Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, 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 tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application. The landlord filed their application originally on July 14, 2016 and amended it on December 21, 2016 asking for an additional amount for the Monetary Order.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties 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 of part of the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started originally on February 01, 2015 for a one year term. On February 10, 2015 a new fixed term tenancy was entered in to by the parties. The agreement states that the tenancy must end on June 30, 2016. The tenants vacated the rental unit on this date. Rent for this unit was $2,675.00 per month due on the 1st of each month. The tenants paid a security deposit of $1,337.50 and a pet deposit of $1,337.50 on January 23, 2015.

The landlord testified that the tenants caused damage to the unit which was not repaired at the end of the tenancy. The landlord has claimed $ 5,743.99 comprised of the following:

Item 1. Repairs and painting	$1,968.75
Item 2. Rekeying locks	$161.56
Item 3. Removed dirt	$210.00
Item 4. Carpet cleaning	$252.00
Item 5. Carpet replacement	$1,800.00
Item 6. New plants and soil	$300.00
Item 7. Shed	$1,051.68
TOTAL	**$5,743.99**

The landlord testified that there was damage to the walls in the unit caused by anchors. These were placed on the walls in the bathroom where shelving had been put up and in the spare bedroom, in the hall closet and the feature wall in the living room. The landlord testified that the tenancy agreement states that the tenants must only use picture nails. The tenants had filled the holes but the walls had to be repainted where this damage occurred. The lower level of the unit had previously been repainted in September 2012 and the master bedroom and bathroom in November, 2012. Further to

this damage there was also a curved gouge in a wall that occurred when the tenants moved in, the ceiling around the access panel to the attic was damaged and the access panel was covered in fingerprints; a door frame to the second bedroom was also damaged and needed repainting and a baseboard near the kitchen exterior door was damaged after the tenants attached an outside hose which leaked into the unit and caused the baseboards to bubble.

The landlord testified that included on the painting invoice are costs associated with power washing an oil stain caused in the parking bay from the tenant's car. The oil was fresh and although the landlord agreed her car also leaked oil her car was parked in a different stall at the opposite end of the parking area. Also included was a charge for painting an exterior fence after the tenant erected an extension on the fence and painting the exterior front railings which were damaged by a crane used to bring in some of the tenants' furniture at the start of the tenancy.

The landlord testified that the tenants failed to return all the keys to the unit. The landlord had to have the locks rekeyed on July 06, 2016.

The landlord testified that the tenants let their two cats and dogs urinate and defecate in the back yard soil. The excessive amount of feces made the yard smell terrible and attracted flies. The top six inches of soil had to be removed to get rid of the cat feces buried there.

The landlord testified that the tenants left the carpets stained and the landlord had to contract a carpet cleaner to clean the carpets. This was done at a discounted rate. There were two large pet stains in the main master bedroom and staining in the hallway and stairs. The carpets had been cleaned by a nonprofessional at the end of the tenancy which wet the carpets and caused the stains to resurface back through when they dried. The landlord testified that she only had the upstairs carpets cleaned again.

The landlord testified that as the carpet cleaning did not remove the stains the landlord obtained a quote to have the carpets and underlay replaced on the upstairs landing, hall and stairs in December 2016. The carpets had been installed in April 2013 by the same company that quoted for the replacement carpet. The landlord agreed she has not provided a copy of the quote in documentary evidence.

The landlord testified that when she rented the unit they had a back yard with boarders and plants. When the tenants left the unit the landlord found that most of the plants had been removed with the exception of one bush. The tenants had removed two bushes and Hostis plants and some perennial herbs such as mint, chives, rosemary and parsley.

The landlord testified that the unit came with a garden shed. The tenants installed an electrical panel and heater in the shed which has compromised the integrity of the floor by leaving a large three to four inch hole in the floor and by cutting out a section of wall. This shed was new in 2012. The landlord went to Rona to get something to repair the shed but was told the entire floor would have to be replaced and as this was no longer made then the landlord had to replace the shed.

The landlord seeks an Order to be permitted to keep the security and pet deposit in partial satisfaction of this claim. The landlord also seeks to recover the filing fee of $100.00.

The tenants disputed the landlord’s claim. The tenant DO testified that with regard to the oil stain, the tenants’ car is fairly new and does not leak oil. This is a fabrication on the landlord’s part. When the tenants received an email about this oil they put some cardboard under the tenant’s car and parked there. There were no oil stains on the cardboard. The oil stains were pre-existing stains when the tenants moved in. the tenants referred to an email from the Strata president in which he asked the landlord about oil stains from her car. He never mentioned or noticed any oil leaks from the tenants’ car.

