Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD (Landlords' Application)
MNSD, FF (Tenants' Application)

Introduction

This hearing convened as a result of cross applications.

In the Landlords' Application filed on March 20, 2017 the Landlords sought the sum of $3,100.00 for unpaid rent and damage to the rental unit as well as authority to retain the Tenants' security deposit.

In the Tenants' application filed on April 3, 2017 the Tenants sought return of double their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on August 15, 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 Tenants recover the filing fee?

Background and Evidence

P.K. testified on behalf of the Landlords. He stated testified that the tenancy initially began September 20, 2015 and that at that time rent was $1,450.00 per month in rent; P.K. stated that after that tenancy ended they entered into another tenancy agreement whereby the Tenants were to pay rent to $1,550.00 per month. P.K. confirmed that the Tenants paid $1,000.00 as a security deposit which the Landlords continue to hold.

P.K. stated that the Tenants were evicted for cause after receiving three different 1 Month Notice to End Tenancy for Cause. He stated that the first two eviction notices were rescinded as they resolved matters by agreement. He confirmed that the Tenants moved out based on the final Notice dated February 2, 2017.

P.K. stated that the Tenants vacated the rental unit on March 5, 2017. He confirmed that on March 17, 2017 they received the Tenants' forwarding address in writing. The Landlords applied for dispute resolution on March 20, 2017.

On their Application for Dispute Resolution the Landlords claimed the sum of $3,100.00.

P.K. stated that they received estimates regarding the damage, but that the actual cost was more than the estimates. Filed in evidence was a Monetary Orders Worksheet wherein the Landlords listed their claims as follows:

Unpaid rent for the month of February 2017 and one week in March 2017	$1,937.50
Outstanding utility bill	$111.26
New blinds	$375.20
Patio cover repair	$1,050.00
Repaint damaged walls	$1,260.00
Replacement cost for dishwasher	$561.22
Replacement cost for new stove	$561.20
TOTAL CLAIMED	**$5,856.38**

During the hearing the Landlords confirmed that the amount of rent outstanding for February and March 2017 was $1,804.80 rather than the amount claimed above.

P.K. stated that the Tenants were responsible for paying 70% of the water bill and at the time the tenancy ended they owed $111.26 for the water.

P.K. confirmed that the Landlord purchased the house in 2014 and the blinds were the same blinds that were there when the tenancy ended. P.K. stated that the blinds were damaged to the point where they could not be repaired and as such the Landlord sought the sum of $375.20 for replacing the blinds.

P.K. stated that the patio cover was there for as long as they have owned the house, and had not been used prior to the tenancy beginning. P.K. stated that the Tenants pulled the cover out and did not put it back in when there was a storm and as such the cover was damaged. He stated that it was not possible to pull the cover back out due to the damage.

P.K. stated that to his knowledge the walls were painted before they bought the house either in 2013 or 2014. He stated that the Tenants' son used a vapourizer to clean his skin and as such there was a build-up of "black gunk" on the walls.

P.K. confirmed that the dishwasher was purchased by the previous owners in the early to mid 2000's.

P.K. further confirmed that the stove was also purchased in approximately 2010 or 2011.

P.K. stated that they were family friends with the previous owners and as such knew when the above items were purchased.

P.K. confirmed that they did not provide photos of the above claimed damage. P.K. stated that they did not submit photos as they were not sure how to submit electronic photos.

In reply to the Landlords' submissions, M.N. testified as follows.

He stated that he "absolutely" paid rent for February 2017 and March 2017. He stated that the Landlords refused to provide him receipts. M.N. also stated that they moved

from the rental unit because the Landlords tried to raise the rent for a third time in one year, and they refused. M.N. also stated that the Landlords refused to fix the stove.

M.N. also stated that the Landlords suggested that he purchase a stove if the one in the rental unit was not working. M.N. claimed that they had purchased other appliances for the rental unit in the past, although they did not wish to buy a new stove. M.N. stated that he then called the Residential Tenancy Branch who told him that it was the Landlords' responsibility to fix the stove, not the Tenants. M.N. stated that at this time he decided to move.

M.N. stated that he paid the water bill and is opposed to the Landlords' claim for compensation in the amount of $111.26. He also stated that in fact they overpaid the hydro bill and the Landlords owe them money for that account.

M.N. stated that the blinds were not moved during the tenancy, as they were immovable, and as such he denied that they damaged the blinds.

In response to the Landlords' claim regarding the patio cover, M.N., stated that the patio cover was damaged by a storm. M.N. further stated that the patio cover was out when they moved in and at no time did the Landlords tell them to put the cover back in, or how to do so in the event of a storm.

In response to the Landlords claim for compensation for the cost of replacing the dishwasher M.N. stated that they did not know how to use the dishwasher and therefore did not use it.

In response to the Landlords' claim for compensation for the cost of replacing the stove, M.N. stated that was the reason they moved as the Landlords refused to fix the stove. He stated that on previous occasions they paid to fix the stove, but on the last occasion (after speaking to the RTB) he asked the Landlord to take care of it. He stated that he called a technician who said it would cost $200.00 to fix the stove. He further stated that he called the Landlord and asked if they would pay the cost to fix it and the Landlord said that they had purchased another stove which would be arriving "soon"; despite this promise the new stove never arrived and four three months they did not have a stove for cooking (which he stated again was the reason they moved out).

In reply to the Tenants' submissions P.K. stated that while the Tenant did pay the repair cost of the glass stove top, the amount was deducted from the rent payment.

P.K. confirmed that the Landlords did not issue a formal Notice of Rent Increase although the Tenants agreed to the increase to $1,550.00. P.K. then stated that the original rent was $1,450.00.

