Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage, for a monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 21, 2015 the Application for Dispute Resolution, the Notice of Hearing, and three pages of evidence the Landlord submitted to the Residential Tenancy Branch on July 06, 2015 were sent to both Tenants named on the Application for Dispute Resolution, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act*)*;* however the Tenants did not appear at the hearing on January 04, 2016.

The Agent for the Tenant stated that she lived in the rental unit with the Tenants named on the Application for Dispute Resolution; that both named Tenants received the Application for Dispute Resolution by registered mail; and that she is acting on their behalf at these proceedings. In the absence of evidence to the contrary I find that the Agent for the Tenants is representing the Tenants at these proceedings.

On December 17, 2015 the Landlord submitted 63 pages of evidence and one CD to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant with the initials "M.H." on December 15, 2015. The Agent for the Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Agent for the Tenants stated that she did not need additional time to consider the evidence served on December 15, 2015 and she declined the opportunity for an adjournment.

On December 29, 2015 the Tenants submitted 80pages of evidence and a USB device to the Residential Tenancy Branch. The Agent for the Tenants stated that the documents and a CD were personally delivered to the Landlord's service address on December 29, 2015. The Landlord acknowledged receipt of this evidence on January 04, 2016 and it was accepted as evidence for these proceedings.

The parties were advised that the evidence submitted by the Tenants on December 29, 2015 was being accepted in spite of the date it was served, as the Landlord delayed serving the bulk of the Landlord's evidence until December 15, 2015. I therefore find it reasonable and fair to provide the Tenants with time to respond to that evidence, even though the evidence was not submitted in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

The Landlord stated that she did not need additional time to consider the evidence she received on January 04, 2016 and she declined the opportunity for an adjournment.

The parties were advised that I was not in possession of the evidence submitted by the Tenants on December 29, 2015, although I had been informed evidence was being forwarded to me. As the hearing progressed on January 04, 2016 it became readily apparent that I needed to be in possession of the Tenants' evidence to fully understand the issues being discussed, at which point I determined that the hearing should be adjourned.

The hearing on January 04, 2016 was adjourned. The hearing was reconvened on March 08, 2016 and was concluded on that date.

Prior to the hearing being adjourned on January 04, 2016 and in my interim decision of January 05, 2016 the Tenants were advised that the Tenants must provide the Residential Tenancy Branch with a copy of the CD that was served to the Landlord on December 29, 2015. This is to ensure that I have an exact duplicate of the evidence served to the Landlord, as the Tenants had served a USB device to the Residential Tenancy Branch, rather than a CD.

On January 15, 2016 the Tenants submitted 8 pages of evidence and a CD to the Residential Tenancy Branch. As the Tenants had been directed to submit the CD to the Residential Tenancy Branch, which item was accepted as evidence for these proceedings.

As neither party was given leave to submit additional evidence after January 04, 2016, the 8 pages of evidence the Tenants submitted on January 15, 2016 were not accepted as evidence for these proceedings.

All parties present at the hearings were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid utilities, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Agent for the Tenant agree that:

- the tenancy began on August 15, 2014;
- the tenancy ended on June 30, 2015;
- the Tenants agreed to pay monthly rent of $1,650.00 by the first day of each month;
- the Tenants paid a security deposit of $825.00;
- the Tenants paid a pet damage deposit of $250.00;
- the Landlord did not schedule a time to complete a condition inspection report at the beginning of the tenancy;
- the Tenants left a forwarding address, in writing, inside the house on June 30, 2015;
- the Tenants did not authorize the Landlord to retain any portion of the pet damage deposit or security deposit; and
- The Landlord did not return any portion of the pet damage deposit or security deposit.

The Landlord is seeking compensation, in the amount of $2,000.00, for repairing the floor in the rental unit, which the Landlord contends was scratched in numerous locations during the tenancy. The Landlord submitted several photographs of the floor, which the Landlord stated were taken at the end of the tenancy, which show the flooring was scratched in numerous places.

The Agent for the Tenants stated that all of the scratches seen in those photographs were present at the start of the tenancy.

The Landlord stated that the floors were installed shortly before the start of this tenancy. The Landlord submitted a sales order from a flooring company, dated June 08, 2014, which indicates the cost of supplying and installing laminate flooring is $4,887.75. The Landlord stated that this sales order is a receipt for flooring that was installed on, or about, June 08, 2014.

The Agent for the Tenants alleges that this must be a fraudulent sales order, as the flooring was not new when the Tenants moved into the rental unit on August 15, 2014.

