



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction and Preliminary Matters

This dispute resolution originated on the landlords' application seeking a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit and for recovery of the filing fee paid for this application.

The hearing began on March 17, 2015, and dealt only with the landlord's evidence in support of their application. An Interim Decision dated March 20, 2015, was entered in this matter.

The hearing was reconvened on May 7, 2015, and at the reconvened hearing, the tenant testified in response to the landlords' application, appearing to read from a document. After 80 minutes, the hearing was not able to conclude and it appeared that at least one more oral hearing would be necessary. I determined that the remainder of the hearing would be conducted and concluded by the further written submissions of the parties. The parties were given timelines to provide their written submissions, and those instructions were contained in the 2nd Interim Decision of May 7, 2015. Both parties complied with the required timelines.

The first and second Interim Decisions should be read in conjunction with this Decision and further, they are incorporated herein by reference.

During the period of adjournment, both parties provided further extensive written submissions, and that, along with all original documentary and photographic evidence submitted in accordance with the Dispute Resolution Rules of Procedure (Rules) was reviewed and considered; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues

Are the landlords entitled to monetary compensation from the tenant and to recovery of the filing fee paid for this application?

Background and Evidence

The evidence was that this tenancy began on July 15, 2010. The landlords were issued an order of possession for the rental unit by another Arbitrator, with an effective move-out date of May 1, 2014. The order of possession was granted to the landlords in the dispute resolution of the tenant when he disputed the landlords' 1 Month Notice to End Tenancy for Cause (the "Notice"), as the tenant's application was dismissed. That decision and order of possession issued by the other Arbitrator were provided into evidence by the landlords.

The evidence shows that the tenant did not vacate the rental unit by May 1, 2014, and that the tenancy actually ended on May 6, 2014. The rental unit was in the loser portion of the home, and the landlords had tenants residing in the upper portion.

The landlords do not live in the same city in which the rental unit is located.

The landlords' monetary claim is as follows:

Airfare to and from the rental unit	\$1403.32
A new stove	\$613.01
Cleaning of washing machine	\$245.10
Toilet handle replacement	\$34.08
Paint and repair of drywall	\$1400.00
Hardware for closet door repair	\$68.87
Broken thermostat	\$20.99
Broken baseboard heater	\$81.71
Paint costs	\$417.01
Locksmith charge	\$164.26
Final cleaning	\$296.30
Removal/recycling of abandoned prop.	\$808.75
Portable storage unit	\$407.05
Landlord's labour	\$1680.00
Landlords' labour (4 people/16 hrs/\$30 hr.	\$1920.00
Loss of rent, 3 mths, due to condition of rental unit	\$3300.00

The landlords confirmed that there was no move-in or move-out condition inspection report for the rental unit.

The landlords' original relevant documentary and photographic evidence included, but was not limited to, handwritten witness statements, receipts for some of the monetary claims, copies of letters from the tenant requesting his personal property and security deposit be returned, noting the landlords' disagreements with the contents of the letters, photographs of the rental unit taken sometime after the tenancy ended, and responses to the tenant's evidence.

The landlords provided the following oral evidence in support of their application, while referring to their documentary and photographic evidence.

Airfare to and from the rental unit-

The landlord submitted that they were required to travel to and from the rental unit for issues with this tenancy caused by the tenant, as they live in another city.

A new stove-

The landlord submitted the tenant damaged the stove in the rental unit, as depicted in their photographs, to such an extent that it required a replacement.

Cleaning of washing machine-

The landlords submitted that the washing machine in the rental unit had to be taken apart at the end of the tenancy in order to properly clean the unit.

Toilet handle replacement-

The landlords submitted there was a high consumption of water used, due to the broken toilet handle, as caused by the tenant.

Paint and repair of drywall-

The landlords submitted that the tenant had cut large holes in the wall and stuffed the holes with blankets, requiring that the landlords hire a professional for repair and painting of the walls.

Hardware for closet door repair-

The landlords submitted that they had to buy hardware to reinstall the closet doors, as they were lying inside the closet at the end of the tenancy.

Broken thermostat/broken baseboard heater-

The landlords submitted that the tenant damaged these two items during the tenancy and were required to be replaced.

Paint costs-

The landlords submitted that this was a further required expense due to the damage to the walls by the tenant during the tenancy.

Locksmith charge-

The landlords submitted that the keys they had to the rental unit did not work and were not operational, so they hired a locksmith to re-key the locks.

Final cleaning-

The landlords submitted that they were required to clean the rental unit after the work had been completed, for which the tenant was responsible.

Removal/recycling of abandoned property/storage units-

The landlords submitted that the tenant abandoned his personal property and left garbage in the rental unit prior to vacating. Due to this, the landlord incurred costs in having the garbage and personal property removed or stored.

