Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNDC, MNSD, O, FF
Tenants: MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to and cleaning of the rental unit and residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on August 14, 2013 for a 2 year and 9 day fixed term tenancy beginning on July 22, 2013 for a monthly rent of $1,200.00. The agreement stipulated that rent in the amount of $900.00 was due on the 6th of each month and $300.00 was due on the 7th of each month and that the landlord required a security deposit of $600.00 and a pet damage deposit of $600.00.

The parties agree the tenancy ended and a move out condition inspection was completed on April 20, 2015.

The parties agree the tenants had provided their forwarding address both by email and in writing by registered mail. The tenants submitted that they sent the registered mail on April 30, 2015 and the email on May 3, 2015. The landlords could not confirm the date received but did confirm that these dates seem correct.

The landlords submitted that once they received the tenants' forwarding address they attempted on May 17, 2015 to file an Application for Dispute Resolution online from the Residential Tenancy Branch (Branch) website. The landlords stated they heard nothing else from the tenants and nothing at all from the Branch until they received the tenants' Application and Notice of Hearing documents in December 2015.

The landlords submitted copies of several hardcopy Applications for Dispute Resolution that they had completed. On the second one attempted, the landlords highlighted the requirement to submit the application in person at the Burnaby Branch office or at any Service BC Office with a notation that the process was not convenient because the landlords live outside of BC.

The landlords submitted that she tried again in January 2016 to file an online Application. They stated in their written submission:

> "That the landlord consulted with staff members of the Residential Tenancy Branch regarding the RTB's online application process, and on January 6, 2016 after walking through the online process with an RTB employee, the RTB employee learned that the landlord may have been inadvertently misdirected by the website to a .pdf document instead of being linked to the online application process. The RTB employee suggested the landlord make the arbitrator aware of the errant process.
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> That possibly resulting from the January 6, 2016 discussion with the RTB employee regarding an errant link, and that on the evening of January 7, 2016 through the morning of January 12, 2016, the RTB's webpages relating to the link to 'applying for a dispute resolution' was closed for repairs, and that, coincidentally, upon being available on the internet on January 12, 2016, the RTB website was promoting their 'new and improved' online access to apply for dispute resolution. Why did this online application process need to be improved?
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> That further, relating to the Landlord's conversation with the RTB employee on January 6, 2016, whereby the landlord insisted that there were no instructions available on the website on the evening of May 17, 2015, when the RTB offices are closed, when the landlord needed to refer to instructions for learning the proper way to apply online, and ironically, that effective January 11, 2016, according to the new improved online application process, a set of 'guidelines to applying online for dispute resolution' is linked from the 'applying online' webpage. The guidelines were created according to the documents properties on 10/05/15 – either October 7, 2015 or July 10, 2015 – but two months or five months after the landlord attempted to apply online for the Landlord's Dispute Resolution."

The landlords have submitted a claim for damage to and cleaning of the rental unit and residential property. The landlords have broken their claim down into 3 major components: dog damage; tenant damage; and costs associated with filing this claim and submitting evidence in response to the tenants' claim.

In support of their claim the landlords have submitted copies of the Condition Inspection Report; photographs; estimates; quotes; and invoices.

The landlords claim the following for dog damage:

Description	Amount
Door blind repair/installation	$75.24
Bathtub drain repair – reported by new tenants to landlords November 24, 2015 – dog hair found in drain	$89.25
Furniture cleaning – from start of tenancy – landlord's donated furniture at end of tenancy due to dog hair	$231.00
Front Screen door replacement – the tenants accept this part of the landlords' claim	$351.68
Backyard Repair – the landlord submitted photographs of the yard backyard at the end of the tenancy however and several taken 1 year or more prior to the start of the	$420.00

tenancy, there is no mention of the condition in the Condition Inspection Report at either the start or end.	
Carpet Removal, replacement, and new installation – the parties agreed the tenants had had the carpet cleaned. The tenants stated they did so on March 30, 2016. The landlords submitted a copy of an email dated April 4, 2016, from the tenants acknowledging that some of the staining did not come out. Landlord acknowledged the carpeting was installed in the home in 2007.	$5,117.25
Total	$6,284.42

The landlords claim for tenant damage is as follows:

