Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, unpaid rent and, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution. The landlord named two co-tenants as respondents.

The tenants applied requesting return of the pet and security deposit and to recover the filing fee cost. Two of the three co-tenants are applicants. The third co-tenant was present at the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They 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 evidence and testimony provided.

Preliminary Matters

In the detailed calculation of the claim the landlord has not set out a claim for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit and utilities?

May the landlord retain the security and pet deposits in partial satisfaction of the claim or should the deposits be ordered returned to the tenants?

Background and Evidence

The tenancy commenced on May 1, 2015. Rent was $1,600.00 due on the first day of each month. The landlord is holding a security and pet deposit in the sum of $800.00

each. The tenancy agreement indicated that utilities were included with the rent. There was a notation made in the additional information section:

> *"hydro included only if dollar amount does not exceed the amount same time last year."*
>
> (Reproduced as written)

The parties agreed that the tenants were not given copies of any bills showing the hydro consumption during the previous year. The landlord said there are two units in the building and a single hydro meter. The upper tenant has placed the utilities in their name and would pay the total bill. The tenant in the upper unit would then deduct the sum owed by the lower tenants, from rent owed. The tenants were then to pay the landlord the sum owed for hydro if the amount was more than the previous year's bill.

The landlord has claimed the cost of hydro ($206.31) and water ($293.41.) It was explained that the payment of hydro, as set out in the tenancy agreement renders the term unenforceable. The tenancy agreement does not require payment of water bills. This finding will be referenced in the analysis section of this decision.

A move-in condition inspection report was completed on April 20, 2015. The report supplied as evidence indicated that some repairs were required: loose baseboards, dome light in a bedroom, kitchen faucet and bathroom stopper.

The tenancy ended on April 30, 2016. The parties met on April 30, 2016 to complete a move-out inspection report. The landlord said that at the time the report was completed two of the co-tenants had yet to fully vacate. They parties agreed to meet again on May 7, 2016 to finalize the inspection.

A copy of the inspection report was supplied as evidence. At the end of tenancy the tenants signed agreeing to some damage for which the tenants were responsible, including: master bedroom fixture not replaced, living room laminate lifting; stained master bedroom floor, peeling floor surface and a damaged stone wall in the driveway.

The landlord has made the following claim for compensation, excluding utilities:

Flooring	$1,828.73
Floor installation	1,070.00
Painting – master bedroom	283.50
Light fixture	223.05
Repair and replace fixture	80.00
Door knob	55.86
Repair stone work	420.00
TOTAL	$3,961.14

The landlord said the laminate floors were installed in 2014. When the tenants moved into the unit there was no damage. The landlord supplied photos of the flooring that showed some lifting around the edge of several planks in the living area. The landlord said the tenants had said they had dragged the couch; causing the damage.

The landlord said the tenants used some sort of product on the floor to remove paints spots. As a result the surface of the laminate was removed. Photos of the flooring showed a number of areas that had damaged surface. There was surface damage in the hallway and master bedroom. The tenants had a dog; the landlord could not be sure the damage was not caused by the pet.

The landlord supplied invoices for flooring that was purchased and a quote for installation. The flooring was replaced and, subsequently, the home was sold. The landlord had all the floors replaced and, based on a calculation of square footage, pro-rated the sum owed by the tenants for the living room, hallway and master bedroom.

The landlord gave the tenants permission to paint the master bedroom. After the tenancy had ended the landlord noticed that the quality of the work was not sufficient. The landlord had the entire unit painted and has claimed the cost of the bedroom only.

There was no dispute that the tenants had removed a fan fixture in a bedroom and replaced it with another light fixture. The tenants did not reinstall the fan fixture. Wires had been cut by the tenants. The fan had been new in 2012 or 2013 and was damaged by the tenants. The landlord purchased a new fixture and hired an electrician to install the fixture. Invoices were supplied as evidence.

After the tenants vacated the landlord noticed that a door knob with a lock mechanism was installed on a bedroom door. The landlord contacted the tenants to request a key. The tenants did not respond so a new door knob was installed. The landlord supplied an invoice.

The landlord provided photographs of a rock wall that was damaged. The landlord supplied pictures of vehicles parked over the top of the wall. One vehicle showed damage the landlord said was caused by hitting the wall. The landlord paid a mason to replace the top cap of the wall. An invoice was supplied as evidence.

The tenants responded that they did drop paint on the floor of the master bedroom. When an attempt was made to clean the paint the surface of the flooring was damaged. The tenants said the photos made the damage look worse than it was. The tenants said the landlord asked if the living room flooring could have been damaged by a couch and the tenants had responded that it might have. The tenants do not believe they damaged the living room flooring. When the tenants moved into the unit they noticed the floor had some uneven areas and that the original installation was not properly completed. The flooring had been placed over an uneven surface. The damage in the hallway may have been caused by the tenants; the tenants had noticed that damage.

The tenants said the master bedroom was painted, with permission and they were not asked to repaint the room. The tenants thought the paint was fine.

The tenants confirmed that the light fixture was removed and not replaced. The tenants said a friend had changed the fans and had cut some wires.

