Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This was a cross-application hearing.

On March 24, 2015 the tenant applied requesting return of double the $500.00 security deposit paid and to recover the filing fee costs.

On May 14, 2015 the landlord applied requesting compensation in the sum of $500.00 for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant.

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.

Hearing documents and evidence supplied by both parties were confirmed as received, with no dispute.

Issue(s) to be Decided

Is the tenant entitled to return of double the $500.00 security deposit?

Is the landlord entitled to compensation in the sum of $200.00 for cleaning and $300.00 for couch replacement?

Background and Evidence

A copy of a rental agreement signed on May 31, 2014 was supplied as evidence. The agreement contained information on ending the tenancy, the deposit, a one year lease, rent in the sum of $650.l00 to be paid on the first day of each month, including utilities and internet and furnishing.

The rental agreement included reference to a move-in date of May 30, 2014. A section of the one page agreement contained a condition inspection report which acknowledged the suite was clean. There was no dispute that the tenant wrote three items on the agreement as a record of damage to the rental unit. This section of the rental agreement included no other information on the state of the rental unit.

The landlord said that they walked through the rental unit at the time the tenant moved in. The tenant said that the landlord was present while she allowed the tenant to go through the unit while he attempted to locate any damage.

There was no dispute that the parties reached agreement to end the tenancy effective February 28, 2015.

The landlord confirmed that the tenant contacted them to complete an inspection report at the end of the tenancy. The tenant said the landlord told him the unit would be checked after the tenant vacated and that the deposit would then be returned. The tenant refused and said they were required to meet at the rental unit. The parties agreed that they then met at the rental unit. The landlord said they had a list of deficiencies prepared for the tenant and that when the tenant arrived he disagreed with the list and then left.

The tenant said that when he arrived to complete the move-out condition inspection report the landlord handed him a sheet with a list of deficiencies that explained why the security deposit would not be returned to the tenant. The tenant said he was shocked by this. The tenant said he then returned the keys to the landlord and left the property.

A copy of a document entitled “reasons for not returning the damage deposit” was supplied as evidence. The list of deficiencies totaled $1,640.00. The lists included a charge for cleaning and couch replacement.

The landlord confirmed receipt of the tenant’s written forwarding address on March 2, 2015. The landlord claimed against the deposit on May 14, 2015. The landlord said that since the tenant left the rental unit when they met to complete the inspection at the end of the tenancy the tenant extinguished his right to request return of the deposit.

The landlord has requested compensation in the sum of $300.00 for the value of a couch and $200.00 for cleaning costs.

The landlord said that when the tenant moved into the unit the IKEA couch was almost three years old. There was no dispute that the couch was covered in imitation leather. At the end of the tenancy the cushions of the couch were cracked and worn and there were two spots on either end of the couch. The tenant had also allowed his brother to live in the unit for two months, which caused additional wear to the couch. If the tenant had told the landlord the couch was experiencing excessive wear the landlord could have taken steps such as obtaining slip covers or treatment to the fabric.

The couch was so damaged aesthetically the landlord took it to the dump. The landlord supplied a current price for a same couch from IKEA in the sum of $599.00. The landlord had paid $400.00 for the couch. The landlord said they purchased a pine futon couch for $300.00.

The tenant agreed that the couch was in good condition at the start of the tenancy and that at the end it was worn. The tenant said he used the couch every day during the eight month tenancy. The couch was inexpensive, imitation leather. He discussed the couch with the landlord at the end of the tenancy and offered him $100.00 to take it away. The tenant said he could have continued to use the couch as the damage was cosmetic. The tenant also said that covering the seats would not likely have stopped wear and tear and that he doubted treatment to imitation leather would have assisted.

The landlord said that at the end of the tenancy the unit had not been sufficiently cleaned. The tenant may have thought he had cleaned it sufficiently but the floor did not appear to have been cleaned, there were hand prints on surfaces, the baseboards were dirty, the bathroom floor and shower was not clean and areas under the appliances were dirty.

The landlord supplied a document signed by a cleaner they hired, T.O. who declares she worked for a full day on April 4, 2015 and was paid $200.00 to clean the rental unit. T.O. submits that the unit had not been vacumned, the fridge had excessive dust on the top and that there was dried liquid and food under the fridge. The baseboards were dirty and the base of the floor around the toilet and the shower were dirty. The cleaner submits that the couch was cracked and ripped.

The landlord said they take pride in having a clean home and that the tenant failed to make adequate effort to leave the unit clean.

The tenant said that he spent a large amount of time cleaning, but he suspected there would be a problem with the landlord wanting to keep the deposit. The tenant washed the floors, walls and bleached the bathroom. The tenant does not understand how someone could have taken all day to clean the unit after he left.

