



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD

Introduction

This is an amended application brought by the Landlord requesting a monetary order in the amount of \$9965.85, and requesting an order to retain the full security/pet deposit towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondents, and, if so, in what amount.

Background and Evidence

The parties agree that this tenancy began on March 15, 2014, and that the tenants vacated the rental unit on October 31, 2016.

The parties also agree that at the end of the tenancy the monthly rent was \$2200.00, due on the first of each month.

The parties also agree that the tenants paid \$1980.00 in US funds on April 3, 2014, and a further \$180.00 in US funds on May 15, 2014 to cover the \$1100.00 pet deposit, and the \$1100.00 security deposit.

The parties agree that a move in inspection report was done at the beginning of the tenancy, and that report shows that both the landlord and tenants signed the report.

The parties also agree that a move out inspection was done of the rental unit over two days; it was done partially on October 31, 2016, and then completed on March 5, 2016. It appears however that, although some notes were added to the move-in inspection report on the date of the moveout inspection, no signed moveout inspection report was produced.

The landlord testified that she believes that the information provided in her written statement for today's hearing accurately depicts her claim against the respondent.

The applicant claims that the tenants requested window screens for the rental unit for the safety of their cats and that the respondents had offered to pay for those screens however the respondent's never did pay for those screens. She is therefore requesting a total of \$593.00 for window screens.

The applicant states that the upstairs kitchen sink tap were in good working order the beginning of the tenancy however during the tenancy the respondents reported that they had discovered water on the floor and running out of the light fixture below the kitchen and that she subsequently discovered that the water was coming from upstairs at the kitchen sink and onto the floor. The tenant further reported that the water was stopped upstairs in the kitchen by turning off the tap.

The applicant therefore believes that the tenant should be held liable for the damage caused by this water overflow, and the cost to repair the damage was \$1526.41.

The applicant further states that the tenants had overloaded the shelf in the upstairs third bedroom where the doorbell was located and the overweight of boxes and items against the doorbell cause the doorbell the malfunction. The cost to replace this doorbell is \$394.45.

The applicant further states that the tenants had signed a fixed term tenancy agreement with an end of tenancy date of November 30, 2016, however the tenant gave notice that they would be vacating the rental unit on October 31, 2016 and they subsequently did so, and therefore she is requesting that the tenants be held liable for the November

2016 rent, Hydro, and Fortis BC accounts for a total of \$2370.00. She is requesting this amount even though the unit was re-rented for November 2016 because there were unforeseen inconveniences and disruptions for the following tenants which delayed their privacy and comfort for the month of November 2016.

The applicant further states that the respondents had offered to pay for fumigation of the rental unit due to the fact that carpet beetles were found during the moveout inspection, however the new tenants were uncomfortable with the idea of having toxic chemicals used, and therefore, after contacting a pest-control company, it was determined that frequent cleaning and vacuuming could take care of an infestation over approximately a three week time frame, and therefore this was done by the landlords and in part by the new tenants.

The applicant states that the extra cleaning required in the rental unit took approximately 56 hours to bring the home back to a clean and sanitary condition, and therefore the applicant is requesting a total of \$1400.00 for cleaning.

The landlord states that the tenants were to maintain the landscaping during the tenancy however they failed to do so and, on two occasions, she found it necessary to hire a landscape contractor to do the yard work, and as you can see from the invoices the total cost was \$262.50.

The landlord states that the tenant damaged a gas/fridge line on the exterior the house and the cost to repair that was \$135.00.

The landlord states that the tenants left the walls in the rental unit in very poor condition and as a result the walls needed extensive patching, sanding, and complete repainting. The tenants had left marks on the walls, patched walls poorly and then painted over those patches, done incomplete job of painting, left dents in walls, hand prints, shoe scuffs, and dirt. It appeared the tenants had tried to cover up some of the damage with a poor, incomplete paint job which made it even more difficult to repair as it is more difficult to sand down rough areas that have already been painted over. Her total costs for filling, sanding, and total painting, including the paint came to \$2675.00.

The landlord states that the tenants left the bathroom tub drain broken the sinks needed to be re-caulked and the toilet seat needed to be tightened down, and the cost to have a plumber do this work was \$163.61.

The landlord states that, although the tenants had the carpets cleaned, the cleaning was insufficient and she had to have the carpet re-cleaned because of visible stains left

on the carpets, even after cleaning, and due to the presence of carpet beetles. The cost to have the carpets re-cleaned was \$345.45.

