Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

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.

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, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenants confirmed receipt of the amended application contained in the landlords' 34 page evidence package. The tenants confirmed receipt of the hearing documents sent by registered mail on January 23, 2015, which included the evidence and application marked as amended.

The landlord confirmed receipt of the tenants' unnumbered evidence package, given personally on February 24, 2015. The landlord received 29 pages. A number of the documents in the tenants' evidence package were duplicates of those given by the landlord. The landlord confirmed receipt of the tenants' five page response dated February 12, 2015 and a document setting out the forwarding address. The landlord did not receive a copy of a December 13, 2014 letter which was given to the RTB as part of the tenants' evidence submissions. The tenant said the landlord already had a copy of that letter. The Residential Tenancy Branch (RTB) received 38 pages of evidence on February 26, 2015.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $4,835.00 for damage to the unit and cleaning costs?

Is the landlord entitled to compensation in the sum of $79.20 for the cost of entry keys?

May the landlord retain the security deposit?

Background and Evidence

The last tenancy between the parties commenced on February 1, 2014 as a fixed term to January 31, 2016. Rent was $1,400.00 per month, due on the first day of each month. A security deposit was paid on January 4, 2011 as part of a previous tenancy with the landlord. The parties agreed the deposit was transferred to the new tenancy. A copy of the tenancy agreement was supplied as evidence.

The landlord is a commercial management company acting as agent for the owner.

A move-in condition inspection report was completed on January 11, 2014; a copy was supplied as evidence. The parties did not complete a new inspection at the end of the previous tenancy as the tenants remained in the same rental unit when the most recent tenancy commenced.

The rental unit was renovated in 2009; with new flooring installed at that time.

On December 19, 2014 the landlord issued a 10 day Notice to end tenancy for unpaid rent in the sum of $1,400.00. Each party supplied a copy of the Notice as evidence. The Notice was posted to the tenants' door on December 19, 2014. The landlord then issued notice of entry and went into the unit on December 29, 2014. The landlord said the tenants had vacated the unit without any notice. The landlord posted a notice of inspection for the next day and completed an inspection report on December 30, 2014.

The tenants submit they received the10 day Notice to end tenancy on February 10, 2015 as part of the landlords' hearing documents.

A copy of a January 6, 2015 email to the tenants sent by the landlord maintenance coordinator requested the tenants forwarding address. The tenants were informed that the cleaning and maintenance had been completed and the landlord wished to process the refund of the deposit. This email predates invoices supplied for carpet cleaning and flooring.

The tenants responded to the landlord, that the rental unit address could be used as the forwarding address.

On January 7, 2015 the landlord confirmed via email that they were to use the rental unit address and asked the tenants to contact her if they had any questions.

On January 20, 2015 the landlord applied for dispute resolution claiming against the security deposit.

The landlord had made the following claim:

Cleaning	425.00
Carpet cleaning	210.00
Floor replacement	2,885.00
Access fob replacement	79.20
December 2014 rent	1,400.00
TOTAL	$4,999.20

The landlord said the unit was dirty and had not been cleaned. A January 1, 2015 invoice in the sum of $415.00 was supplied as evidence of 17 hours of cleaning and rubbish removal. The inspection report indicated that floors and walls required cleaning.

The bedrooms were carpeted. On January 8, 2015 the carpets were professionally cleaned. The invoice supplied as evidence recorded that the carpets were "very dirty and stained." The work was completed on January 7, 2015.

The landlord said that the laminate flooring was damaged by a pet. Urine caused the flooring to bubble. A Visual Inspection Report completed by the landlord in November 2014 was supplied as evidence. All areas of the unit were marked as checked. The report noted that there was a dog bone on the patio but no signs of a dog. The report mentioned that the laminate flooring in the living room was "still swelling from moisture".

The landlord provided a copy of a January 15, 2015 invoice in the sum of $2,885.00 to replace the laminate in the main living area and rugs in bedrooms as the result of pet damage.

The landlord supplied a copy of a Credit/Invoice document dated January 8, 2015, in the sum of $79.20. The landlord said this was a record that indicated the tenants' security deposit should cover the cost of one garage door opener and two key fobs totalling $79.20 that had not been returned by the tenants.

The landlord has claimed compensation for unpaid December 2014 rent in the sum of $1,400.00.

The tenants said that on December 13, 2014 they delivered a letter to the landlord's office. A copy of the letter was provided as evidence to the RTB, but not the landlord. The letter was entitled "Breach of a Material Form."