Landlord's labour/loss of rent revenue-

The landlord submitted that they were required to spend an extensive number of hours over 3 months to restore the rental unit into a rentable state, due to the condition of the rental unit left by the tenant. As such, they suffered a loss of rent revenue for the 3 months following the tenancy.

The landlords confirmed that as they lived out of town, they were not able to work on the rental unit every day.

Tenant's response-

The tenant provided the following oral evidence in response to the landlords' application, while referring to his documentary and photographic evidence.

The tenant submitted that there was no proof by the landlords of the preoccupancy condition of the rental unit, as there were no inspections of the rental unit by the parties. The tenant submitted further that his photographs were taken at the beginning of the tenancy as a way of documenting for the landlords the uninhabitable state of the rental unit as left by the prior tenants and as a way of having the landlords pay for cleaning costs. The tenant submitted the photographs.

The tenant submitted further that the photographs of the room adjacent show that there was no wall damage and that the reason there was a hole in the wall was for remodeling for the benefit of the upper tenants, to add soundproofing. The tenant denied he should be responsible for the landlords' remodeling costs and that there was no reason he would have wanted to live in a rental unit with holes in the walls. The tenant further questioned when the landlords'

photographs were taken, as they could have been any time after the tenancy ended, and at any stage of the remodeling. The tenant submitted further that the last time he was allowed in the rental unit, the doors were fine.

The tenant submitted further that he was locked out of the rental unit when the landlords illegally took possession of the rental unit, as he had not been served the order of possession for the rental unit, there had been no writ of possession issued by the Supreme Court of British Columbia, and no bailiff hired to have the tenant removed.

The tenant submitted further that items in a rental unit such as a toilet handle are subject to erosion and mechanical failure and that the landlords' depiction of the stove did not accurately reflect its condition.

The tenant submitted that the landlords offered no proof of when the rental unit was re-tenanted.

The tenant's additional relevant evidence included, but was not limited to, written responses to the landlords' application and evidence.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlords have the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As to the landlords' claims against the tenant for damages, cleaning, storage, labour, and removal of the tenant's property, despite the voluminous amount of evidence presented for this application, by both parties, I find a critical component in establishing a claim for damage and the resulting expenses is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, the landlords failed in their obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also considered that I did not have photographic evidence of the state of the rental unit from the landlords showing the state of the rental unit at the beginning of the tenancy and the photographic evidence submitted by the tenant from the beginning of the tenancy shows that the rental unit was not in pristine condition, as alleged by the landlords.

I was persuaded by the tenant's evidence that the landlords failed to obtain a writ of possession from the Supreme Court of British Columbia and hire a bailiff to remove the tenant. I therefore was not convinced that the tenant was able to retrieve his personal property when the locks were changed by the landlords as I was not convinced that the tenant, for instance, would leave electronic equipment voluntarily. As such, I was not convinced that the landlords made arrangements to obtain the keys to the rental unit and a return of keys is most often noted on move-out condition inspection reports.

As I could not rely on the documentary or photographic evidence of the landlord, the other evidence submitted was the disputed verbal testimony of the parties, which I find does not satisfy the landlords' burden of proof on a balance of probabilities, as I did not find one party more credible than the other.

Due to the above, I find the landlords submitted insufficient evidence to support their monetary claim against the tenant for damages, repairs, locksmith charges, removal, and storage. I therefore dismiss the landlords' claim for a new stove, cleaning of washing machine, toilet handle replacement, paint and repair of drywall, hardware for closet door repair, broken thermostat, broken baseboard heater, paint costs, locksmith charge, final cleaning, removal/recycling of abandoned property, portable storage unit, and the landlord's labour, without leave to reapply.

As to the landlords' claim for 3 months of loss of rent revenue due to the state of the rental unit at the end of the tenancy, as I have found that the landlords have not proven that the tenant caused damage to the rental unit, I find the landlords are unable to substantiate their claim against the tenant for loss of rent revenue due to the state of the rental unit. I therefore dismiss their claim for the said loss of rent revenue, without leave to reapply.

As to the landlords' request for travel expenses, I find that the landlords have chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be responsible for the landlords choosing to rent a property in another town apart from where the landlords reside. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to

the rental unit. Therefore, I find that the landlords are not entitled to travel costs, as they are costs which are not named by the Act. I therefore dismiss the landlords' claim for airline travel, without leave to reapply.

As I have dismissed the landlords' claim against the tenant, I dismiss their request to recover the filing fee paid for this application.

Conclusion

For the reasons stated above, the landlords' application has been dismissed.

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: July 3, 2015

Residential Tenancy Branch

