area of repair of the wall was much smaller than suggested by the landlord and it should have only cost several hundred dollars to make any necessary repairs. Finally the tenants testified that they sent the landlord an email on February 6, 2015 after they re-cleaned the unit and asked if there was anything more they could do. They produced a reply from DL thanking them. The tenants submit they were therefore not required to do anything further.

The tenant submitted that he landlord failed to complete a move in or move out report. The tenant requested that I also deal with the issue of the return of the security deposit.

Analysis

During the hearing I advised the tenant that I did not think I was able to consider the issue of the return of the security deposit and that he would likely have to bring an application at a later date. I was incorrect. The Residential Tenancy Act requires me to consider the security deposit in this application without the necessity of the tenant bringing a separate or subsequent application.

The landlord's agent DL admitted to not completing a written move in or move out report as required by the Act. Section 23 of the Residential Tenancy Act states:

> **23** (1) The landlord and tenant together **must inspect the condition** of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
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> (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
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> (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
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> (b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(my emphasis added)

Regulation 19 of the Regulations made pursuant to the Residential Tenancy Act states that a Condition Inspection Report must be in writing:

Disclosure and form of the condition inspection report

19 A condition inspection report must be

(a) in writing,

(b) in type no smaller than 8 point, and

(c) written so as to be easily read and understood by a reasonable person.

(my emphasis added)

Regulation 20 prescribes the content of such reports. In this matter the landlord made a claim only for damage: including repairing a wall, cleaning and yard work. The landlord did not claim for any loss of revenue. The landlord only claimed against the security deposit and for permission to retain all of it.

I find that the landlord had failed to comply with section 23 of the Act by not completing a written move in or move out inspection report in accordance with the Regulations 19. Accordingly I find that the landlord's right to claim against any of the security deposit is extinguished by operation of sections 24(2) and 36(2) of the Act:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is **extinguished** if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

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

> **36** (2) Unless the tenant has abandoned the rental unit**,** 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
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> (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
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> (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.**
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> (my emphasis added)

I find that when the landlord received the tenant's keys on February 3, 2015, and because of the extinguishment, the landlord was required to return the deposit in full as provided by section 38(1) of the Act. The landlord would thereafter be at liberty to submit a claim for compensation for any damage to the unit any time up to two years beyond the date the tenancy ended. Here the landlord apparently believed that if he claimed against the deposit within 15 days of the date the tenancy ended, he was in compliance with the Act. That would only have been correct if the tenant had extinguished his right to return of the deposit.

Section 38(1) of the Act provides:

> **38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of
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> (a) **the date the tenancy ends,** and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) **repay,** as provided in subsection (8), **any security deposit** or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) **Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished** under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate *in end of tenancy inspection].*
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> (my emphasis added)

> **38** (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

I find that, the landlord has not complied with section 38(1) of the Act by not returning all the security deposit to the tenant within 15 days from February 3, 2105 the end of the tenancy, and in accordance with section 38 (6) the landlord must now pay the tenant double the deposit of $ 2,500.00 totalling $ 5,000.00.

> **38** (6) If a landlord does not comply with subsection (1), the landlord
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> (a) **may not make a claim against the security deposit** or any pet damage deposit, and
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> (b**) must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.
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> (my emphasis added)

Regarding the landlord's monetary claim I find that DL was a credible witness and I accept his testimony. Unfortunately he was not able to distinguish or separate the cost of the cleaning from the yard work as the landlord was invoiced for those two items together. I find that likely some more cleaning was required and I allow four hours at what is a typical average rate of $ 25.00 per hour for a total of $ 100.00.

I find the tenant is bound by the tenancy agreement regarding maintaining the yard regardless of any verbal promises made by the owner. However it is the landlord's burden to prove how much work was required and how much it cost. The landlord relied upon an invoice totalling $ 819.00 for the cost of cleaning and yard work combined. When asked, DL was unable to separate the two claims. I accept that some yard work was required but in absence of any proof of the exact cost of that claim I find that the landlord is entitled to a nominal amount. Accordingly I have awarded the landlord the sum of $ 200.00 for the cost of yard work not done by the tenant.

The tenant admitted responsibility for the cost of repairing and repainting the wall. Although, I accept DL's evidence that the area is much larger than that alleged by the tenant, it's difficult to accept that the cost of repairing and painting one wall could amount to $ 1,775.00. DL submitted that the house was exceptional as it was valued in excess of $ 1,900,000.00 and therefore the landlord contracted an exceptional painter.

Section 32 of the Residential Tenancy Act provides that a tenant must maintain

reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is only required to maintain the reasonable standards set out in the Act.

I find that the standard of quality claimed by the landlord for the repainting and repairing of the wall to be excessive and not reasonable. Accordingly, I have reduced the landlord's claim for the wall repainting and repair by fifty percent. The landlord is entitled to recover $ 892.50 for that claim.

I find that the landlord has proven a total claim of $ 1,192.50. As the landlord has only been partially successful in this matter I award him fifty per cent of the filing fee of $ 25.00 for a total award of **$ 1,217.50**. I have set this off against the tenant's award of $ 5,000.00 and accordingly the tenant is entitled to a Monetary Order amounting to **$ 3,782.50.**

Conclusion

In summary, the tenant is entitled to recover double his security deposit totalling $ 5,000.00. The landlord proved a claim totalling $ 1,192.50 plus one half the filing fee of $ 25.00 for a total claim of $ 1,217.50. I have set this off as against the tenant's award of $ 5,000.00 and have granted the tenant a Monetary Order in the amount of **$ 3,782.50.** A copy of the Order must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. The landlord shall not recover his filing fee.

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: May 13, 2015

Residential Tenancy Branch