The Landlord submitted a document, dated November 01, 2014, which appears to be signed by the Landlord and the Tenant with the initials “J.J.”. In this letter the Tenant signing the letter acknowledged that there were no scratches on the floor when the unit was inspected on October 24, 2014. The Tenant with the initials “J.J.” stated that he signed this document without reading it.

The Landlord submitted an email from a flooring company, dated July 28, 2015, in which the author estimates it will cost $2,000.00 to repair the floor.

The Tenants submitted a series of emails the parties exchanged on October 10, 2014, which the Agent for the Tenant contends helps to establish that the flooring in the rental unit was scratched at the start of the tenancy. The Agent for the Landlord acknowledged that there is nothing in these emails that specifically refer to the condition of the floor.

The Landlord stated that many areas of the rental unit were not in good condition at the start of the tenancy, which she acknowledges in her email of October 10, 2014. She stated that the flooring was not one of the areas in poor condition at the start of the tenancy.

The Agent for the Tenants stated that one of the digital images on the CD the Tenants submitted in evidence demonstrates the scratches that existed in many areas of the laminate flooring at the end of the tenancy. The Landlord acknowledged there may have been one or two minor scratches on the floor at the start of the tenancy but nothing in comparison to the damage that existed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $200.00, for the cost of disposing of property left at the rental unit.

The Landlord stated that she hired a company to dispose of furniture/property that had been left behind by a previous occupant of the residential complex and that the company was in the process of removing the items when the Tenants’ property was being moved into the rental unit. She stated that a female, who the Landlord believes is one of the Tenant’s mothers, asked if she could keep some of the items being thrown away and, as a result of that request, several items were left at the residential complex.

The Landlord stated that she subsequently learned this female did not want the items that had been left behind so she had to pay the company to return to the residential complex and to dispose of the items left behind after the first load. The Landlord is seeking compensation for the cost of the second load.

The Agent for the Tenants stated that when the Tenants were moving into the rental unit the Landlord was in the process of disposing of items left behind by a previous occupant of the residential complex. She stated that her aunt asked the Landlord if she could keep a dresser that was being thrown away and that the dresser and other items were not removed by the disposal company in their first load. She stated that when the

disposal company returned for a second load the Landlord was advised that her aunt no longer wanted the dresser.

The Landlord is seeking compensation, in the amount of $231.52, for the cost of hiring a pest control company.

In support of this claim the Landlord stated that:

- there has never been a problem with mice prior to this tenancy;
- there has not been a problem with mice after the tenancy ended;
- the Tenants reported finding evidence of mice in the rental unit, although she cannot recall the date of the report;
- the Tenants showed evidence of mouse droppings in a dresser, but no other evidence of mice;
- she called a pest control company, which left traps and poison;
- the pest control company did not find any mouse droppings nor did they catch any mice inside the unit;
- the pest control company found mouse droppings outside the rental unit; and
- the pest control company found possible entry points for mice.

In response to this claim the Agent for the Tenants stated that:

- before the Tenants had unloaded their property they saw evidence of rodents in the rental unit;
- during the early part of the tenancy they observed one mouse and one rat inside the rental unit;
- the problem was reported to the Landlord on August 23, 2014; and
- the Landlord sent a pest control company to the rental unit approximately one month after the report.

The Landlord is seeking $127.37 for hydro costs and $92.99 for gas costs.

The Landlord stated that the Tenants agreed to pay 2/3 of all hydro and gas bills during their tenancy. The Agent for the Tenants said the Tenants agreed to pay 60% of all hydro and gas bills. Neither party could refer me to documentary evidence that corroborates their testimony.

The Landlord submitted a hydro bill for $151.31, which is for the period between May 28, 2015 and July 27, 2015. The parties agree the Tenants have not yet paid any portion of this bill.

The Landlord submitted an electronic hydro bill for $51.71 which appears to be for the billing period prior to the $151.31 bill. The parties agree the Tenants have not yet paid any portion of this bill.

The Landlord submitted a gas bill for $53.63, which is for the period between May 15, 2015 and June 02, 2015. The parties agree the Tenants have not yet paid any portion of this bill.

The Landlord submitted a gas bill for $39.36, which is for the period between June 02, 2015 and July 02, 2015. The parties agree the Tenants have not yet paid any portion of this bill.

The Landlord is seeking $200.00 to replace a washing machine.

The Landlord stated that there is a washing machine in the residential complex that was shared by the Tenants and the occupant of the lower unit; that the washing machine was working at the start of the tenancy; and that the washing machine would not spin at the end of the tenancy.

The Landlord is seeking compensation of $336.88 for painting the rental unit.

The Landlord stated that the Tenants moved into the rental unit one or two weeks early, with the understanding they would compensate the Landlord by painting the unit. She stated that only the kitchen cabinets were painted.