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.

When a landlord makes a claim against a tenant for damage to the rental unit policy (#40) suggests an arbitrator may consider the useful life of a building element and the age of the item. Policy suggests a landlord should provide evidence showing the

age of the item at the time of replacement and the cost of the replacement item. An 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.

In relation to the couch there was no evidence provided by the landlord setting out an expected useful life of the item. There was no dispute the couch was close to four years old at the end of the tenancy. If the tenant had used the couch daily and it had been used by guests, it is reasonable to expect the couch would experience reasonable wear and tear. Over a period of time it is then reasonable to expect the value of the furnishing would decline.

RTB policy (#1) suggest that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his guest. There was no evidence before me that the tenant or a guest did anything to the couch that could be considered deliberate or neglectful. Further, the landlord did not supply any evidence of the useful life that could be expected of an IKEA.

Therefore, in the absence of evidence of negligence or deliberately caused damage on the part of the tenant and the absence of evidence of the expected useful life of this couch I find that the claim for the couch replacement is dismissed. I considered the possible mitigation by the use of slip covers or treatment and gave it little weight. The most important factors are the absence of evidence setting out the useful life of the couch and any negligent use by the tenant.

The landlord and tenant disputed the cleaning required to the unit at the end of the tenancy. The only further evidence in support of the landlord's testimony was the document supplied by the person who cleaned the unit. The cleaning persons' statement indicated that areas of the rental unit were cleaned that were not inspected at the start of the tenancy. There was no indication the landlord pulled the appliances out when inspecting the unit. Those areas may well have been clean, but there is no evidence before me that was the case. The tenant disputed the cleaning claim and I agree that the claim for a day of cleaning does not appear to align with the evidence before me.

However, I have given the cleaning persons statement some weight and on the basis of the cleaning required to the bathroom, floor and shower I find that the landlord is entitled to a reduced sum of $100.00 for cleaning. A tenant is required to leave a rental unit reasonably clean. I find that this compensation would meet the deficiency of cleaning completed by the tenant. The balance of the claim for cleaning is dismissed.

In relation to the security deposit value, I have considered the inspection report completed at the start of the tenancy and whether the landlord complied with the Act and Regulation. Section 23 of the Act requires the landlord to schedule the move-in condition inspection report. The parties did meet at the rental unit but the landlord did not complete the inspection in the form required by Residential Tenancy Regulation Section 20, which provides:

Standard information that must be included in a condition inspection report

20 *(1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:*

(a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;

(b) the address of the rental unit being inspected;

(c) the date on which the tenant is entitled to possession of the rental unit;

(d) the address for service of the landlord;

(e) the date of the condition inspection;

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

(i) entry;

(ii) living rooms;

(iii) kitchen;

(iv) dining room or eating area;

(v) stairs;

(vi) halls;

(vii) bathrooms;

(viii) bedrooms;

(ix) storage;

(x) basement or crawl space;

(xi) other rooms;

(xii) exterior, including balcony, patio and yard;

(xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I, ...

Tenant's name

[ ] agree that this report fairly represents the condition of the rental unit.

[ ] do not agree that this report fairly represents the condition of the rental unit,

for the following reasons:
.....
.....
.....
.....
.....
.....

(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [condition inspection: end of tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

The section of the rental agreement signed by the parties failed to contain all of the required detail. Only the tenant name, landlord name, start date of the tenancy and reference to three damages items were included in the agreement.

At the end of the tenancy I find that the landlord failed to schedule the inspection report but that the parties did meet with the intention of the completing the report. This meeting was the result of the tenant's effort to have the landlord comply with the legislation.

However, when the parties met at the end of the tenancy I find that the landlord and tenant both met the legislative requirement and that neither extinguished their right to claim against the deposit. When the landlord presented the tenant with a list of deficiencies before the inspection was completed the tenant chose to leave. The tenant did not fail to attend the inspection; I find that he disagreed with the landlord's assessment and then chose to leave.

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.

As the landlord had the tenant's forwarding address on March 2, 2015 I find that the landlord had to return the deposit or submit a claim against the deposit no later than March 17, 2015.

Therefore, as the landlord did not return the deposit and did not claim against it until May 14, 2015 I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the $500.00 security deposit; less $100.00 for cleaning.

As each application has some merit the filing fee costs are set off against the other.

Based on these determinations I grant the tenant a monetary Order for the balance of $900.00**.** 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 $100.00 for cleaning. The balance of the claim is dismissed.

The tenant is entitled to return of double the $500.00 security deposit, less $100.00 due to the landlord.

Filing fee costs are set off against the other.

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: June 08, 2015

Residential Tenancy Branch