Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, 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 rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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 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

The details of the dispute section of the application references damage to floors, walls and kitchen cabinets. The landlord did not serve the tenant with a detailed calculation of the claim, as required by section 3.1 of the Rules of Procedure:

> ***3.1 Documents that must be served***
>
> *The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*
> *a) the application for dispute resolution*
>
> *b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;*
>
> *c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;*
>
> *d)* ***a detailed calculation of any monetary claim being made;***
>
> *e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

(Emphasis added)

The tenant expressed an understanding of the claim for flooring and two faucets. The landlord then set out a calculation for each of the three items. The hearing proceeded based on a claim for flooring and the faucets.

Four pages of evidence supplied by the tenant to the Residential Tenancy Branch on December 5, 2016 were not served to the landlord. That evidence was set aside. The tenant was at liberty to make oral submissions.

Issue(s) to be Decided

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

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on October 1, 2015. A security deposit in the sum of $460.00 was paid. A move-in condition inspection report was not scheduled. A tenancy agreement was not signed.

The tenant gave notice and ended the tenancy effective May 30, 2016. A move-out condition inspection report was not scheduled.

The landlord confirmed receipt of the tenants' written forwarding address on May 30, 2016. The landlord filed claiming against the deposit on July 4, 2016. The deposit has not been returned to the tenant.

The landlord has made the following claim:

- Replace kitchen faucet twice ($72.80 and $85.00); and
- Repair laminate flooring ($450.00.)

There was no dispute that the almost new kitchen faucet broke on two occasions. At the time the tenancy began the faucet was approximate one month old. The unit had been renovated. The landlord said it looked as if the tenants had damaged the front portion of the faucet, causing it to leak. The landlord replaced the faucet at a cost of $72.80. In December 2015 the faucet malfunctioned again. The same problem occurred, with the front of the faucet breaking. The landlord obtained the same model of faucet and replaced it at a cost of $89.58. Receipts for the faucets were supplied.

The landlord submitted photographs of the rental unit taken when the tenants vacated. One area on the laminate flooring has a hole through the finish. The landlord said this flooring was two weeks old when the tenants moved into the unit. The landlord said he pointed this damage out to the tenant on the day they were vacating but the tenants did not make any comment in response.

The landlord had originally installed the flooring and made the repair. Three boards had to be replaced. The flooring cost approximately $20.00. The landlord said it took seven to eight hours to make the repair and that he charges $35.00 to $40.00 per hour for his work.

The tenant responded that the faucet broke almost immediately after moving in. The landlord had agreed to have the tenant exchange the faucet and provide payment to the tenant. The tenant purchased a faucet but the landlord obtained his own, on sale. The tenant suggested the faucet was inferior. The landlord said it was the same model as the original faucet.

The tenant said that in December 2015 the same malfunction occurred. The tenants did nothing to damage the faucet.

The tenant stated that everything the landlord said about the flooring is false. If a hole had been created in the flooring the tenants would have reported this to the landlord. The tenant said that the damage shown in the photo could have occurred after they vacated the unit and that there was no damage in the floor during the time they lived in the unit. The landlord never said anything about the flooring.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 23 of the Act requires a landlord to schedule a move-in condition inspection report with the tenant. The landlord failed to do so and, as a result, there was no agreement as to the state of the unit at the start of the tenancy. Section 35 of the Act

requires a landlord to complete a move-out condition inspection; this did not occur. As a result there was no agreement on the condition of the unit at the end of the tenancy.

In the absence of evidentiary evidence that a condition inspection report would provide the Residential Tenancy Regulation determines that a landlord must bring forward a preponderance of evidence in support of damage caused by a tenant.

There was no dispute that the faucet failed on two occasions. However, I can find no evidence of any negligence on the part of the tenant. I find that it is more than likely the reason for the failure of the two faucets is undetermined. The landlord has assumed the tenant did something to damage the faucets, but there is no evidence the tenant did anything but use the faucet as it would normally be used.

In relation to the floor, the landlord did produce a picture of a hole made in the laminate. However, in the absence of any evidence of the state of the floors at the end of the tenancy and, in the absence of a condition inspection report, I can find no evidence that supports the claim the tenant caused this damage. It is possible that the tenant did damage the floor, but it is equally possible the damage occurred after the tenant vacated.

Therefore, I find on the balance of probabilities that the landlord has failed to prove the tenant damaged the faucets and the flooring.

As a result I find that the claim is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant.

When the landlord failed to complete a move-in condition inspection of the rental unit in accordance with section 24(2) of the Act, the landlord extinguished the right to claim against the deposit for damage to the rental unit. As there was no claim made for unpaid rent the landlord was then required, pursuant to section 38(1) of the Act, to return the deposit within 15 days of May 30, 2016; the date the address was provided by the tenant.

Sec 38(1) of the Act provides:

> ***38*** *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> > *(a) the date the tenancy ends, and*
> >
> > *(b) the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*

> *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
>
> *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

Section 38(6) of the Act provides:

> *(6) If a landlord does not comply with subsection (1), the landlord*
>
> *(a) may not make a claim against the security deposit or any pet damage deposit, and*
> *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, in accordance with section 38(6) of the Act I order the landlord to return double the $460.00 security deposit to the tenant.

Based on these determinations I grant the tenant a monetary order in the sum of $920.00**.** 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' application is dismissed.

The landlord is ordered to return double the security deposit to the tenant.

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: January 04, 2017

Residential Tenancy Branch