Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

In the first application, made February 25, 2015, the tenants seek to recover the remainder of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

In the second application, made May 11, 2015, the landlord seeks damages for the cost of cleaning and repair of the premises after the tenants left.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a five bedroom home. The tenancy started in February 2014 for a fixed term to April 30, 2015. The monthly rent was $3300.00, due on the first of each month, in advance. The landlord received a $2000.00 security deposit.

The tenancy ended early; at the end of January 2015 when the tenants passed over keys to a new tenant whose tenancy started February 1st at a rent greater than what the applicant tenants had paid.

The tenants provided a forwarding address by email sent February 5th. The landlord returned $1323.26 of the $2000.00 by mail to the tenants, sent February 5th or 6th, 2015 and received by the applicant tenant on February 13, 2015.

The tenant Mr. D.D. acknowledges responsibility for a $70.00 fridge filter and a $256.00 Telus bill.

The parties did not conduct a move-out inspection nor did the landlord prepare a move-out report. There is evidence of any move-in condition report. The landlord spends much time out of the province and does not appear to have an agent handling her landlord affairs in British Columbia.

The premises were a “no smoking” premises. The landlord testifies that the tenants smoked inside the home. She claims $472.50 as the estimated cost to have the home deodorized and produces a quote for that work. It has not been done.

The landlord called Ms. S.S. as a witness. She had viewed the home in February 2015 and confirms that the third floor “reeked” of cigarette smoke.

The landlord called the current tenant Ms. R.V. as a witness. She testifies that the third floor bedroom smelled of cigarettes and that a location on the main floor smelled too, but that it was not offensive enough to prevent her from renting the house.

The attending tenant acknowledged that both he and his co-tenant were smokers but that they always smoked outside. He acknowledged that his co-tenant Mr. H.L. occupied the third floor bedroom but insists the room was not smoke in. He opines that any smoke smell on the third floor must have come through the window, which is located above the area on the ground outside that the tenants used for smoking.

The landlord testifies that the tenants caused damage to drawers in the kitchen. She produces photos showing chip marks at the base and top of cabinet doors and what appears to be a wear mark on a drawer. She submits a quote from a service company offering to repair the drawers for $420.00. It does not appear that the work has been done.

The landlord called as a witness Ms. K.R., the previous tenant, who indicated that the mark on the door was caused by the lazy susan door scraping on it.

The attending tenant says there were marks on the doors in the kitchen when he moved in.

The landlord testifies that the tenants stained the granite tiles on the kitchen floor. She thinks they did it by leaving a garbage bin on the floor. She tenders a quote from the same service company estimating that to replace the affected tiles would cost $1207.50.

The current tenant calls it and “ugly stain” and says she tried to scrub it out without success.

The landlord testifies that the bathtub spout in the third floor bathroom was not working. The knob on the top of the spout is ended to be pulled up to shower and to be left down to fill the tub. She produced a quote from the same service company, estimating the repair cost at $110.25. The new tenant confirms that the spout did not function when she first tried to use it after move-in.

The tenant Mr. D.D. testifies that at the end of his tenancy he used the bath function and the spout was working properly.

The landlord testifies that there was damage to the walls in the premises. She presents photo evidence indicating a hole where a door knob has pushed into it, a location where a towel bar fixture has come away from a wall and a number of what appear to small scrapes or dings. The same service company has quoted a cost of $262.50 to repair the damage. It is not apparent the work has been done.

The tenant acknowledges responsibility for the door knob damage. He says the towel rack came loose merely through regular use. He notes that the first time he received any complaint about the damage was when he received a portion of his security deposit back in mid-February 2015.

The landlord claims the tenants damaged the wooden nosing on the tile stairway. She adduced photos showing two steps with a portion of the wooden nosing broken away. This damage was noted by the landlord in July 2014 and repaired by her then without any request for reimbursement from the tenants. She produces a bill dated July 2, 2104, marked “paid” for $150.00 for the stair repair.

The previous tenant testifies that the stairs were not damaged when she moved out.

The tenant says the stair damage was there on move-in.

The landlord raised other concerns or claims during the hearing, specifically regarding the state of the lawn. This item was not referred to in her claim and so has not been fairly raised in this dispute. I decline to deal with it.

Analysis

The landlord has put herself in a very difficult position by failing to conduct formal move-in and move-out inspections with these tenants and to prepare condition reports. The *Act* requires a landlord to do so.

The inspections and reports are required by law, as an effort to reduce disputes just like this one.