P.K. claimed that he was always with his dad when he spoke with the Tenant M.N. and that at no time did his father tell the Tenants that he would replace the stove or that a stove was to be delivered.

P.K. confirmed that the Landlords refused to fix the stove because from their perspective the Tenants kept damaging the appliances.

Analysis

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.

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.

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* 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.

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

The Landlords claimed the Tenants failed to pay rent for February and 5 days in March 2017. The Tenants claimed they paid rent and allege the Landlords refused to provide receipts for cash rent payments. Notably, the Landlords did not issue a 10 Day Notice to End Tenancy for Unpaid Rent in February of 2017. The 1 Month Notice alleges a breach of a material term, however no details as to the alleged breach are provided. I am unable, based on the evidence before me, to reconcile this discrepancy and I therefore find the Landlords have failed to prove their claim for unpaid rent. (The parties are reminded that pursuant to section 26(2) of the *Act* a Landlord must issue receipts for any cash payments.)

Similarly, I am unable to reconcile the discrepancy in the parties' testimony as to the payment of the water bill. The Landlords claim the Tenants did not pay this amount; the Tenants claim they did and allege they overpaid. Without corroborating evidence, such as a demand for payment, email communication between the parties regarding this alleged debt, I am unable to find in favour of the Landlords. Accordingly, I find the Landlords have failed to prove their claim regarding the water utility on a balance of probabilities and I therefore dismiss this claim.

I accept the Landlords evidence that the blinds were damaged during the tenancy. I do not accept the Tenants' testimony that they were immovable and therefore perpetually closed. I find it unlikely that the Tenants would not have requested repair or replacement of the blinds if this was in fact the case.

Residential Tenancy Policy Guideline 40—Useful Life of Building Elements provides that,

> "if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

Policy Guideline 40 provides that blinds have a useful life of 10 years. The evidence of the Landlords was that the blinds were purchased in 2014. I therefore find that the amount claimed by the Landlords should be discounted by 30% for a total recoverable **$262.64.**

I accept the Tenants evidence that the patio cover was out when the tenancy began and they were not instructed how to retract it in the event of a storm. I therefore dismiss the Landlords claim for related compensation as I find the Tenants are not responsible for the damage caused by the storm.

Policy Guideline 40 further provides that interior paint has a useful life of 4 years. The Landlords did not provide proof of the age of the paint only to estimate that the rental unit had been painted three to four years before the tenancy ended. Accordingly, I find that the interior paint was likely nearing the end of their useful life at the end of this tenancy and I dismiss the Landlords' claim for related compensation.

The Landlords fail to submit any evidence as to how the Tenants were responsible for the dishwasher. The Tenants claim they never used it. In any case, *Policy Guideline 40* provides that a dishwasher has a useful building life of 10 years. The Landlords' evidence was that the dishwasher in the rental unit was purchased in the mid 2000's; as such I find the dishwasher was beyond its useful life and I dismiss the Landlords' claim for related compensation.

Similarly, the Landlords failed to adduce any evidence as to how the Tenants allegedly broke the stove. The Tenants claim this was the reason the tenancy ended as the Landlord failed to repair the stove. The Tenants further submit that they were informed the stove would cost $200.00 to repair. Section 7 of the *Act* requires the claiming party to mitigate their loss; in this case, I find the Landlords failed to prove that the stove required replacement and could not be repaired, such that they have not satisfied the requirement of section 7.

Further, *Policy Guideline 40* provides that a stove has a useful life of 15 years. The Landlords did not provide any documentary evidence to support their claim that the stove was purchased in 2010 or 2011; they simply claimed that they knew the previous owners and recall the stove being purchased at this time. I find this to be insufficient to prove the age of the stove and as such, I am unable to find the Landlords are entitled to compensation equivalent to the cost to purchase a new stove. In all the circumstances, I dismiss the Landlords' claim for related compensation.

I therefore award the Landlords the sum of **$262.64** representing the adjusted cost for replacing the blinds.

The Tenants seek return of double their $1,000.00 security deposit. I accept the Landlords' evidence that they received the Tenants' forwarding address on March 17, 2017; further the Tenants concede this in the "Details of Dispute" section on their Application. As the Landlords applied for dispute resolution on March 20, 2017, they applied within the 15 days required by section 38 of the *Act.* I therefore decline the Tenants' request for double their security deposit.

I find the parties have enjoyed divided success and I therefore find they shall each bear the cost of their filing fee.

The evidence with respect to the amount of rent payable was unclear; however, it suggests the Landlords may have illegally increased the rent during the tenancy. The parties were reminded that rent increases are governed by Part 3 of the *Residential Tenancy Act* and Part 4 of the *Residential Tenancy Regulation.* Notably, the Tenants did not seek monetary compensation for any such alleged illegal rent increase and I therefore grant them leave to reapply for further monetary compensation.

Similarly, the evidence indicates the Tenants paid a security deposit in the amount of $1,000.00. The parties are reminded that the amount of deposits is limited by operation of section 19 of the *Act.*

Conclusion

The Landlords are entitled to the sum of **$262.64** representing the depreciated value of the blinds. The balance of the Landlords' claims is dismissed.

The Tenants claim for return of double their security deposit and recovery of the filing fee is dismissed.

The Landlords are authorized to retain the $262.64 sum from the Tenants' security deposit of $1,000.00 and must return the balance of **$737.36.** In furtherance of this Order I grant the Tenants a Monetary Order in the amount of **$736.36.** The Tenants must serve this Order on the Landlords and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: August 15, 2017

Residential Tenancy Branch