



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BERNARD C. VINGE ASSOCIATES (HCS) LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant's agents and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on January 15, 2014 for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit was \$1,150.00 per month due on the 15th of each month. The tenants paid a security deposit of \$1,150.00 on January 14, 2014. The tenants were named as the tenants on this agreement and they sublet the unit to a tenant with disabilities. The tenant is the company that is the health care provider for the subtenant.

The landlord testified that tenant upstairs allowed water to flood the bathroom which then came through into the unit below. The tenant in that unit informed the landlord on April 27, 2015 after the flooding had occurred on April 26, 2015. The toilet overflowed after it was blocked by the tenant. The landlord agreed he did not see a blockage in the toilet and testified that this was cleared before he got to the unit. Previously the toilet had also become blocked and at that time the tenant had said the toilet was blocked because they had put too much toilet paper in.

The landlord testified that the toilet was also leaking from the tank to the bowl but the tenant did not inform the landlord of this. When he arrived at the unit he could see that the tank was leaking into the bowl as a flange was worn out. This was a small leak so the landlord has not repaired it. The landlord testified that he asked the tenant to fix the problem and that if they called a plumber the landlord would pay for the repair to the flange but the tenant would have to take care of the rest of the damage and to the damage caused in the unit below. The person in charge said they would take care of it and they did call a plumber and the plumber did fix the flange inside the tank and the tenant paid for that repair. The landlord testified that there was still damage to the unit downstairs and the landlord had to take care of this damage. The tenant downstairs

worked for a restoration company so the landlord agreed that he could repair the damage in his unit. He had to replace the drywall on the ceiling and paint his bathroom. He had given the landlord a detailed account of the repairs and sought \$570.00; however, they agreed on \$520.00 and that tenant was allowed to deduct this amount from his rent. The landlord referred to that tenant's rent receipt provided in documentary evidence.

The landlord testified that at the end of the tenancy the landlord and an agent for the tenant did a move out inspection on June 15, 2015. The tenant's agent filled in the form and some damage was documented to the feature wall, the baseboards and the fire place mantel which all required painting. The landlord testified that the tenant's agent refused to sign the report. Sometime after the inspection the landlord agreed he documented other damage on the report as a drywall paper rip in the living room, a hole in the wall in the dining room and paint on the deck and railings. The landlord testified that he had not noticed this damage at the time of the inspection. The landlord seeks to recover \$350.00 for the paint used to repair the damage to the unit but agreed he has not provided a receipt for the paint in documentary evidence.

The landlord testified that he deducted \$870.00 from the tenant's security deposit and returned \$280.00 to the tenant on June 28, 2015. The landlord testified that the tenant's filed an application to recover their security deposit and a hearing was held in January, 2016. At that hearing the tenant's application to recover their security deposit was found to be premature as they had not provided a forwarding address in writing to the landlord. The landlord testified that he later received the tenant's forwarding address in writing which was sent by registered mail but this was not received by the landlord until January 22, 2016.

The tenant's agents disputed the landlord's claims. The tenant's agents testified that they did rent the unit and then used it for a person with disabilities who was provided with round the clock care. The tenant agreed that the toilet did get blocked on April 28, 2015 and the staff at the unit unblocked the toilet and dried the floor. The next day the

landlord came and said there were problems in the unit below and asked the tenant to call a plumber which the tenants did on April 28, 2015. The landlord was present when the plumber came and was well aware of the issues with the toilet not working correctly. On the plumber's invoice it states that the main floor toilet filler valve was defective and was spraying water through the top seal of the tank, the toilet base was not attached firmly to the ground and the shut off valve did not work. Because of this defective shut off valve the tenants could not turn off the water when the toilet became blocked. The plumber made all these repairs. The reason any water flooded into the unit below was not because of the blockage which was dealt with immediately by staff but because of the defective toilet. This is an old house with an old toilet that has not been maintained by the landlord.

The tenant testified that they had notified the landlord of issues with the toilet after a staff member who providing care for the tenant had said there were problems. They had asked the landlord to call in the plumber but he wanted the tenants to do this. The problem with the toilet was repaired at the tenant's expense. The landlord did not want work down on the toilet at first because he was worried that the pipes might break.