The lack of inspections and reports leads to the troubling question of whether or not claimed damage occurred during the tenancy in question and from that to the unfortunate situation of having to weigh the acuity of each party's memory and credibility against that of the other.

The lack of inspections and reports can put a tenant at a distinct disadvantage, having to deal with a claim but no longer having access to the premises to view or photograph the claimed damage, to repair it or possibly to obtain a repair quote.

I find that the tenants or their guests did smoke in the premises. Particularly, the tenant Mr. H.L. was smoking in his third floor bedroom. The new tenant gave convincing evidence about it. The suggestion made by the attending tenant that smoke simply wafted up three floors and in through the bedroom window, is not reasonably plausible.

However, the landlord has not suffered any damage as a result. She has not had the deodorizing work done and now has a new tenant whose rent does not appear to have been lowered because of the smoke smell. That new tenant indicates the smell is now gone but for an occasional hint in the third floor bedroom.

I find the tenants breached the "no smoking" term of the tenancy agreement but that the landlord has not proved damages flowing from that breach. As a result, I award her only nominal damages of $100.00 for the breach.

I must dismiss the landlord's claim for kitchen cabinet damage. The chipping shown in the photos is consonant with the wear and tear incidental to the use of the cabinet doors. The wear mark in the drawer is consistent with the use of the lazy susan as noted by the previous tenant in her testimony. It is reasonable wear and tear.

Regarding the kitchen floor, it is apparent that there is a stain on it. It's reasonable to conclude that a kitchen floor is going to have liquids spilled on it and garbage cans or bins place on it during its life. The landlord presents a quote for tile replacement but it is not clear why the stain did not result from ordinary use of the kitchen nor is it apparent

that replacement of the tiling, as opposed to repair, is required. In this regard the opinion of a person knowledgeable in granite tile flooring would have been helpful.

I find that the staining of the kitchen floor occurred during this tenancy. I find that the landlord has not satisfactorily proved her damages in regard to the staining. In consequence, I award only nominal damages of $100.00 for this item.

I dismiss the landlord's claim for the bathtub spout repair. The evidence does not permit me to choose between the testimony of the tenant that it did work and the evidence of the new tenant that it didn't work. In any event, it is difficult to envision how such a straightforward mechanical system, a simple valve on a metal rod with a knob, would be damaged, rather than malfunctioning or wearing out through use over time.

In regard to the claimed drywall damage, the lack of any condition reports prevents me from determining when the mars and scratches noted in the landlord's photos occurred and so I dismiss this item of the claim, but for the pulled off towel rack, which I find exceeds reasonable wear and tear and for the acknowledged hole caused by the door knob. I consider $150.00 to be reasonable charge for those repairs and I award that sum to the landlord.

In regard to the broken stair nosing, I find that the damage; the splintering and breaking away of two wooden stair noses, occurred during this tenancy and is not damage consistent with reasonable wear and tear. A foot falling on a stair tread, a stair tread designed for that purpose, could not reasonably cause the damage shown. I find the tenants were responsible for its repair.

The landlord did not immediately claim the repair cost against the tenants back in July 2014, but neither did she waive her claim against them. I award the landlord $150.00 for the stair repair.

Regarding the tenants' claim for recovery of the remainder of their deposit, doubled under s. 38 of the *Act*, s. 38 is a provision designed to cause a landlord to deal with deposit money quickly after the end of a tenancy. It penalizes a landlord for attempting to unilaterally keep any part of a deposit.

The provisions of s. 38 do not apply if a landlord has obtained a tenant's written authorization to keep any part of a deposit or an arbitrator's monetary award. They require and mandate that once a tenancy has ended and once a landlord has received a tenant's forwarding address is writing, she must, within the following 15 days, either

repay the deposit or make an application to keep it. Failure to comply draws the doubling penalty.

In this case the landlord withheld $676.74 of the $2000.00 deposit money. She did not have any written authorization from either tenant do so nor a monetary award from an arbitrator. She breached s. 38 and is required to account to the tenants for double the deposit money.

At this hearing the attending tenant requested a doubling of only the remainder: $676.74. I award the tenants that doubling in the amount of $1353.48.

From that amount the landlord is entitled to retain the acknowledged fridge filter cost of $70.00, the Telus bill of $256.00 and the aggregate $500.00 awarded in this decision, a total of $826.00. As each side has had success I offset each party's filing fee.

The tenants are entitled to recover the remainder of $527.48. They will have a monetary order against the landlord in that amount.

Conclusion

The tenants' application is allowed. The landlord's application is allowed in a part.

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: June 11, 2015

Residential Tenancy Branch