Description	Amount
Lock Replacement (parts and labour	$152.48
Replacement lightbulbs and installation and other electrical repairs	$177.95
Front door screen replacement	$112.28
Shed door roller replacement – the landlord was not sure but testified the shed has likely been on the property since the home was built in 1998	$46.54
Interior cleaning including cleaning appliances; cleaning behind appliances; wall and handrail washing	$300.00
Front, side, and back yard cleanup includes initial clean up and compensation, in the amount of $210.00, landlord provided to new tenants in January 2016 for condition of the property when they started their tenancy.	$270.00
Removal of tires from behind shed – the tenants dispute that the tires belonged to them	$20.00
End table repair – the rental unit was partially furnished – the landlord has provided no evidence of the condition of the end table at the start of the tenancy but has submitted photographic evidence of the condition at the end of the tenancy	$466.04
Wall repair and painting – the tenants submit that the wall marks are nothing more than wear and tear. The landlord confirmed that the upstairs; living room and foyer had been painted in November of 2009 or 2010 and the dining room; kitchen and master bedroom had been painted before 2007. The parties agreed the stairwell had been painted at the start of the tenancy in 2013 and this did not require any work at the end of the tenancy. The landlord submitted they completely painted the entire interior due to time constraints it was faster to paint the whole house than to spot paint marked areas.	$3,410.00
Mould repair and paint completed in 2014 during the tenancy. The landlord submit the tenants had acknowledged mould had been in the bathroom since the spring of 2014 but did not report it to the landlord until September 2014 at which time the paint repair required more work than had it been reported as soon as spotted. The landlords also asserted it was the tenants' habits that caused the mould in the first place. The tenants submitted they had been trying to manage the mould prior to reporting it when it got larger than anticipated.	$557.00
Total	$5,512.28

The landlord's claim for the cost of pursuing this claim includes recovery of the filing fee for this Application for Dispute Resolution; legal consultation fees; stationary supplies such as binders; paper; markers; pens; copies; miscellaneous supplies; Canada Post charges for mail and boxes; flight and transportation costs for delivery of evidence packages; witness costs; and loss of pay and massage therapy. These costs totalled $1.823.77

Analysis

In the hearing, I advised the landlords that the costs to pursue this claim, with the exception of the filing fee to submit their Application for Dispute Resolution, and respond to the tenants' Application are not recoverable costs under the *Act*. I also advised the filing is recoverable at the discretion of the arbitrator and it is based on the success of the landlords in their claim.

I note that during the hearing the tenants agreed to the replacement of the front screen door and the locks. As such, I find the landlord has established entitlement for compensation for these items in the amount of $504.16.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and 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.

I note that a number of the landlords' claims do not arise as a result of the condition as recorded at the end of the tenancy which include lightbulb replacements; furniture cleaning; bathtub train repair; end table repair; provision of $210.00 to the current tenants for yard work; and the mould repair of 2014.

Despite the landlords' submission that the no lights were turned on during the inspection and that it was not until later after dark that the landlords could determine that a number of bulbs were burned out, I find the landlords cannot rely on this evidence to establish this part of their claim.

The purpose of the condition inspection is that both parties attend and note any of the deficiencies at the end of the tenancy in regard to the condition of the rental unit. As such, it is required that the landlord complete a thorough inspection with the tenants or their agent present. I find the landlord or their agent could have, at any time turned on the lights during the inspection. As such, I find there is insufficient evidence to establish this claim and I dismiss this portion.

In regard to the furniture cleaning, I note that this was cleaning by the landlords at the start of the tenancy, at the tenants' request in preparation for the tenancy. A landlord cannot claim for a cost of preparing the rental unit or furnishings at the start of the tenancy for a violation any obligation under Section 37 of the *Act*.

Further, as the landlords did not have the furniture cleaned at the end of the tenancy but rather donated the furniture to charity, I find the landlords have not incurred any loss as a result of the tenancy and I dismiss this portion of the landlords' claim.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others. In regard to the mould repair of 2014 I find that had the landlords felt the tenants should be held responsible for the mould repair they should have pursued the claim at the time. I find the landlords' failure to pursue this claim within a reasonable time from when the costs were incurred in 2014 estopped the landlords from pursuing the claim now. I dismiss this portion of the landlords' claim.

In regard to the claim for repairs to the end table, I find the landlord has provided no evidence of the condition of the end table at the start of the tenancy and as such cannot provide any evidence to establish that damage to the table was caused during the tenancy. I therefore dismiss this portion of the landlords' claim.

