Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made March 3, 2017: MNSD
Landlords' Application made March 14, 2017: MND; MNSD; MNDC; FF

Introduction

This Hearing was scheduled to consider cross-applications. The Tenant seeks return of the security deposit and compensation pursuant to Section 38 of the Act.

The Landlords seek a monetary award for damages to the rental unit; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenant, pursuant to Sections 67, 38, and 72 of the Act.

This matter was originally heard on May 9, 2017, before a different arbitrator (LT). LT adjourned the Hearing because "after 66 minutes into the hearing, it was clear that additional time will be necessary to hear all of the evidence related to this application." LT has since resigned from the Residential Tenancy Branch, and therefore the matter was assigned to me. This reconvened hearing is a new hearing of the matters. I explained to the parties that we are starting fresh and I would require the parties to re-present their evidence and submissions.

Both parties gave affirmed testimony at the Hearing. It was determined that the parties had duly exchanged their documentary evidence.

Issue(s) to be Decided

- Is the Tenant entitled to double the amount of the security deposit and pet damage deposit?

- Did the Tenant breach Section 37 of the Act? If so, are the Landlords entitled to a monetary award for materials and labour resulting from the Tenant's breach, along with recovery of the cost of serving the Tenant, photographs, and the filing fee? May the Landlords set the security and pet damage deposits off against the Landlords' monetary award?

Background and Evidence

This tenancy began on April 3, 2014. The Tenant paid a security deposit in the amount of $550.00 and a pet damage deposit in the amount of $275.00, for a total of $825.00.

The Tenant testified that a final inspection was done on February 28, 2107, at which time both parties signed a "check-list". He stated that the Landlord MS was satisfied with the cleanliness and condition of the rental unit and gave him a full refund of the security deposit and pet damage deposit, by cheque. The Tenant testified that he has asked for his copy of the signed check-list, but the Landlords will not give it to him. The Tenant provided the Landlords with his forwarding address on January 24, 2017.

The Landlord MS testified that the parties were supposed to do a move-out condition inspection at 9:30 a.m. on February 28, 2017, but the Tenant had not finished moving out and that there were still a few of his possessions and garbage remaining on the property. MS denied signing a "check-list" with the Tenant. MS testified that the rental unit was "not quite clean" but that the Tenant assured her he would take his belongings away, so she foolishly returned the security deposit and pet damage deposit. MS stated that when she returned to the rental unit a few hours later, she saw that there was damage to the laminate flooring, which had been obscured by a pile of the Tenant's remaining possessions. MS took a photograph of the water damage with her cell phone, which was provided in evidence.

MS stated that during the tenancy, the Tenant had brought in a freezer without her permission and had installed it in the living room over the spot where the damage was found. She stated that the Tenant had asked her if she wanted to keep the freezer when he moved and that she told him she would have it. The Tenant unplugged the freezer and moved it outside under the deck at some point before February 28, 2017.

MS stated that when she saw the damage to the floors, she plugged the freezer back in and discovered that there was an exposed pipe in the back of the freezer which quickly became frosted over. MS submitted that this caused the water damage. She stated that the damage to the floors was slightly larger than the foot print of the freezer.

MS testified that after she discovered the damage, she gave the Tenant a Notice of Final Inspection Opportunity for March 4, 2017. The Tenant did not attend for the Inspection, so she completed it herself and provided the Tenant with a copy.

The Tenant testified that he left the rental unit at about 10:00 a.m. on February 28, 2017. He stated that he did not see any damage to the floors and that the damage might have been done any time after he left. The Tenant stated that the freezer was located against an outside wall, and suggested that the damage may have been caused by a leak from the eaves trough outside. He submitted that the damage appeared to have come from underneath the laminate floor rather than from the top of the floor. The Tenant testified that the "freezer was an older model" and that he had "no issues with it leaking".

The Tenant acknowledged that there was a floor cleaner, mop, broom and a kitchen chair inside the rental unit when MS came for the inspection on February 28, 2017. He stated that there was a mirror, 3 to 5 empty boxes, and a table top outside the rental unit. The Tenant stated that he tried to make arrangements to pick up his belongings on March 1, 2017, but he received threatening e-mails from MS and wished to have an escort or witness with him, which the Landlords would not permit. The Tenant provided copies of e-mails between the parties.

The Tenant acknowledged that he received the Notice of Final Inspection Opportunity, but that he had to work that day so he did not attend for the inspection. He reiterated his position that the inspection had already taken place, and that the damage claimed was post-inspection and after the security and pet damage deposits had been returned. The Tenant testified that the Landlord put a stop payment on the security and pet damage deposit cheque.

