Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, OLC, MND, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The landlord has applied requesting compensation for damage to the property and damage or loss under the Act, to retain the security and pet deposits and to recover the filing fee from the tenants.

The tenants applied requesting compensation for the cost of emergency repairs, return of double the security and pet deposits, an order the landlord comply with the Act and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties had the opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, 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

The landlord confirmed receipt of the tenants' cross-application made on January 1, 2016, and evidence. That application and evidence was not before me. The tenants made evidence submissions of 53, one and 66 pages, plus 32 pictures.

The parties were informed that the hearing would proceed, as the bulk of the tenants' application related to return of the security deposit. I explained that if necessary the hearing would reconvene, in order to consider the tenants' application and evidence further.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $5,438.70 for damage to the rental unit?

Are the tenants entitled to compensation in the sum of $110.25 for the cost of a door handle?

May the landlord retain the security and pet deposits?

Are the tenants entitled to return of double the security and pet deposits?

Background and Evidence

The parties confirmed that they had a tenancy which ended in July 2014. A new tenancy agreement was signed, commencing August 1, 2014. The tenancy was a fixed term to July 31, 2015 at which point the term converted to month-to-month. Rent was $2,000.00, due on the first day of each month. The tenants paid a security and pet deposit in the sum of $1,000.00 each. A copy of the tenancy agreement and one page addendum, including two terms, was supplied as evidence.

The addendum included a term:

"Tenant agreed to maintain lawn and gardens."

(Reproduced as written)

A move-in condition inspection report was not completed. The landlord and tenants did walk through the unit at the start of the tenancy.

The landlord issued a two month Notice ending tenancy for landlords' use of the property. The tenants accepted the Notice and vacated on August 31, 2015. The landlord confirmed receipt of the tenants' written forwarding address on September 1, 2015. The landlord applied claiming against the deposits on September 14, 2015. There is no claim for unpaid rent.

The landlord confirmed that the property had been listed for sale in April 2015 and that a sale completed effective September 1, 2015.

The landlord submitted a monetary work sheet setting out a claim for the cost of cleaning, door frame repair, carpet replacement, light bulbs, a fridge shelf, yard maintenance, bark mulch, a door handle, area carpet, shower drain, sprinkler heads, paint, thatching the yard and the addition of lime, plus labour.

When asked if any of these expenses claimed were incurred, the landlord stated that, with the exception of the yard work he had not been able to complete repairs and

cleaning as the property had transferred to new owners. The landlord said that he had submitted the claim in order to be compensated for the loss in value of the home as the result of the failure of the tenants to properly clean and maintain the home and property.

The landlord said he had asked 1.150 million and received 1.085 million as a purchase price. The landlord attributes the lower sale price to the tenants' failure to keep the home to an acceptable standard.

The landlord was at the property in April 2015, at which time he worked on the yard. Invoices issued in April 2015 for bark mulch and compost. The balance of the claim was based on quotes for work that cannot be completed as the property has been sold.

The landlord has claimed $120.95 for the cost of an entry rug that had been left for the tenants' use. The landlord said the rug was used as a dog mat and ruined. The landlord believes the tenants must have damaged the two sprinkler heads with the lawn mower.

The landlord supplied photographs to demonstrate the need for cleaning, light bulbs, replacement of a shower stall drain cover, painting, exterior window cleaning, and shrubs the landlord submits were in need of pruning, missing sprinkler covers, damaged wood door frame, replaced door handle and area rug.

The tenants said that throughout the tenancy they took good care of the home. They replaced a door handle in 2014, prior to the current tenancy. They attempted to assist the landlord in repair of the warrantied handle but the replacement parts supplied by the landlord broke. The tenants then replaced the handle themselves.

The tenants hired a gardening service during the last year; they cut the lawn and weeded. The tenants said that the landlord came to the property in April 2015 to prepare the home for listing. The tenants had their gardener do work in the yard in February and April, 2015. The tenants said they were willing to help the landlord in his efforts to sell the home and wanted to cooperate as best they could.