The applicant is also requesting recovery of the \$100.00 filing fee that was paid for today's hearing.

Therefore the total amount claimed by the applicant is as follows:

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| Cost of window screens | \$593.43 |
| Repair damage caused by water overflow | \$1526.41 |
| Replace doorbell transformer | \$394.45 |
| November 2016 rent and utilities | \$2370.00 |
| 57 hours of cleaning | \$1400.00 |
| Lawn cutting | \$262.50 |
| Repair gas/fridge line | \$135.00 |
| Fill, sand, and repaint walls | \$2675.00 |
| Plumbing | \$163.61 |
| Carpet cleaning | \$345.45 |
| Filing fee | \$100.00 |
| Total | \$9965.85 |

The respondent testified that she did request window screens and had originally offered to pay a portion of the price; however the landlord stated she would cover the cost as it was an upgrade to the rental unit.

The respondent testified that there was a leak under the sink, however it was not caused by them and it was not the result of an overflow of the sink. Water was leaking under the sink whenever the tap was turned on and therefore, once they discovered this, they insured no one turned the tap on again until the landlord had time to have the problem rectified. They further state that, they caused no damage to the drawers and any marks in the drawers were there when they moved in, as noted on the move-in inspection report, or were normal wear and tear.

The respondents testified that they caused no damage to the doorbell, they had heard a strange sound coming from the bedroom closet and when the landlord investigated she found it was the doorbell transformer, and, at that time, we all agreed that the doorbell could be disconnected. We are not responsible for any damage to the doorbell.

The respondents testified that tenancy agreement did state that the end of tenancy date was November 30, 2016, and it was their mistake as they thought the tenancy ended on October 31, 2016; however the landlord re-rented the unit for November of 2016 as is

evidenced from the photos we have provided, and therefore they feel they should not be liable for any rent or utilities for the month of November 2016.

The respondent testified that she does not believe they are liable for any further cleaning as they had the home professionally cleaned when they vacated, and they believe they left the home in reasonable condition. They do not believe they are liable for the carpet beetle problem as they had no issue with carpet beetles during their tenancy, and they have been informed that carpet beetles can lay dormant in carpets for many years and that it is likely that the carpet cleaning caused the carpet beetles to come out of the carpets.

The respondents testified that they also do not believe they are liable for the cost of lawn cutting as they did maintain the yard during the tenancy and it was the landlord's choice to have someone come and mow the lawn a couple of occasions, however they were never told they would be charged for this lawn mowing. They were always willing to do the work themselves.

The respondents testified that they do not dispute the claim for the gas/fridge line as they believe their mover's damaged that line.

The respondents testified that any damage they caused to the walls during their tenancy they repaired and although they are not professional painters they believe the repairs were done satisfactorily and in good faith. The repairs certainly were not visible under ordinary lighting conditions, and only showed up when the landlord scoured the walls with a high-powered flashlight. Further, some of the damage showed by the landlords was pre-existing their tenancy.

The respondent testified that they dispute the cost of the plumbing as this is normal maintenance, and was not the result of any negligent or willful actions on their part.

The respondents testified that they also dispute the claim for carpet cleaning as they had had a professional carpet cleaning company come and clean the carpets and no further cleaning was needed. They further state that on the copy of the invoice they have provided from the carpet cleaning company it states *"no sign of pet odor, carpets were well and taking care of"*.

The respondent is therefore requesting the landlord's claim be denied other than the cost of the gas/fridge line of \$135.00. They therefore request that the remainder of their deposits totaling \$2803.41 at today's conversion rate from Canadian to US dollars, be returned.

The respondent's witness testified that she attended the moveout inspection on November 5, 2016 with the respondent and the applicant, and at that time it was obvious new tenants were living in the rental unit, as there was a bed, clothing, and bathroom and kitchen supplies in the rental unit.

The respondents witness also testified that the moveout inspection took approximately 4 hours and 20 min. and although the landlord kept pointing out what she believed to be deficiencies, she found that the tenant had left the rental unit in exceptionally good condition and, as a landlord herself, she would have been very happy to have a tenant leave a rental unit in such good condition.

The respondents witness testified there were two problems she did note in that was a bent pipe by the side door, and a couple of carpet beetles, however she further states that the tenant offered to have the property fumigated.

Analysis

It is my decision that I will not allow the landlords claim for window screens because, even though the tenants did request window screens, this is an upgrade to the landlord's house and not an item that the tenants could take with them at the end of the tenancy. The landlord must therefore bear the cost of the window screens.