MS testified that the eaves troughs had not leaked at any time during the tenancy. She stated that there is a deck overhanging the area of the outside wall where the freezer was located and therefore even if the eaves troughs had leaked, the leak would not affect the rental unit.

MS testified that the laminate floors were installed "approximately 10 years ago". She stated that she did not have any replacement boards to repair the damage and that that particular type of boards is no longer available. MS stated that rather than replace the whole floor in the open concept living area of the rental unit (750 square feet), she thought the best option would be to remove existing boards from the bedroom to repair the damage and then replace the bedroom flooring.

The Landlords provided estimates ranging from $1,699.95 (for removing and replacing the boards with existing boards from the bedroom, and installing new floor in the 150 square foot bedroom) to $4,924.00 plus GST for replacing the floor in the living area. The Landlords seek the lesser of the estimate amounts on their Monetary Order Worksheet.

The Landlords provided an estimate from a cleaning company in the amount of $247.00 plus tax ($52.00 per hours for 4.75 hours). MS testified that she cleaned the rental unit herself, which took 7 hours.

The Landlords also provided 66 photographs, receipts and invoices in evidence. The Landlord's Application for Dispute Resolution and the Monetary Order Worksheet disclose that the Landlords seek a total of $3,106.39, calculated as follows:

Water damage to floor	$1,699.95
Garbage removal	$187.95
Replacement of broken kitchen cabinet door	$23.00
Replacement of broken compost bin	$9.99
Replacement of weather stripping	$18.48
Cleaning rental unit (7 hours $52.00)	$364.00
Replace missing sink stopper, light fixture, hooks	$65.09
Landlords' labour (painting, installing light fixture, hooks, shopping, arranging garbage removal) 6 hours @$20.00	$120.00
Loss of revenue during cleaning and repairs (15 days)	$550.00
Cost of mailing Notice of Final Inspection	$10.67
Cost of printing photographs for evidence	$57.26
Total claim	$3,106.39

Analysis

Regarding the Tenant's Application

Section 38 of the Act provides:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

[Reproduced as written.]

The Tenant provided his forwarding address in writing on January 24, 2017. The tenancy ended on February 28, 2017. I find that the Landlords made their Application within the time frame provided in Section 38(1) of the Act (within 15 days of the end of the tenancy), and therefore Section 38(6) of the Act does not apply and the Tenant is not entitled to double the amount of the deposits.

Part 3 of the Residential Tenancy Regulation provides that Condition Inspection Reports must be completed at the beginning and at the end of a tenancy, when the rental unit is empty of the tenant's possessions. In this case, the Tenant was not finished moving out and the rental unit was not empty of his possessions at the agreed-upon time for the inspection. In addition, there is standard information that must be on a Condition Inspection Report in order for it to be a valid report. A "check list" does not include all of the required information. For these reasons, I find that the parties did not complete a valid condition inspection on February 28, 2017.

I find that the Landlords complied with the requirements of Part 3 of the Regulation by providing the Tenant with a notice of final inspection opportunity. The Tenant was at liberty to have an agent attend at the inspection on his behalf if he was unable to do so because of work. In addition, the e-mails between the parties disclose that the Landlord

MS offered on March 1, 2017, to be at the rental unit at the Tenant's convenience to do the condition inspection.

Pursuant to the provisions of Section 38(2) of the Act, I find that the Tenant's right to return of the security and pet damage deposits was extinguished.

The Tenant's Application is dismissed.

Regarding the Landlords' Application

Section 37 of the Act provides that a tenant must leave the rental unit reasonably clean and undamaged, save for normal wear and tear, at the end of a tenancy.

Based on the documentary evidence and oral testimony of the parties, I find that the Tenant did not comply with Section 37 of the Act. The Landlords' photographs show that the range top and hood were dirty; the dishwasher was dirty, inside and out; the fridge had not been cleaned; the windows, baseboards, screens and walls were dirty; and the bathtub, faucet and bathroom floor were dirty. The photographs also show garbage left behind in the alley and yard, including the freezer and other items the Tenant acknowledged leaving behind. There are also photographs of broken or damaged items claimed by the Landlords, which I do not find to be normal wear and tear.

The Tenant first submitted that the damage to the floor was, as he put it, "post-inspection". The Tenant testified that he left the rental unit at approximately 10:00 a.m. on February 28, 2017. MS's photograph of the damaged floor boards was taken at 12:03 p.m., February 28, 2017. I find it highly improbable, if not impossible, for the damage to have occurred within a two hour period. The boards are dry, but buckled and water stained. The Tenant then submitted that he did not notice any leak while he was living at the rental unit and that perhaps the water damage came from something other than the freezer. The photographs show a dent in one of the boards, which appears to be the same size and shape as one of the freezer's feet. It is also is located at approximately where one of the feet would be, in relation to the damage (which is approximately the same size as the bottom of the freezer). I do not accept the Tenant's submission that the floor appears to have been flooded from underneath the floor boards. I find it most probable that the water damage was caused by the Tenant's freezer.