The tenant's agents disputed the landlord's claim for damage to the rest of the unit. When they did the move in report there was some damaged noted on that report such as chipping on the trim in the kitchen and on the counter top plus other damage around the unit. The slight damage to the feature wall, the marks on the baseboards and the marks on the mantel are no more than normal wear and tear. After the inspection neither the landlord nor the tenant's agent signed the inspection report and this was noted at the previous hearing; however, now the landlord has provided an inspection report with additional items added in a different type of pen and the landlord has signed the report. None of this damage was seen or noted when they did the inspection and could have been caused after the inspection and after the tenants vacated.

The tenant's agents testified that they did receive a cheque from the landlord for \$280.00 but have not chased that cheque as they did not agree that they were

responsible for any of the damage. That cheque is no longer valid and the tenant will return it to the landlord by registered mail.

The landlord testified that the tenant's agent filled in the inspection report because his writing is not very good and he agreed he added additional items sometime later once he was made aware of them.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for damage to the unit and to recover costs for damage caused to the unit below due to a water leak from the toilet in this unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having considered the evidence before me I am not persuaded that the tenants are solely responsible for the leak that caused damage to the unit below. It is clear from the evidence provided by both parties that the toilet was old and had not been maintained by the landlord. The tenant's agent read out the invoice from the plumber who did the repair to the toilet and the repair work done shows that it is likely that the toilet was already leaking prior to the blockage occurring. With the extent of repairs required to the toilet including the fact that the toilet sprayed water from the tank and was not fixed securely to the floor and in light of the fact that the shut off value did not work so the tenants could turn off the water when the blockage occurred, then I find it is likely that this all resulted in the water penetrating the unit below.

The landlord testified that he was not informed of the defective toilet by the tenants. The tenant's agent testified that they did inform the landlord and the landlord was present when the plumber came to look at the toilet so was aware of the extent of work needed to the toilet and that this work was significantly more than just a repair to a damaged flange as described by the landlord. While I accept that there was a blockage in the toilet I also find that this was dealt with by the tenant's staff member who was present at the time. Consequently, as the tenants paid for this repair I do not find that it is also their responsibility to pay for any repair work to the unit below and therefore the landlord's claim to recover the cost for this repair of \$520.00 is dismissed.

With regard to the damage in the remainder of the unit; a landlord must complete a move out condition inspection report at the end of the tenancy. This report must fairly represent the condition of the rental unit at that time. The landlord must not then add additional items to that report after the inspection is completed. I have therefore not considered the landlord's claim for torn drywall paper, a hole in the wall in the dining room or paint on the deck and railings as these items were added sometime after the report was completed and there is no way for me to know when this damage was done. With regard to the other damage that was documented on the report by the tenant's agent. I find this damage to be superficial in nature and constitutes damage that I would

consider to be normal wear and tear and therefore pursuant to s. 32(4) of the *Act*, not the tenants responsibility. Furthermore, the landlord has not met the burden of proof to show the actual cost for any paint purchased for these minor repairs. Consequently, this section of the landlord's claim is dismissed.

With regard to the landlord's claim to keep part of the security deposit. The landlord did provide the tenants with a cheque for \$280.00; however, this cheque has not been cashed by the tenants and according to the tenants is no longer valid due to the time that has lapsed since it was written. As the landlord's claim has no merit I find the landlord must return the tenant's security deposit in full to an amount of \$1,150.00 to the tenants pursuant to s. 38(6)(b) of the *Act*, as soon as the landlord has received the cheque back from the tenants for \$280.00. The tenants are not entitled to have the security deposit doubled as the landlord did file his application within the 15 allowable days after receiving the tenant's forwarding address in writing. This was sent by registered mail on January 20, 2016 and received by the landlord on January 22, 2016. The landlord filed his application on February 05, 2016.

As the landlord has been unsuccessful with his application I find the landlord is not entitled to recover the filing fee from the tenant.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,150.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court. The tenants must return the original cheque to the landlord for \$280.00.

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: September 15, 2016

Residential Tenancy Branch