The tenants testified that with regard to the fence extension. This was put up by the suggestion of the Strata manager to stop the tenants' pets escaping. Strata said they could find some matching paint but did not do so. The property manager was advised that the tenant could come and take down the fence extensions the fence was Strata property and not the landlords.

The tenants testified that the exterior railing was Strata property and not the landlords. The tenants agreed that when they moved in they did have to use a crane but the Strata manager repainted all the railings on the property in the spring of 2016 so therefore the landlord would not have needed to do this work again in the summer. The tenant even helped the Strata manager do this painting and they had matching paint available. There was no further damage noted to these railings when the tenants moved out.

The tenants testified that the hose they put up never leaked and there was no damage to the baseboards. There is nothing noted on the move out report and the hose pipe was turned off when the tenants left the unit.

The tenants testified that at the start of the tenancy there were two anchors on the living room wall and two to hold up a mirror in the hallway. The tenants disputed that they put any further anchors in the walls for pictures and only used small picture nails. The tenants agreed they did put in two anchors to hold a towel rail up in the bathroom. The landlord never gave the tenants instructions not to use anchors in the walls and as the landlord had previously used them the tenants thought it would be alright to use them in the bathroom to make the towel rail steady. All holes made including picture nails were filled at the end of the tenancy. The landlord had spoken to the tenant about her painting the unit when she moved back in so the walls were left ready for the landlord to paint. With regard to the alleged curved gouge; when the tenants moved furniture in there was a small dent on the wall. The landlord's property manager never commented on this and it was also filled and sanded by the tenants

The tenants testified that the access panel was dirty when they moved in. It was dirtied further by the landlord's maintenance men who accessed the attic area to service the furnace. The tenants washed the finger marks off the access panel At the start of the tenancy there were also some chips to the popcorn ceiling.

The tenants testified that there were no marks on the second bedroom doorframe when they moved out and this could have been caused by the landlord's movers when they moved the landlord's furniture into the unit. The tenants testified that after they received an email from the landlord about more damage being found in the unit after the tenants vacated, the tenants asked the landlord's property manager twice to be permitted to go back and look at this alleged damage but were denied this opportunity.

The tenants testified that they had inadvertently packed the keys to the side door and one other door. These keys were returned to the landlord on July 05, 2016 yet the landlord still had the locks rekeyed the next day on July 06, 2016.

The tenants testified that their cats are indoor cats and they do have a small dog. The cats used their litter tray and any dog feces were picked up. If the cats did urinate in the soil this is what cats do. The landlord has only provided one picture showing one piece of dog feces, this may have been missed on the day the tenants moved out but they do not recall it being there during the inspection. The tenant testified he offered to come and put some lime on the soil to kill any alleged urine smells but the landlord refused this offer.

The tenants testified that they had purchased a top of the line carpet cleaner and the carpets were perfect after they had been cleaned. What stains were caused after they left the unit is not the tenants' responsibility. The tenants disputed that their pets urinated on the carpets and there was only on occasion when the cats vomited on the carpets but this was cleaned up. The tenants referred to the move in inspection report that shows the carpets had a stain when they moved in.

The tenants testified that the landlord has not provided any pictures showing stained carpets and nothing is mentioned on the move out report. If there was staining after the landlord had the carpets cleaned again then she should provide evidence of this. The property manager told the tenants she had pictures of the carpet stains but when the tenants asked to see these they were denied. Five months later the landlord decided to replace the carpets on December 21, 2016 and now expects the tenants to pay for this cost.

The tenants testified that with regard to the plant removal; the Strata manager hired workers to remove one of the plants as it was in a poor condition when the tenants moved in and the second plant Strata suggested that the tenants removed it as it was diseased. The Strata president informed the tenants that the plants are in a common area and not owned by the landlord. Gardeners from the Strata were always coming in to do work on the common area. The tenants disagree that the herbs were perennials and that they generally only last two years and die in colder weather. There were two plants by the fence which the tenants did remove as they were in bad shape but the tenants testified that they planted lots of new plants in their place.