I find that the Landlords mitigated their loss by removing and replacing the damaged boards with boards from the bedroom, at considerably less cost than replacing the whole living area floor.

The Landlords' evidence shows that the cost of the boards was approximately $365.00. The remainder of the cost was for labour. MC testified that the floors were approximately 10 years old. Policy Guideline 40 provides a useful life of wood floors to be approximately 20 years. Therefore, I deduct 50% of the cost of the floors, $182.50, from the Landlords' claim for water damage, and award the Landlords $1,517.45 for this portion of their claim.

The Landlords seek $364.00 for the cost of cleaning the rental unit at the end of the tenancy. This amount is based on the hourly rate of professional cleaners, who estimated 4.75 hours of cleaning. The Landlords did the cleaning themselves, which took them 7 hours. I find that the amount as claimed is unreasonable. The cost estimate was $247.00 for the professional cleaners, who tend to clean more thoroughly than required under Section 37 of the Act ("reasonably clean"). Therefore, I allow this portion of the Landlords' claim in the amount of $140.00 (7 hours @ $20.00).
The Landlords claimed $120.00 for their labour for painting and other items. The Landlords' photographs of the dirty walls have a notation that the paint was 3 years old. The Residential Tenancy Branch Guidelines provide that indoor paint has a useful life of 4 years, and therefore the walls were nearly due to be painted. I saw no indication that there were holes or other damage to the walls other than normal wear and tear. I dismiss this portion of their claim.

I allow the Landlords' claim with respect to replacement of the stained kitchen cabinet door, sink stopper, light fixture, hooks and weather stripping. I dismiss their claim with respect to the compost bucket, as I find it probable that the missing lid was due to normal wear and tear.

I find that the Landlords provided sufficient evidence to support their claim in the amount of $187.95 for the cost of disposing of the Tenant's garbage and junk. I do not accept the Tenant's submission that the Landlords' e-mails were harassing or threatening in nature, and in any event the Tenant could have sent an agent or had a friend accompany him to collect these items. On March 1, 2017, at 6:47 p.m., the Tenant e-mailed MS writing that he has "finished work for the day and I am willing to come collect anything of mine from the yard. I'll ask that [the other Landlord] be present to escort me and my witness on and off the property….". The Tenant did not go to the rental property to collect his belongings. At 11:07 p.m. on March 1, 2017, MS wrote, "I'm forwarding a copy of the 'notice of final opportunity to schedule a condition inspection'

which I will be mailing to you tomorrow. I have set up a time when [the other Landlord] will also be available for your comfort. Feel free to bring your escort." The Landlords arranged for a junk disposal company to pick up the items on March 8, 2017.

There is no provision in the Act for recovery of the cost of serving another party with documents, or for the cost of photographs used in evidence. This portion of the Landlords' claim is dismissed.

I find that the Landlords did not provide sufficient evidence that they had rented the rental unit for March 1, 2017. I accept that it may have taken 15 days to make repairs to the floors; however, I find that the Landlords provided insufficient evidence that the Landlords lost revenue as a result of the repairs. An e-mail dated February 21, 2017, from the Landlord MS to the Tenant discloses, "…..the guy that was going to move in has backed out, so we need to show the suite again". I find that the Landlords provided insufficient evidence that they had a new occupant lined up for March 1, 2017 (for example a copy of a tenancy agreement) and therefore, the Landlords' claim for loss of revenue in the amount of $550.00 is dismissed.

The Landlords have been largely successful in their Application and I find that they are entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit and pet damage deposit in partial satisfaction of their monetary award. Further to the provisions of Section 67 of the Act, the Landlords are hereby provided with a Monetary Order, calculated as follows:

Water damage to floor	$1,517.45
Garbage removal	$187.95
Replacement of broken kitchen cabinet door	$23.00
Replacement of weather stripping	$18.48
Cleaning rental unit (7 hours $20.00)	$140.00
Replace missing sink stopper, light fixture, hooks	$65.09
Recovery of the filing fee	$100.00
Subtotal	$2,051.97
Less set-off of deposits	-$825.00
	$1,226.97

Conclusion

The Tenant's Application is dismissed.

The Landlords are hereby provided with a Monetary Order in the amount of **$1,226.97**, for service upon the Tenant. This Order may be enforced through the Provincial Court of British Columbia (Small Claims 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: July 11, 2017

Residential Tenancy Branch