Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenants for money owed damage or to the rental unit, authority to retain the Tenants' security deposit and to recover the filing fee.

The hearing was conducted by teleconference on February 8, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?

2. What should happen with the Tenants' security deposit?

3. Should the Landlords recover the filing fee?

Background and Evidence

M.L. testified on behalf of the Landlords.

She stated that the tenancy began August 30, 2012. The Tenants paid a security deposit in the amount $550.00 and a pet damage deposit in the amount of $550.00. M.L. confirmed that she continues to hold these funds in trust for the Tenants.

She confirmed that she did not complete a move in condition inspection report as required by the *Residential Tenancy Act* and the *Residential Tenancy Regulation.*

The tenancy ended at the end of July 2016. She further confirmed that she received the Tenants forwarding address on August 2, 2016 by text message. She filed for Dispute Resolution on August 10, 2016 and sent the Hearing package to the Tenants as provided on August 2. She stated that the Tenant, C.P. then came to her residence and handed her the proper address on August 18, 2016.

The Landlords stated that the Tenants were to pay 60% of the B.C. Hydro bill and the downstairs Tenants were to pay 40%. The Landlord confirmed that the bill was in her name and was invoiced every two months. She confirmed that she provided the Tenants with a photocopy of the hydro bill by putting it in their mailbox.

The Landlord testified that at the end of the tenancy the sum of $703.80 owed by the Tenants for their share of the hydro bill and despite her requests the Tenants have failed to pay this amount. The Landlord also stated that she had an accountant review the bills to confirm the amounts outstanding.

The Landlord also claimed the sum of $879.90 representing the cost to repair a wall and replace a broken toilet. She stated that pursuant to paragraph 2 of the Rental Agreement the Tenants were prohibited from putting screws in the drywall; further despite this clause, the Tenants damage the walls by putting screws in the drywall. For greater clarity I reproduce paragraph 2 as follows:

> …
> **THE ABOVE LISTED TENANT AGREES TO:**
>
> …
>
> 2. Not make any alterations to the premises (painting, wallpapering, window treatments, changing locks, screws in the wall etc.) without first obtaining permission from the Owners."
>
> …
>
> [Reproduced as Written]

The Landlord also testified that the Tenants knocked the toilet off its bolts and it required replacement. She stated that she purchased the home approximately five years ago and that the toilet appeared to be new and not original to the home.

In addition, the Landlord sought the sum of $155.00 for carpet cleaning. She confirmed that this was forgotten on her original application.

The Landlord also wished to recover the cost of registered mailing and photocopying. She was informed these amounts are not recoverable under the *Act.*

C.P. testified on behalf on the Tenants. In response to the Landlords' claim for $703.80 for the outstanding B.C. Hydro, C.P. stated that they disputed the amount owing. He confirmed that they entered into an equal payment plan with the Landlord in which they were required to pay $140.80 per month, paid biweekly in the amount of $70.40. He further stated that he paid the Landlords a set amount every two weeks and did so for approximately 18 months. C.P. further stated that at no time did the Landlords request further payments, and accepted the $140.80 as payment of the hydro. C.P. further stated that the first they were aware that the Landlords wanted more money for the Hydro was when they received the Hearing package.

C.P. stated that for a year and a half they did not see a hydro bill.

In response to the Landlords' claim for damages to the walls, C.P. stated that the Landlord gave the Tenants permission to hang items on the wall and to decorate the home. C.P. stated that this permission was provided within the first two months of the tenancy starting when the Landlord painted the nursery. C.P. further stated that at that time the Landlord told them to decorate their home as they had not hung anything on the wall because of that clause in the agreement.

C.P. stated that the toilet was not damaged, or chipped by the Tenants. C.P. stated that the toilet was chipped when they first moved in and at that time they informed the Landlords. He also stated that the toilet was rocking on its bolts at the start of the tenancy and this was something they brought to the Landlord's attention; he stated that the Landlord replied that they were not going to attend to this repair because they did not want to spend the money. C.P. also stated that the toilet "rocked" but it was functioning and flushing and did not require replacement as alleged by the Landlord. The Tenants provided in evidence two affidavits regarding the condition of the toilet on the day they moved out (one from C.P.'s father and the other from C.P.'s step brother.)

In reply to the Tenants' submissions, M.L. stated that the monthly payment plan with respect to the B.C. Hydro ran from June 2014 to July 2016 and she reiterated that the Tenants were provided with copies of the invoices during this time period.

M.L. testified that she spoke to the Tenants about the outstanding amount for the B.C. Hydro. She stated that on the June to October 2015 bill she realized the Tenants were not paying the amount owing, which should have been $199.00 not the $140.80 they were paying. She claimed that she provided notes to the Tenants each month reminding them that they were not paying the correct amount. M.L. stated that she continued to pay the full amount of the bill.

M.L. confirmed that she painted the nursery for the Tenants. She denied giving the Tenants permission to hang pictures on the walls and "make it their home".

M.L. stated that the toilet was not broken at the start of the tenancy

M.L. confirmed that they did not complete a move out condition inspection report. She claimed that the Tenants refused to participate.

Analysis

The Landlord seeks to retain the Tenants' $550.00 security deposit and $550.00 pet damage deposit.