The tenants testified that there were no issues reported on the move out condition inspection report. On the move in report it was noted that the garden shed door would not open. This was repaired by the tenant using a paver. The tenant GS agreed he did add some power to the shed for lights and a heater as there was an outside light with no bulb. The landlord was informed that the tenants would leave the lights and heater for the landlord but could have removed them if the landlord requested the tenants to do so. There were only four screw holes 1/8 inch deep and one one inch hole for the plug. The integrity of the shed was not compromised. The tenants referred to the landlord’s documentary evidence in which it shows that the Strata manager notes that all the work was done properly on the shed. There was never a three to four inch hole cut in the floor of the shed or a hole left in the wall. The shed was still water tight and structurally sound.

The tenants testified that they provided the landlord with their forwarding address in writing on June 30, 2016 on the move out inspection report. The tenants requested double the security and pet deposit because the landlord failed to do a new move in condition inspection report when the tenants renewed their lease agreement on February 01, 2016. The tenants testified that the landlord has therefore extinguished their right to file a claim against the security or pet deposit for damages.

The tenants call their witness SL. The witness testified that she actually found the unit and viewed it at the start of the tenancy. SL was there when the tenants moved out and that she helped them clean the unit. SL did a walkthrough of the unit herself as she is also a landlord and the place was as good if not better than it was when they moved in. At the start of the tenancy there were some wall anchors, not all the walls had been primed, there was missing glass in a kitchen cabinet and a large piano had been left behind.

The landlord testified that the only damage recorded on the move out report was a patch on the living room feature wall and missing keys. It was later that more damage came to light and the tenants were sent an email informing them of this additional damage. The landlord agreed she moved into the unit on July 01, 2016. The landlord testified that her property manager said it was an uncomfortable inspection; she was badgered by the tenants and that DO shouted at her that they were not responsible for anything.

The tenants asked the landlord why CR feels it is necessary to believe his property manager when she wrote that DO was irate and out of control. CR responded that she was representing the landlords in a professional capacity. The tenants asked the landlords what their intention is if they win this arbitration and will they split any monetary award with their property manager. The landlords responded that they have no intention of splitting any award and if they had been working with the property manager then surly she would have been in attendance at the hearing for the landlords.

Analysis

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

The *Act* requires a landlord to complete a Move in and a Move out condition inspection report of the rental unit with the tenant at the start and end of the tenancy. The purpose of doing these reports is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. The landlord or the landlord's agent did complete the inspection reports; however, there is nowhere on the reports for the tenants to sign to agree or disagree with the finding of the reports. There is a sentence on the report that states

“variances to this report must be made in writing within three days to the property manager”. I find the reports do not comply with the form and content of the reports as specified under section 20 of the Residential Tenancy Regulations. Further to this I find the move in report does detail items of damage or items not clean at the start of the tenancy; however, the report detailing the end of the tenancy only specifies that there is a patch on the living room wall and missing keys to the front and side door. The reports were signed by the tenant and the property manager.

The landlords used a professional management company to manage this rental unit and i must therefore conclude that the evidence of the move out inspection report showing only a patch on the living room wall and the non-return of keys as the condition of the rental unit at the end of the tenancy. I am therefore puzzled in light of this professional inspection why seven days later, after the landlord had possession of the rental unit, were further damages identified. I am also puzzled if the landlord was so certain that these alleged damages were caused by the tenants why they would not allow the tenants to view the alleged damages instead of simply expecting the tenants to take the landlord’s word that further damage was found.

Further to this I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance for landlords and tenants on their responsibility for residential premises and states, in part, that:
Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

Consequently, with regard to the landlord’s claim for damage to the parking bay with oil and for the damaged walls and baseboards I find the landlord has not met the burden of proof that this damage was caused during the tenancy other than one feature wall. I find I prefer the tenants’ evidence regarding their use of picture nails and the existing wall

anchors in place and while the tenants did hang some shelves and a towel rail I am satisfied that there was no instruction given to the tenants concerning the landlords preference for using anchors. The tenants clearly filled in any holes they created in the unit and as the unit was last repainted in 2012, the Residential Tenancy Policy Guidelines indicates that the useful life of interior paint is four years; therefore the landlord would have been required to repaint the unit in 2016. Consequently, I find the landlord's claim for painting walls and to remove oil stains must be dismissed.