During the hearing the landlord agreed to try to locate a copy of the tenant's December 13, 2014 letter. The landlord left the hearing for several minutes and returned with a copy of the letter which she agreed to reference during the hearing. Upon re-entering the hearing the landlord said that the letter was marked as having been received on December 29, 2014; it was found posted to the landlords' office door.

The tenants said they did not pay December 2014 rent as the landlord had refused to make repairs to the unit. The December 13, 2014 letter was delivered to the landlords' office on that date. The tenants then vacated three days later and handed in the key fobs and garage door opener and were given the credit notice for return of the keys. The tenants referenced the January 8, 2015 document as proof they had returned the keys. The landlord said that document was used as a charge against the owner of the unit; the owners` name appeared on the form.

The letter issued by the tenants on December 13, 2014 outlined a number of issues that had not been addressed by the landlord during the tenancy. Light bulbs were not functional, the fireplace was causing a rattling sound, the floor was buckling, and vertical blinds were malfunctioning and that repeated requests for repair made to the staff resulted in the property owner denying repairs. The tenants inform the landlord they would vacate within three days.

The tenants stated they were not invited to complete an inspection of the unit at the end of the tenancy. The copy of the inspection report supplied by the tenants was legible; the copy given by the landlord was not. The tenants' copy, Part V includes comments written by the landlord, including:

> *"fix laminate floor in living room, clean carpets or fix or replace?, cleaning needed for tenant-ready"*

The inspection report indicates cleaning was required in the entry, a sticky mark in the bathroom, cabinets in the bathroom needed cleaning and another entry, all window frames and sills and the balcony were dirty. The majority of comments recorded by the landlord on the report were issues of repairs required throughout the unit as the result of scuffs and nail holes.

The tenants said the unit was only 1,000 square feet in size and it would be impossible to spend the equivalent of $60.00 per square foot. The tenants said that if the carpets and flooring needed replacement there should not also be a cost for cleaning those areas. The landlord should not be able to claim for both costs. The tenants did clean the unit the day after they vacated and agree that one carpet was dirty.

There was no dispute that the tenants obtained a puppy in June 2014. The dog used "pee pads" when required. The pads were placed in one location on the floor. The laminate flooring had begun to buckle one year prior to the end of the tenancy. The tenants said that three other units in the complex had the same issue. The Visual Inspection Report issued in November 2014 referenced moisture on the floor, not urine.

The tenants' dog did not urinate on the floor. When the landlord was in the unit in November he said that the tenants' dog was causing this damage, so they moved the tenants' chesterfield and could see the floor was buckling under the furniture. The tenant said the floor swelling could not have been caused by the pet as the area under the chesterfield was inaccessible.

The tenants said the landlord had taken pictures of the flooring and the staff viewed the unit every three months and saw the damage and that photos were taken by the tenants. The landlord also eventually took pictures of the flooring but nothing was done to repair the flooring. Neither party supplied any photos of the flooring as evidence.

The tenants said that the January 8, 2015 Credit/Invoice document was evidence that they had returned the key fobs and garage door opener. The tenants also said that they had cleaned the unit on December 17, 2015 and that they then handed in the keys. On January 22, 2015 the tenants emailed the landlord to remind her that they had returned the keys and garage door opener that past Monday, January 19, 2015. The envelope had the landlords' name, C.L.R. on it. The tenants asked for confirmation the keys had been received. A response to that email was not supplied by the tenants. On January 23, 2015 the landlord sent the hearing documents to the tenants.

An email sent to the landlord by the tenants on February 4, 2015 mentioned a January 7, 2015 email from the landlord that had promised copies of invoices. The tenant reminded the landlord of the obligation to return the deposit and that they had had not received any invoices.

The tenants were at the rental building recently and told by people living there that no repairs had been completed to his old unit. The tenants do not believe the work was completed and want access to the unit so that they can see the work was performed.

The tenants' written submission requested compensation in the sum of $5,000.00. The tenants have not submitted an application for dispute resolution, setting out a claim.

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 and proof that the party took all reasonable measures to mitigate their loss.

I have considered how the tenancy ended and if the tenants complied with section 45(3) of the Act, which provides:

> *(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the*

> *service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*
>
> (Emphasis added)

The tenants did not supply any evidence of written notice issued to the landlord requesting the landlord comply with a material term of the tenancy agreement. In the absence of such communication I find that the letter dated December 13, 2014 was premature and insufficient to end the fixed term tenancy agreement.