Section 38 of the *Residential Tenancy Act* deals with deposits and provides as follows:

> **Return of security deposit and pet damage deposit**
>
> **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.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit or pet damage deposit.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished their right to claim against the security deposit or pet damage deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

Further, as a pet damage deposit can only be applied to damages caused by the Tenants' pets, and the Landlords extinguished their right to claim against these funds by, the only option available to the Landlords pursuant to section 38(1) was to return those funds within 15 days of receipt of the Tenants forwarding address in writing. In failing to do so, the Landlords breached section 38(1) of the *Act.* Section 38(6) provides that a Landlord who breaches section 38(1) must pay the Tenant double the deposit. Accordingly, I Order pursuant to sections 38 and 67 of the Act, that the Tenants are entitled to the sum of **$1,100.00**, comprised of double the pet damage deposit.

I will now turn to the balance of the Landlords' claims.

The Landlords seek compensation for unpaid utility accounts, a damaged toilet and damage to the walls.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

With respect to the Tenants obligation to pay the hydro utility, the tenancy agreement provides as follows:

> "…Monthly rent to be due and payable on the first day of every month. Hydro to be due and payable within two weeks of receiving the amount due…"

The evidence before me was that the Tenants paid their portion of the hydro account to the Landlords as and when they requested payment. At some point in time during the hydro was billed on an equal installment plan, the benefit of which was passed on to the Tenants as they also paid a regular amount. I am satisfied the Tenants paid the

amounts requested of them as and when the amounts were due, save and except for the final request which occurred after the reconciliation of the hydro account. I am further satisfied that at the time the hydro usage was reconciled, it was apparent the Tenants had failed to pay their share. Documentary evidence submitted by the Landlords indicates the Landlords requested payment once the reconciliation was completed. In failing to pay the outstanding amount the Tenants breached their tenancy agreement.

I accept the evidence of the Landlords that the amount outstanding for the Tenants share is **$703.80** and I award them compensation pursuant to sections 67 and 7 of the *Act* for this amount.

I will now turn to the Landlords' claim for compensation for damages to the rental unit.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the Act which reads as follows:

> 37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The Landlords sought compensation for the cost to repair damage drywall. The Tenants submit they were authorized by the Landlord to hang items and make the rental unit their home.

I accept the Tenants evidence that the Landlord told them to make the rental unit their home when she was painting their nursery. I am also mindful of the fact that this was a longer term tenancy. However, the photos submitted by the Landlords show significant damage to the master bedroom, bathroom and living room walls. I find this to be over and above normal wear and tear as contemplated by section 37.

In addition, the tenancy agreement provided that the Tenants were not to put any screws in the wall. The photos suggest screws were used by the Tenants contrary to the tenancy agreement.

Residential Tenancy Policy Guideline 1 provides in part as follows:

Nail Holes:

1. 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.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find the Landlords are entitled to compensation from the Tenants for repairs of the drywall due to this damage.

The Landlords also sought compensation for a broken toilet. The Tenants submit the toilet was chipped and unstable when they moved in and that as a consequence it "rocked". Without a move in condition inspection report, I have insufficient evidence before me to find that the Tenants damaged the toilet. I therefore dismiss the Landlords claim for related compensation.

On the Monetary Orders worksheet, the Landlords noted that the labour for repairing the drywall and replacing the toilet was $879.90. Introduced in evidence was a receipt dated August 10, 2016 which provided a breakdown of the amounts charged and which indicated that the amount relating to the drywall repair with tax is **$315.00**. I therefore award the Landlords compensation in this amount.

During the hearing the Landlord, M.L., stated that she also sought the cost of cleaning the carpets in the amount of $155.00. She confirmed she had forgotten to make this claim on her application and failed to provide evidence of this expense. I find the Landlords did not give the Tenants prior notice of this claim; they are at liberty to reapply for compensation for cleaning of the carpets should they wish to pursue these funds.

As noted earlier in my Decision registered mailing and photocopying costs are not recoverable under the *Act.*

As the Landlords have been partially successful in their claim, I grant them recovery of one half of the filing fee in the amount of **$50.00.** In total I award the Landlords the sum of **$1,068.80** representing compensation for the unpaid hydro utility in the amount of

$703.80, the $315.00 cost to repair the drywall and one half of the filing fee. The Landlords are authorized to retain the Tenants security deposit in the amount of $550.00 towards the amount awarded and are therefore granted compensation in the amount of **$518.80**.

As I have awarded the Tenants the sum of **$1,100.00** and the Landlords the sum of **$518.80** these amounts are to be offset against one another such that the Tenants are entitled to a Monetary Order in the amount of **$581.20.** This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenants are entitled to return of double their pet damage deposit in the amount of $1,100.00.

The Landlords are entitled to the sum of $1,068.80 for payment of the Tenants' share of the outstanding hydro utility account, repairs to the drywall necessitated by damage caused by the Tenants and recovery of one half of the filing fee. The Landlords are authorized to retain the Tenants $550.00 security deposit towards the $1,068.80 awarded and are therefore entitled to the balance of $518.80.

The amounts awarded to each party are to be offset such that the Tenants are granted a Monetary Order in the amount of **$581.20.**

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: February 17, 2017

Residential Tenancy Branch