The landlord and male tenant met on the last day of the tenancy to complete a "walk through." The landlords' son submitted a statement that they left the property to obtain a proper condition inspection report form. The tenant said that landlord used a piece of paper and never offered to have the tenant sign a form. The landlord submitted a copy of a completed move-in/move-out condition inspection report which has not been signed by either tenant. The tenant stated that the landlord explained that he would not be returning the deposits.

The tenants cooperated with the new owners, allowing them to replace the lower level carpeting and prepare for installation of hardwood in the upper level of the home. The carpets were original to the home that was built in 2005.

The tenants spoke to a local realtor that they know and were told that the final sale price obtained by the landlord was five per cent under the asking price and represented fair market value. The tenants were surprised and shocked that the landlord has refused to return the deposits.

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 find that the claim for replacement and cost of the door handle relates to a previous tenancy and that, as such, it is not a matter that can be decided. An application for dispute resolution may consider only a single tenancy; not multiple tenancies. Therefore, I have considered the claims that related to the most current tenancy that ended on August 31, 2015. The parties have leave to reapply in relation to any claim for a previous tenancy.

I have considered the claim for sprinkler heads and the area rug and find that the landlord has failed to prove on the balance of probabilities that the tenants are responsible for those costs. There was no evidence before me that the parties had examined each sprinkler head at the start of the tenancy, to establish that they were all in place. Therefore, I find that the landlord has failed to prove that any negligence of the tenants resulted in the need to purchase two sprinkler heads. I find that the landlord has failed to prove the age of the area rug and that it does not appear to have been rendered unusable. Outside of some hair on the rug, the photo supplied as evidence showed a rug that was serviceable. Therefore, I find that the claim for the sprinkler heads and rug is dismissed.

In relation to the expenditures made in preparation for sale of the home, I find that this is a cost that forms part of regular maintenance. A tenant is not expected to purchase mulch and compost. Residential Tenancy Branch policy #1 suggests a tenant is responsible for regular yard maintenance such as weeding and cutting the lawn. A landlord is normally responsible for pruning. The addendum signed by the parties did not set out details of the yard work. Therefore, as the term is silent on pruning, I find that the term did not require the tenants to complete pruning on the property and that the tenants were required to weed and cut the lawn; which they did. Therefore I find that the claim for all gardening costs claimed by the landlord is dismissed.

The landlord has said that he suffered a loss in the value of the home and, as a result achieved a lower selling price. The landlord has the burden of proving such a claim and brought forward no evidence to support his allegation that the tenants care of the home resulted in a lower sale price. The landlord only provided an opinion that the lower price was the fault of the tenants; what I find wholly insufficient to prove the claim.

From the evidence before me I find that any painting or repair was the result of a need for maintenance and not due to neglect. A landlord is to expect tenants will inflict normal wear and tear on a property and there was no evidence that any damage, outside wear and tear, occurred.

Therefore, I find that the balance of the landlords' claim is dismissed.

Section 38(5) of the Act provides:

> *(5)* ***The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24*** *(2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
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> (Emphasis added)

Pursuant to section 24(2) of the Act, I find that the landlord's right to claim against the deposit was extinguished. The landlord must arrange a move-in condition inspection report and when he failed to do so at the start of the tenancy he extinguished his right to claim against the deposit for damages. He walked through the rental unit with the tenants but did not complete the required report.

Section 38(4) of the Act allows a landlord to retain the deposit if the tenant agrees in writing at the end of the tenancy or an Order is issued allowing the landlord to retain the deposit. Neither situation occurred in this instance.

When the landlord received the tenant's written forwarding address on September 1, 2015, as provided by section 38(1) of the Act, the landlord was required to return both deposits, in full within 15 days. The landlord would then have been at liberty to submit a claim for compensation any time up to two years beyond the end date of the tenancy.

The landlord has extinguished the right to claim against the deposits and did not return the deposits to the tenants by September 16, 2015. Therefore, I find, pursuant to section 38(6) of the Act, that the landlord must pay the tenants double the amount of security and pet deposits.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to recover the $100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order in the sum of $4,100.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlords' claim is dismissed.

The claim for the door handle is dismissed with leave to reapply.

The tenants are entitled to return of double the pet and security deposits.

The tenants are 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: March 30, 2016

Residential Tenancy Branch