The tenants did change the door knob but it worked properly. The tenants was going to give the key to the landlord but did not as they thought the tone of the landlord's email was not somehow welcoming.

The tenants stated that the masonry had many cracks and had moss growing in the cracks. The wall was very old and already falling apart. The wall was not inspected at the start of the tenancy. A vehicle may have "rested" on the wall, but the tenants' vehicle did not damage the wall.

Analysis

Section 37(2) of the Act set out the tenant responsibilities when the tenancy ends:

> *(2) When a tenant vacates a rental unit, the tenant must*
>
> > *(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
> > *(b) 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.*

From the evidence before me I find that the tenants did damage the laminate floors; this was not disputed. It was the degree and extent of the damage that was in dispute. I find that the tenants did cause damage in the bedroom and hallway as the result of using some sort of cleaner that removed the laminate surface. While the damage caused was not intentional, I find that the damage was not the result of wear and tear. I have considered the damage to the floor in the living room. I found the tenants' submission compelling. The landlord did not provide any professional opinion that might explain why the floor was lifting; which leaves me to find that it is just as likely that the flooring was not properly installed and that the lifting was not caused by moving furniture over the flooring.

The landlord did not supply a breakdown of the square footage of each area of the home; although the floor installation quote appears to include measurement for all rooms in the home. In the absence of detailed floor space measurements I find that the landlord is entitled to compensation in the sum of $365.00 for bedroom and hallway flooring and $280.00 for installation. I have referenced the measurements supplied by the quote and accept that one bedroom would be approximately 143 square feet and the hallway 24 square feet in size.

There was no dispute that the tenants were allowed to paint a room. No instructions had been given directing the tenants as to the quality of the work. The landlord accepted the tenants' skill level as sufficient. When the tenancy ended the landlord had the unit fully repainted and the paint applied by the tenant was not sufficient in quality. The absence of any direction given as to the quality of the work does not then entitle the landlord to compensation. The tenants had permission and painted. Therefore, I find that the claim for painting is not supported and is dismissed.

I find that the tenants did remove a light fixture, that wires were cut and that the fixture was not replaced. This was not in dispute. Therefore, I find that the landlord is entitled to the cost of a new fixture and the electrician installation fee, as claimed.

As the tenants removed a door knob and did not replace that knob with the original or supply the landlord with a key to the new door knob I find that the landlord is entitled to compensation in the sum claimed. If the tenants had made an effort to provide the landlord with a key to the door knob they had installed the landlord would not have replaced the door knob.

From the evidence before me I find that it is apparent the wall that was damaged was old. Residential Tenancy Branch policy suggests a concrete wall has a useful life of 20 years. The wall in question is masonry and stone. I can see no reason why the wall would not retain use over the years; with appropriate maintenance. The wall was not inspected at the start of the tenancy for pre-existing damage. I have weighed the likely age of the wall and absence of inspection against the evidence that showed vehicles parked over the top of the wall and find, on the balance of probabilities, that some damage was caused to the wall by the tenants' vehicles. Taking into account the age of the wall and the absence of evidence that the wall was not already in need of some maintenance I find that the landlord is entitled to compensation in the nominal sum of $50.00.

In relation to the utility claim, the tenants were not given any information on the sum payable the year previous and were not given copies of bills. Section 6(3)(c of the Act provides:

Enforcing rights and obligations of landlords and tenants

> ***6*** *(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
> *(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
> *(3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*

> *(c)* ***the term is not expressed in a manner that clearly communicates the rights and obligations under it.***
>
> (Emphasis added)

As the term provided no detail on the sum of the hydro utility cost that could be payable and, as no record of past payments was supplied when the agreement was signed I find that the utility clause of the agreement was not expressed in a manner that adequately communicated the rights and obligations; rendering the term unenforceable. Further, the term was contradictory; the agreement indicated utilities were included with rent. That portion of the agreement was contradicted by what I find was a vague term in the additional information section of the agreement in relation to hydro. Therefore, the claim for hydro is dismissed.

The addition information section of the tenancy agreement did not reference the water utility; therefore I find that water was included with rent.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Flooring	$1,828.73	365.00
Floor installation	1,070.00	280.00
Painting – master bedroom	283.50	0
Light fixture	223.05	223.05
Repair and replace fixture	80.00	80.00
Door knob	55.86	55.86
Repair stone work	420.00	50.00
TOTAL	$3,961.14	$1,053.91

The balance of the claim is dismissed.

Pursuant to section 72 of the Act I find that the landlord may deduct $1,053.91 from the deposits held in trust, totaling $1,600.00.

As each application has some merit I find that the filing fee costs are set off against the other.

I find that the tenants are entitled to return of the balance of the security and pet deposits in the sum of $546.09.

Based on these determinations I grant the tenants a monetary order in the sum of $546.09. 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 landlord is entitled to compensation in the sum of $1,053.91. The balance of the claim is dismissed.

The landlord may retain the sum owed from the deposits held in trust.

The balance of the deposits is ordered returned to the tenants.

Filing fees are set off against the other.

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: November 18, 2016

Residential Tenancy Branch