The Agent for the Tenants stated that the Tenants moved some property into the rental unit prior to the start of the tenancy but there was never an agreement to paint the unit prior to the start of the tenancy. She stated that after the tenancy began the Landlord gave the Tenants permission to paint and that the Tenants did paint some areas of the unit.

The Landlord is seeking compensation of $7.35 for replacing two door hinges. The Landlord submitted a receipt to show $7.35 was paid to purchase hinges.

The Landlord stated that the door to the room where the Tenants had a pool table had been removed and the hinges were missing at the end of the tenancy.

The Agent for the Tenants stated that the Tenants removed the door to move the pool table and she thinks the hinges were left in the unit, although she is not certain.

The Landlord is seeking compensation of $269.64 for cleaning the rental unit.

The Landlord stated that the rental unit required significant cleaning at the end of the tenancy. She stated that the digital evidence she submitted accurately reflects the condition of the rental unit at the end of the tenancy. She stated that the digital images were taken between July 01, 2015 and July 19, 2016.

The Agent for the Tenants and the Tenant both stated they were not present at the end of the tenancy so they do not know if digital images accurately reflect the condition of the rental unit at the end of the tenancy. The Agent for the Tenants stated that her

brother took photographs of the condition of the rental unit at the end of the tenancy; that she has viewed those photographs and believes they show the unit was left in clean condition; and that the Tenant did not submit copies of those photographs as evidence.

The Landlord submitted receipts to show that she incurred costs of $269.64 for cleaning.

The Landlord is seeking $495.00 for the cost of hiring a property manager. She stated that after having difficulty dealing with the Tenants she opted to hire a property manager.

The Landlord is seeking $500.00 in additional pet deposits for two unauthorized pets, which the Tenants obtained after the tenancy began.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Landlord and particularly on the document dated November 01, 2014 which appears to be signed by the Landlord and the Tenant with the initials “J.J.”, I find that there were no scratches on the floor when the unit was inspected on October 24, 2014.

Although the Tenant with the initials “J.J.” testified that he did not read the document dated November 01, 2014, I find that testimony highly unlikely, given the limited information in the document. I find this document is far more compelling than any of the evidence submitted by the Tenants.

In adjudicating this matter I have considered the digital images of the rental unit, titled MOVEINPICS, contained on the CD submitted in evidence by the Tenants. Although only very small area of the flooring can be seen in these images, most of the images show the laminate flooring is in good condition, with the exception of one minor scratch near a heat vent.

On the basis of the undisputed evidence, in particular the digital evidence submitted by the Landlord, I find that the floors in the rental unit were badly scratched at the end of the tenancy. I therefore find it reasonable to conclude that the floors were scratched sometime between October 24, 2014 and June 30, 2015. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damaged floors**.** I therefore find that the Landlord is entitled to compensation for repairing the floors.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

Residential Tenancy Policy Guidelines estimate the life expectancy of tile floors to be ten years and the life expectancy of hardwood floors to be 20 years, however it does not estimate the life expectancy of laminate flooring. As laminate flooring is considerably less durable than hardwood flooring, I find it reasonable to estimate the life expectancy of laminate flooring to be ten years.

I accept the Landlord's testimony that the laminate flooring was installed on June 08, 2014. Although the Agent for the Tenant stated that the flooring did not appear new, I accept the Landlord's testimony because she submitted a sales order that corroborates her testimony. I therefore find that the laminate flooring was approximately 20 months old when this tenancy ended and had, therefore, depreciated by approximately 17%.

As the value of the flooring had depreciated by 17%, I find that the Landlord is entitled to 83% of the cost of repairing the floor, which is $1,660.00.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord suffers a loss as the result of the tenant not complying with the *Act.* Even if I accepted the Landlord's evidence that she offered to give abandoned property to a relative of one of the Tenants and that the relative subsequently abandoned that gifted property, I could not find that any of the Tenants are responsible for the costs of disposing of that property.

Any agreement that the Landlord reached with a third party that is not a party to the tenancy agreement is, in my view, entirely separate from the tenancy agreement reached between the Landlord and the Tenants. The Tenants cannot, therefore, be held liable if their relative breaches a term of the agreement the relative has with the Landlord. I therefore dismiss the Landlord's claim for disposing of property left behind by a previous occupant.

On the basis of the testimony of the Agent for the Tenant and in the absence of evidence to the contrary, I find that the Tenants reported a problem with rodents after they observed evidence of rodents. As a result of that report the Landlord incurred the expense of hiring a pest control company.

