Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Preliminary Issues

The Landlord filed their application for Dispute Resolution seeking monetary compensation for $929.00. The Landlord wrote the following in the Details of the Dispute section of their application:

> *Tenant moved out of unit, did not do inspection with staff. Landlord is requesting to retain the security deposit ($388.27) and a monetary order for move out charges:*
> *Removal of rubbish/debris - $255.00*
> *Cleaning and yard clean up unit - $344.00 (cleaning unit $144/yard $200.00)*
> *2nd coat of paint (red and brown walls) - $180.00*
> *Lock change - $150.00*
>
> [Reproduced as written]

In the Landlord's August 10, 2015 evidence submission they included a list of additional items sought as well as copies of invoices for items and amounts not listed on their original application.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Landlord did not file an amended application and simply listed the additional items in their evidence such as carpet cleaning. Accordingly, I declined to hear matters which involved an amount not claimed or listed on the original application. Therefore, the remaining items submitted in their evidence are dismissed, without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 6, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by an agent for the Landlord (herein after referred to as Landlord) and one of the two named respondent Tenants who affirmed that he would be representing both Tenants in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation for damages?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a written month to month tenancy that began on January 1, 2002.The Tenants submitted one month's notice to end their tenancy and vacated the rental unit sometime on or before November 30, 2014. At the beginning of the tenancy rent was payable on the first of each month in the amount of $750.00 and rent was subsequently raised up to $1,008.00 per month.

Both parties were represented and signed the move in condition inspection report form on January 3, 2002. The inspection was conducted after the Tenants took possession on January 1, 2002, cleaned the unit, and moved their possessions into the unit. The move in condition report included, among other things, the following statement:

Tenant said they spent 20 hrs cleaning. Down Stairs Carpet has a smell.
[Reproduced as written]

The move out form was completed and signed by the Landlord on December 2, 2014 in absence of the Tenants. The Landlord submitted that they had confirmation from the Tenants that they would be returning to conduct the inspection; however, no one showed up at the arranged time. That confirmation was not submitted into evidence.

The Landlord received the Tenants' forwarding address in writing on January 22, 2015 and filed their application for dispute resolution on February 6, 2015; within in the required 15 day period.

The Landlord argued that the rental unit was left dirty, painted dark colors, with some damage, and with debris that had to be removed at the end of the tenancy. They submitted into evidence several photographs of the rental unit, invoices for work performed, and a copy of the condition report form.

The Landlord seeks to recover $929.00 which is the total charge back amount they wish to recover from the Tenants and consists of the following:

1) $225.00 rubbish / debris removal which included labour and landfill fees;
2) $144.00 cleaning costs inside unit
3) $200.00 yard cleanup costs
4) $180.00 for the second coat of paint as the Tenants left the unit painted with dark colors instead of the standard neutral colors
5) $150.00 to change the locks as no keys were left behind and the deadbolt was not in working order.

The Tenant testified that the unit was not cleaned prior to their move in, as noted on the move in condition report, so they did not clean it when they moved out. He argued that the yard was in better condition when he left than what it was when he first moved into the unit. The Tenant acknowledged that they left debris left behind as displayed in the Landlord's photographs.

The Tenant disputed the claim for painting and asserted that the walls were painted dark colors when they moved in. He submitted that they were given permission to paint the kitchen walls so they decided to install a chair rail and paint the upper half of the walls a lighter color to break up the existing dark brown walls. He stated the rental unit was never painted by the Landlord during their twelve year tenancy and argued they should not have to pay to repaint it.

The Tenant confirmed that no keys were returned to the Landlord at the end of the tenancy. He argued that the keys were not returned because the locks did not work.

The Tenant argued that none of the Landlord's employees came to see them when they were moving out at the end of November 2014 and they received no notice of a scheduled move out inspection. He asserted that when he went to the Landlord's office on December 5, 2014 he was handed a copy of the move in / move out condition sheet. He stated that he volunteered his security deposit to the Landlord during that December 5, 2014 meeting as compensation for the cleaning.

In closing, the Landlord submitted that despite her not being present at the move in inspection, their staff normally indicated on the move in report form if walls were painted a different color at the start of the tenancy. She noted that there was no indication of wall colors listed on the Tenants' move in report.

The Tenant argued that this rental unit had a very large waiting list and the units were being offered in an "as is condition" at the time they accepted their unit. Everything was rushed to accept the unit and they had no opportunity to dispute anything at that time because it was basically "you take it as is or we will give it to the next person in line". He argued that they needed the condition of the rental unit documented which is why they noted on the top of the move in form about them cleaning the unit for 20 hours.

Analysis

The *Residential Tenancy Act* (the *Act),* the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

> 7. Liability for not complying with this Act or a tenancy agreement
>
> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32 (3) of the Act provides that a tenant of a rental unit 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Policy Guideline 40 provides that the normal useful life of interior painting is 4 years.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Notwithstanding the evidence that the Tenants spent 20 hours cleaning the rental unit at the beginning of the tenancy, the undisputed evidence was the Tenants left the rental unit dirty, scattered with debris, with broken locks and without returning the keys at the end of the tenancy. If the Tenants wanted compensation for their time spent cleaning, they ought to have sought that compensation back in 2002 when their tenancy first began. Therefore, I conclude the Tenants breached sections 32 and 37 of the *Act.*

Based on the above I grant the Landlords request for: $225.00 for rubbish / debris removal; plus $144.00 cleaning costs for inside the unit; plus $200.00 yard cleanup costs; and $150.00 to change the locks; for a total award of **$719.00,** pursuant to section 67 of the *Act.*

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

After consideration of the Landlord’s submission that she was not present at the time the move in condition report was completed, the Tenant’s disputed testimony, and in absence of photographs of the rental unit at the start of the tenancy, I find the Landlord

submitted insufficient evidence that the rental unit had been painted neutral colors at the start of this tenancy. Furthermore, the normal useful life of interior paint is 4 years, as per Policy Guideline 40, and the Landlord did not paint this rental unit during this entire 12 year tenancy. Accordingly, I find there was insufficient evidence to prove the Landlord's claim for a loss for interior paint and the claim is dismissed, without leave to reapply.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order –This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages / Cleaning	$719.00
Filing Fee	50.00
SUBTOTAL	$769.00
LESS: Security Deposit $375.00 + Interest 0.00	-375.00
Offset amount due to the Landlord	**$394.00**

Conclusion

The Landlord has primarily succeeded with their application and was awarded monetary compensation of $769.00 which was offset against the Tenants' security deposit of $375.00 leaving a balance owed to the Landlord of **$394.00**.

The Landlord has been issued a Monetary Order in the amount of **$394.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: September 02, 2015

Residential Tenancy Branch