I also deny the landlords claim for damages caused by water from the kitchen sink area, as the landlord has provided no evidence to show that this water damage was the result of any negligence on the part of the tenants. There is no evidence to show that this damage was caused by an overflow of the sink as suggested by the landlord.

I also deny the landlords claim for replacing the doorbell because; again there is insufficient evidence to show that the damage to the doorbell was the result of any willful or negligent actions on the part of the tenants.

I also deny the landlords claim for rent and utilities for the month of November 2016, because this rental unit was re-rented for November 1 2016, and therefore the tenants are no longer liable for any rent or utilities after that date. The landlord states that she is requesting this money because the new tenants were inconvenienced; however she has provided no evidence to show that any money was ever refunded to the new tenants, or that any discount in the rent was given to the new tenants.

I also deny the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required, and in fact the tenants have provided evidence to show that they had the rental unit professionally cleaned at the end of the tenancy. Further, there is no evidence to show that the carpet beetle problem was caused by the tenants.

I also deny the landlords claim for yard care because, although the landlord did pay to have the lawn mown on two occasions, she has provided insufficient evidence to show that the tenants failed to properly maintain the grounds of the rental property.

I will allow the landlords claim for the damaged gas/fridge line as the tenants do not dispute this portion of the claim.

I will also allow a portion of the landlords claim for sanding and filling the walls of the rental property, because it is my finding that the landlord has shown that the tenants did leave the walls in need of extra filling and sanding as the repairs done by the tenants were not done sufficiently. I will not however allow the landlords claim for painting, because the useful life of interior paints, as stated in the Residential Tenancy Guidelines is approximately 4 years and the landlord has testified that the last time the interior walls of this rental unit were painted is more than four years prior to the end of the tenancy.

Since the invoice for wall repairs and cleaning does not break down the amount charged for sanding and filling, or the amount charged for painting, it is my decision that I will only allow small amount of the claim, because I find it most likely that the majority of this cost would be for labor and materials for repainting all the interior walls. I am therefore willing to allow \$500.00 to cover the cost of filling and sanding.

I will not allow the landlords claim for plumbing because again the landlord has not met the burden of proving that this work was required as a result of any negligence or willful actions on the part of the tenants. The landlord is responsible for normal upkeep and therefore must pay these costs.

I also deny the landlords claim for re-cleaning the carpets, because there is insufficient evidence to show that the carpets were not properly cleaned by the professional carpet

cleaning company hired by the tenants. Therefore if the landlord chose to have the carpets cleaned again, that is a cost that she must bear.

Having only allowed a small portion of the landlords claim it's my decision that I will not allow the landlords request for recovery of the \$100.00 filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

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| Gas/fridge line repair | \$135.00 |
| Sanding and filling walls | \$500.00 |
| Total | \$635.00 |

The landlord is also requesting an order to retain the security deposit towards this monetary claim, however section 36(2)(c) of the Residential Tenancy Act states:

36(2)(c) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord (*my emphasis*)

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case the landlord has provided no evidence to show that a move out inspection report was completed and signed, and it appears that the landlord simply added notes to the move-in inspection report.

Further, the landlord has admitted that a forwarding address in writing was received by on November 2, 2016.

Therefore since the landlord did not complete a proper move-out inspection report, the landlord did not have the right to claim against the security deposit for damages, and the landlord was required to return the deposit within 15 days of receiving the forwarding address in writing.

Further, section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord did apply for dispute resolution within 15 days; however, since the landlord did not have the right to file such a claim, the landlord is still required to pay double the amount of the security deposit.

The tenant(s) paid a security/pet deposit of \$2200.00 and therefore the landlord must pay \$4400.00 to the tenant(s), and therefore the amount I have allowed of the landlords claim will be set off against that amount.

Conclusion

Pursuant to section 62 and 67 of the Residential Tenancy Act I have allowed \$635.00 of the landlords claim, and therefore pursuant to section 38 of the Residential Tenancy Act I order that the landlord may retain \$635.00 of the \$4400.00 security/pet deposit and I have issued an order for the landlord to pay \$3765.00 to the tenants.

The tenants have requested that, since the security deposit was paid in US funds, the present amount of the deposit be calculated at today's conversion rate, however at the time that the deposit was paid, the amount paid was to cover \$2200.00 in Canadian funds, and therefore at that time the tenants were considered to have paid the equivalent of \$2200.00 in Canadian funds. The landlords have no obligation to return the deposit at the increased conversion rate.

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: May 15, 2017

Residential Tenancy Branch