With regard to the painting of the exterior fence, had the property manager indicated to the tenants that they must remove the extension they put up on the fence the tenants could have done so prior to the end of the tenancy. The tenants were permitted to erect this extension and have testified that the fence is actual Strata property and not that of the landlords. The tenants have also testified that the Strata, with the help of the tenant, had already painted the exterior railings damaged when the tenants moved in and that these also are Strata property and not the landlords. As the landlord has the burden of proof in this matter to show that the fence and railings are part of the landlord's property and that the tenants damaged the landlords property during the tenancy then without further corroborating evidence to meet the burden of proof then this part of the landlord's claim is dismissed.

With regard to the landlords claim for rekeying locks; while I accept that the tenants did not retrun the keys at the end of the tenancy, I am sayfsied that these keys were returned the day before the landlord had the locks rekeyed. Therefore this expenses would not have been necessary and if the landlord choose to go ahead and have the locks rekeyed then she must do so at her own expense. This section of the landlord's claim is dismissed.

With regard to the landlord's claim to have soil removed from the yard; the landlord was aware the tenants had two cats and a small dog when she rented the unit to the tenants, The landlord must also be aware that pets will urinate and defecate outside. The landlord has provided one picture showing one piece of feces but there is no further

indication that the yard smelt so badly or that there was so much feces that the landlord had to remove six inches of top soil and replace this. As nothing was noted on the move out condition inspection report then I find the landlord has not met the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for carpet cleaning; the move in report indicates that there was a pre-existing stain on the back bedroom floor; the move out report does not indicate that there was any staining at the end of the tenancy. The landlord has provided some photographic evidence allegedly showing stains but these are impossible to see. In any event there is insufficient evidence from the landlord to show that the tenants were responsible for any stains found on the carpets after the landlord moved back into the unit. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for carpet replacement; the landlord has insufficient evidence to show that the carpets required replacement due to the tenants' actions or neglect. Further to this the landlord has insufficient evidence to show the actual cost to replace the carpets. Based on these issues I find the landlord has not met the burden of proof and this section of the claim is dismissed.

With regard to the landlord's claim for new plants, the landlord testified that the tenants removed plants from the yard. The tenants testified that these were common property and therefore under the control of the Strata and the Strata removed one plant and asked the tenants to remove the other. The tenants agreed that they also removed some diseased plants. I find I prefer the evidence of the tenants that the Strata removed one plant and asked the tenants to remove another and that other plants were removed because they were diseased. The tenants have a right to maintain a yard on a property they rent without asking the landlord for permission to remove plants that are not doing well or are diseased. I am also satisfied that the tenants replaced some plants by planting new plants. While these may not have the maturity of the ones removed the landlord cannot hold the tenants responsible for the actions of the Strata or in

maintaining the yard as they are required to do. This section of the landlord's claim is dismissed.

With regard to the landlord's claim that the tenants made alterations to a garden shed. It is clear from the move in report that the shed door did not open at the start of the tenancy. I am satisfied that the tenant remedied this and added a paver to allow the door to open. The landlord has insufficient evidence to show that the tenants' additions to the shed have compromised the integrity of the shed. While I do accept that the tenants should have sought written permission from the landlord before adding a light and a heater to the shed, the landlord or her representative should have asked for these additions to be removed at the end of the tenancy. If these additions enhanced the condition of the shed by providing light and a heat source then I can see no reason why the shed needs to be replaced. This section of the landlord's claim is therefore dismissed.

As the landlord's application has no merit the landlord's application to keep the security and pet deposits is therefore dismissed.

The tenants requested double the security and pet deposit; however, the reason cited for this by the tenants is not correct. A move in and move out condition inspection report are only required if the tenants actually vacated the rental unit at the end of the first fixed term period. In this case a new lease agreement was entered into and therefore the existing move in report remains in place

However, pursuant to s. 38(1) of the *Act* the landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on June 30, 2016 and the landlord did receive the tenants' forwarding address in writing on that date. As a result, the landlord had 15 days from the end of the tenancy, until July 15, 2016, to return the tenants' security and pet deposit or file an application to keep it. I find the landlord did file their application on July 14, 2016 and therefore the tenants are not entitled to recover double the security and pet deposit but are entitled to a Monetary Order to recover the deposits pursuant to s. 67 of the *Act*.

As the landlord's application is unsuccessful the landlord must bear the cost of filing their own application.

Conclusion

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

A copy of the tenants' decision will be accompanied by a Monetary Order for **$2,675.00.** 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.

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: January 18, 2017

Residential Tenancy Branch