As to the bathtub train, I find that because this problem was not encountered until at least 6 months after the tenancy ended it is not possible to assign responsibility to these tenants for any problems the current tenants may have had at that time. I dismiss this portion of the landlords' claim.

In regard to the landlord's provision of compensation to the current tenants of the rental unit in January 2016, I find that this was a choice made by the landlord almost a year after the end of the tenancy and did not result from any direct costs associated with cleaning or repairing the yard. As a result, I dismiss this part of the landlords' claim.

In regard to the remainder of the landlords' claim I find, based on the preponderance of evidence submitted by the landlords and a balance of probabilities, the landlords have established that as a result of the tenancy the landlords were required to make the following repairs as claimed: back yard repairs ($420.00); tire removal ($20.00) carpet replacement ($5,117.25); shed door roller ($46.54); interior cleaning ($300.00); yard clean up ($60.00); wall repair and painting ($3,410.00).

I note that any of these costs that represent costs involved in regular maintenance of a property are subject to be discounted based on the useful life of the building product itself. As such I make additional findings regarding the amount the landlords are entitled to for carpet replacement; shed door roller and the wall repair and painting.

Residential Tenancy Policy Guideline #40 lists the useful life of carpet at 10 years; of storage at 20 years; and interior painting at 4 years. Based on the landlords' submissions the carpet replaced was 8 years old; the storage shed was likely 17 years old; and the most recent interior painting was at least 6 years old.

As a result, I order the landlord is entitled to compensation for carpet replacement in the amount of $1,023.45; shed door roller in the amount of $6.98; and no compensation for wall repair and painting.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security and pet damage deposits or file an Application for Dispute Resolution to claim against them. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit and pet damage deposit.

Based on the testimony of both parties I find that the landlords received the tenants' forwarding address on or before May 3, 2015 and as a result the landlords had until May 20, 2015 to either return the security and pet damage deposits.

Based on the landlords' above submissions in regard to the difficulties she had submitting her Application for Dispute Resolution both in May 2015 and in January 2016 I made enquiries to the Residential Tenancy Branch systems staff and found the following information:

1. May 17, 2015 – there were no links from any On-Line Application tabs that lead to a PDF Application instead of the On-Line Application;
2. January 6, 2016 – there were no links from any On-Line Application tabs that lead a PDF Application instead of the On-Line Application;
3. On Friday Jan 8th between 4:00 pm – 8:00 the online application was unavailable for deploying the changes related to the new application fee. During the outage there was an outage notice in place informing the site visitors about the duration of the outage.
4. January 12, 2016 – there was no Residential Tenancy Branch website promotion of a "new and improved" online access to apply for Dispute Resolution.

In addition, I note from the landlords submission of printed Application for Dispute Resolution forms that would have come from the PDF link all indicate that if they were wanting to submit their claim that they would have to submit it in person at the Residential Tenancy Branch Burnaby office or at any Service BC outlet.

As such, and in consideration that the landlords noted this on the documents submitted themselves, I find it is unlikely that the landlords could have concluded that their Application for Dispute Resolution had been submitted online.

Further, while the landlords noted in their submission that no staff from the Branch was available to her on May 17, 2015 because she was completing the form after business hours I find the landlord failed to practice due diligence by not contacting the Branch within a few days of her attempts on May 17, 2015.

I also find that failing to further pursue her own Application for Dispute Resolution when she had not heard anything from the Branch for at least 6 months, is again a failure on the part of the landlords to ensure due diligence was taken to pursue their claim.

When I consider these findings in light of the confirmation from the Branch's system staff that there were no defective links or any complaints of any defective links at all material times, I find the landlords have failed to comply with the requirements with Section 38(1) and as such the tenants are entitled to double the amount of both deposits, pursuant to Section 38(6).

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **$2,384.59** comprised of $504.16 for lock and screen door replacement; $420.00 for backyard repairs; $20.00 for tire removal; $1023.45 carpet replacement; $6.98 for shed door repair; $300.00 for interior cleaning; $60.00 for yard cleaning up and $50.00 of the $100.00 fee paid by the landlords for this application as they were only partially successful in their claim.

I also find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$2,450.00** comprised of $1,200.00 for double the amount of the security deposit; $1,200.00 for double the amount of the pet damage deposit; and the $50.00 fee paid by the tenants for their application.

I grant a monetary order in the amount of **$65.41** to the tenants for the difference between the two awards above. This order must be served on the landlords. If the landlords fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 10, 2016

Residential Tenancy Branch