Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF (Landlord's Application)
MNSD, FF (Tenant's Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution the Landlord requested a Monetary Order for damage to the rental unit and to recover the filing fee. The Tenants sought return of their security deposit and recovery of the filing fee.

Both parties were represented by agents at the hearing. The Landlord's father E.C. acted as her agent and the Tenants' sister, M.G.X. acted as their agent. For the purposes of this hearing I will refer to them simply as "Landlord" and "Tenant." The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Are the Tenants entitled to monetary compensation from the Landlord?

3. What should happen with the Tenants' security deposit?

4. Should either party recover the filing fee?

Background and Evidence

The Landlord provided the following background information regarding the tenancy: the tenancy began on June 1, 2013 for a fixed two year term; monthly rent was payable in the amount of $1,800.00 and the Tenants paid a $900.00 security deposit.

The Landlord confirmed that the move out condition inspection report was not done in accordance with the *Residential Tenancy Act* or the *Residential Tenancy Regulation* as he did not give the Tenants two opportunities to conduct the inspections as required.

The Landlord confirmed the tenancy ended on May 26, 2015 and that he received the Tenants' forwarding address in writing at that time.

The Landlord claimed $4,730.17 in compensation for floor damage allegedly caused by the Tenants' improper use of the washing machine in the rental unit. In support of his claim he introduced a quote from a flooring company called M.F. & I. for $4,730.17. He stated that the cause of the water damage was Tenants allowed powdered detergent to accumulate in the washing machine to such an extent that the water leaked from the machine onto the floors.

The Landlord's advocate claimed the floors and the washing machine had been replaced prior to the start of the tenancy. He further claimed that the flooring in the rental unit was continuous such that the damage caused by the washing machine resulted in all the flooring in the rental unit needing to be replaced.

In support of the Landlord's claim was an invoice from W. Electrical and Mechanical Services dated April 1, 2015 which reads as follows:

> "*washing machine leaking repair*
> - *Open machine cover to investigate this leaking source + run the m/c in regular cycle.*
> - *Water leaking out from the soup trap over flow to the ground.*
> - *Lints + washing powder pluged the the slots, water not fully can to the tank.*
> - *Clear dirts + lints and enlarge the soap trap slots.*
>
> [Reproduced as Written]

During the hearing I confirmed that the Landlord had not made a claim to retain the security deposit. He stated that he thought he had done so on his application.

The Tenants acknowledge that the floors were damaged when they moved out, but deny being responsible for the damage.

The Tenants' advocate testified that in November of 2014 the Tenants' aunt noticed the floor was expanding and informed the Landlord immediately. The Tenants' advocate stated that the Landlord then communicated with the building manager in December of 2014.

The Tenants' advocate testified that at that time the Tenants were unaware of the water leakage, their aunt's observations, or the Landlord's discussions with the building manager and only became aware of this at a later date. In any case, the Tenants' advocate testified that to the Tenants' knowledge there was no follow up by the Landlord or the building manager at this time.

The Tenants' advocate testified that in March of 2015 the Tenants noticed water leaking from the washing machine at which time they immediately informed the Landlord. According to the Tenants' advocate the washing machine was repaired "right away".

The Tenant's advocate testified that she was at the rental unit at the time the repairman attended and he informed her that the reason for the leak was that a small part had "loosened up" causing lint accumulation. She asked the repairman for the report and he refused to provide it to her stating that it was the property of the Landlord. She stated that the first time she read the report was after the tenancy had ended and the Landlord made her claim.

The Tenant's advocate further stated that she spoke directly to the Landlord about the leak and the Landlord also confirmed that the cause of the water leak was a "plugged filter" which caused the drying out of detergent. Further, the Tenant's advocate stated that when she asked the Landlord why the Landlord didn't just make an insurance claim, the Landlord stated that she was not able to make another claim as their insurance company had just replaced all the flooring as a result of a leak in the same washing machine.

The Tenants' advocate submitted that the Landlord and building manager failed to take adequate steps in November and December 2014 to address the water leakage which was the cause of the expanding floor. She further submitted that the Tenants, when they became aware of the leak in the washing machine, immediately informed the Landlord after which the machine was repaired. Finally, she submitted that in any case, the cause of the leak was a faulty washing machine which was the property of the Landlord and therefore not the responsibility of the Tenants.

The Tenants' advocate further submitted that at the time the tenancy began the Tenants and Landlord agreed that the Landlord could attend the rental unit regularly to check on its condition as the Tenants expected to be out of the country for the majority of the tenancy. She stated that had the Landlord regularly checked on the rental unit, she may have noticed the damaged flooring sooner.

In brief reply the Landlord's advocate confirmed that a previous insurance claim had been made as a result of the leaking washing machine and damaged flooring. He stated that as a result of this claim the Landlord purchased a new washing machine and replaced the flooring.

When asked to respond to the Tenants' advocate's claim that the cause of the leak was a missing piece, the Landlord's advocate responded that he wasn't there at the time and couldn't

say anything about the cause of the leak save and except for what was contained in the invoice from the repairman.

When I offered the Landlord's advocate the opportunity to call the repairman as a witness to clarify the cause of the leak, the Landlord stated that he would have to speak to the repairman first, and further stated that he did not want to call him without having the opportunity to discuss his evidence with him first.

Analysis

I will first deal with the Tenant's claim for return of their security deposit.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

In any case, by failing to perform an outgoing condition inspection report the Landlord has extinguished her right to claim against the security deposit, pursuant to section 36(2) of the Act.

The Landlord has also breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as the written agreement of the Tenants or an Order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Accordingly, the Tenants are entitled to $1,800.00 representing double the $900.00 security deposit paid.

I will now turn to the Landlord's claim for compensation for water damage to the rental unit floor which she claims was caused by the Tenants.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove her claim.

It is unfortunate that neither party personally attended the hearing. As a result, their respective advocates gave testimony which for the most part, was hearsay. The repairman was similarly not at the hearing such that he was not able to clarify his invoice or be subject to cross examination; consequently, his invoice was also hearsay.

The only first-hand testimony provided at the hearing was that of the Tenants' advocate. She gave testimony with respect to her discussions with the repairman and the Landlord regarding the cause of the washing machine water leak. She testified that both indicate the washing machine was faulty. While hearsay evidence is admissible in these hearings, the weight given to first-hand testimony is greater as the witness is subject to cross examination from the other party. Further, a witness is able to clarify any documentary evidence submitted on their behalf. In all, the first-hand testimony of the Tenants' advocate supports a finding that the source of the water leak was a faulty washing machine.

Accordingly, while both parties' advocates agreed that the flooring was damaged due to water, I am unable to find that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement. As such, I dismiss the Landlord's claim for compensation in its entirety.

The Tenants, having been substantially successful, are entitled to recover their filing fee and are therefore granted a Monetary Order for the amount of **$1,850.00.** The Tenants must serve the Landlord with the Monetary Order. Should the Landlord not pay, the Tenants may file the Monetary Order in the B.C. Provincial Court (Small Claims Division) and may enforce the Order as an Order of that Court.

Conclusion

The Landlord breached section 38 of the *Act*, entitling the Tenants to return of double their security deposit. The Landlord failed to prove the water damage was a result of the Tenants' actions or neglect. The Landlord's claim is dismissed in its entirety. The Tenants are entitled to recover their filing fee and are granted a Monetary Order in the amount of **$1,850.00.**

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: December 9, 2015

Residential Tenancy Branch