I find, pursuant to section 44(f) of the Act that the tenancy ended on December 29, 2015, the effective date of the Notice and the date the landlord confirmed entry to the unit. The landlord testified the unit had been vacated by that date.

Even if the tenants had vacated on December 16, 2015 section 26(1) of the Act requires a tenant to pay rent when it is due, whether the landlord has complied with the Act or not. Therefore, I find that the landlord is entitled to compensation in the sum of $1,400.00 for unpaid rent to December 29, 2015 and loss of rent revenue from December 30 to 31, 2014.

The Act requires a landlord to give a tenant at least two opportunities to complete a final inspection; the final opportunity must be in writing. The landlord had issued a Notice ending tenancy with an effective date of December 29, 2015. The landlord did not post notice of the inspection until December 29, 2015, the date the tenancy was to end. However, if the tenants had vacated as they say they did, on December 16, 2015, they would not have received notice of inspection, unless it had been given prior to December 16, 2015. The landlord had no reason to do so as the Notice ending tenancy had yet to be issued.

Therefore, I find that service of notice of the inspection to the rental unit would have failed; although the landlord did attempt to comply with the Act and, as a result I find did not extinguish the right to claim against the deposit.

Section 37(2) of the Act provides:

> *(2) When a tenant vacates a rental unit, the tenant must*
>
> > *(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
> > *(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property*

From the evidence before me I find that the rental unit did require some cleaning. I have relied on the condition inspection report to assess the amount of cleaning against the 17 hours claimed by the landlord. I find that the cleaning completed not only took

into account the areas the tenants had not cleaned but additional cleaning to prepare the unit for a new tenant. I based this assessment on comments contained in the inspection report Therefore I find that the landlord is entitled to a reduced sum of $100.00 for cleaning; the balance is dismissed.

The inspection report completed by the landlord indicated that there was some uncertainty if the carpets should be cleaned, fixed or replaced. I find that the attempt to clean the carpets before replacement was reasonable. If the carpets that were assessed as very dirty and stained had come clean, replacement would have been avoided. Therefore, I find that the tenants are responsible for the carpet cleaning costs as claimed.

The invoice supplied as evidence did not give any breakdown of the cost for carpet and laminate. A single amount was charged for all flooring replacement, labour and materials, plus tax. In the absence of a detailed invoice I find that the landlord is entitled to compensation in the sum of $300.00 for carpet replacement and installation. This takes into account the damage I find was caused by the tenants and depreciation of the five year old carpets.

From the evidence before me I am not convinced that the tenants were responsible for damage to the laminate flooring. The landlord was aware of this damage in November 2014. No warning was issued to the tenants or request for repair made. If the landlord believed a pet was causing damage it would have been reasonable to issue a warning to the tenants. The assessment completed by the landlord indicated that there was moisture. If the landlord believed the floor was damaged by urine it seems inconsistent to have recorded the problem as one of “moisture.”

In the absence of convincing evidence that the tenants caused damage to the flooring I find, on the balance of probabilities, I find that the landlord has failed to prove damage was caused by the tenants’ pet. Therefore, I find that the claim for laminate flooring is dismissed.

I found the tenants testimony in relation return of the keys inconsistent. The tenants said they cleaned the unit on December 17, 2014 and then gave the keys to the landlord. The tenants’ email sent on January 22, 2015 indicated they had taken the keys in on January 19, 2015 and the invoice issued by the landlord which the tenant say is proof they returned the keys was issued on January 8, 2015. Therefore, the tenants’ testimony leads me to find that the keys were not returned and that the landlord is entitled to compensation as claimed.

I have rejected the tenants’ suggestion that the landlord has committed fraud by refusing to allow the tenants to inspect the rental unit. I have made my assessment of the claim based on the evidence before me.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning	425.00	100.00
Carpet cleaning	210.00	210.00
Floor/carpet replacement	2,885.00	300.00 carpet
Access fob replacement	79.20	79.20
December 2014 rent	1,400.00	1,400.00
TOTAL	4,999.20	$2,089.20

As the application has merit I find the landlord is entitled to recover the $50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $750.00, in partial satisfaction of the monetary claim. No interest has accrued.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,389.20. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 $2,089.20; the balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: July 30, 2015

Residential Tenancy Branch