As the expense of pest control is not in any way related to the Tenants breaching the *Act* I do not have authority, pursuant to section 67 of the *Act*, to order the Tenants to pay for the cost of the pest control. In the absence of evidence to show the Tenants report of rodents was false, I find that they acted responsibly when they reported their

observations and that the Landlord responded appropriately when she hired a pest control company.

The Landlord's submission that the pest control did not catch mice or find evidence of mice inside the unit is irrelevant, as it does not establish the initial reports were false. I therefore dismiss the Landlord's claim for the cost of pest control.

On the basis of the undisputed evidence, I find that the Tenants agreed to pay a portion of hydro and gas costs incurred during the tenancy. As this is the Landlord's claim, she has the burden of proving the details of the agreement.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants agreed to pay 2/3 of the hydro/gas bills, as she has presented no documentary evidence to corroborate that testimony. I therefore find that the Tenants are only obligated to pay the 60% of the hydro/gas bills, which is the amount they contend was agreed upon.

On the basis of the undisputed evidence, I find that the Tenants have not paid any portion of the hydro bill for $151.31. As this bill was for the period between May 28, 2015 and July 27, 2015, which is 61 days, and the Tenants vacated the rental unit on June 30, 2015, I find they are only required to pay their portion 34/61 of this bill, which is $84.34. As the Tenants are required to pay 60% of this bill, I find they owe $50.60 for this bill.

On the basis of the undisputed evidence, I find that the Tenants have not paid any portion of the hydro bill for $51.71. As the Tenants are required to pay 60% of this bill, I find they owe $31.03 for this bill.

On the basis of the undisputed evidence, I find that the Tenants have not paid any portion of the gas bill for $53.63. As the Tenants are required to pay 60% of this bill, I find they owe $38.18 for this bill.

On the basis of the undisputed evidence, I find that the Tenants have not paid any portion of the gas bill for $39.36. As this bill was for the period between June 02, 2015 and July 02, 2015, which is 30 days, and the Tenants vacated the rental unit on June 30, 2015, I find they are only required to pay their portion 28/30 of this bill, which is $36.74. As the Tenants are required to pay 60% of this bill, I find they owe $22.05 for this bill.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants damaged the washing machine. As the washing machine was also used by occupants of a different rental unit, it is possible that the washing machine was damaged by that party. It is also possible that the washing machine simply malfunctioned due to normal wear and tear, for which the Tenants are not responsible to repair. As the Landlord has failed to establish that the Tenants damaged the washing machine, I dismiss the Landlord's claim for repairing the machine.

I find that the Landlord submitted insufficient evidence to establish that the Tenants agreed to paint the rental unit as a term of their tenancy agreement. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenants agreed to paint the rental unit in exchange for moving in early or that refutes the Agent for the Tenant's testimony that the Tenants did not agree to paint the unit prior to the start of the tenancy. As the Landlord has failed to establish that the Tenants were required to paint the rental unit as a term of the tenancy agreement, I dismiss the claim for painting the unit.

On the basis of the testimony I find that a set of door hinges were missing at the end of the tenancy. As the Agent for the Tenants acknowledges that a door was removed and she is not certain whether or not the hinges were left in the unit, I find the Landlord's testimony in regards to this claim is credible.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the hinges in the rental unit. I therefore find the Landlord is entitled to the $7.35 paid to replace the hinges.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the rental unit in reasonably clean condition. In reaching this conclusion I was heavily influenced by the digital images submitted in evidence by the Landlord, as they corroborate the Landlord's testimony that cleaning was required at the end of the tenancy. I find that this evidence is more compelling that the uncorroborated testimony of the Agent for the Tenants.

As the Landlord has established that additional cleaning was required, I grant the Landlord compensation of $269.64 for expenses she incurred for cleaning.

As the expense of hiring a management company is not directly related to the Tenants breaching the *Act* I do not have authority, pursuant to section 67 of the *Act*, to order the Tenants to pay for the cost of those management fees. Although the Landlord always has the right to hire a third party to act on her behalf in relation to this, or any, tenancy, there is nothing in the *Ac*t that entitles her to collect those costs from the Tenants. I therefore dismiss the Landlord's claim for management fees.

A pet damage deposit is something that a landlord is entitled to collect, in some circumstances either at the start of the end of the tenancy. It is not something that can be collected after the end of the tenancy. I therefore dismiss the Landlord's claim for an additional pet damage deposit.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $2,128.85, which is comprised of $1,660.00 for repairing the floor, $81.63 for hydro costs, $60.23 for gas costs, $7.35 for hinges, $269.64 for cleaning, and $50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenants' security deposit and pet damage deposit of $1,075.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount $1,053.85. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: March 12, 2016

Residential Tenancy Branch