Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE CHILLIWACK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing dealt with monetary cross applications. The tenants applied for return of double the security deposit and compensation payable where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*. The landlord applied for compensation for damage to the rental unit and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Two co-tenants were named on the applications before me; however, only one tenant appeared at the hearing. The tenant confirmed that she was representing herself and her co-tenant, who is her mother. The landlord named on the applications is a property management company hired to act as agent for the owners of the rental unit throughout the tenancy. A property manager meets the definition of "landlord" under the Act and the reference to landlord in this decision may include the owner of the property; the property management company; or the individual appearing on behalf of the property management company.

At the outset of the hearing I confirmed service of hearing documents and evidence upon the parties. I noted that I did not have a detailed calculation for either claim before me. Both parties orally described the calculation in reaching their total claim and were agreeable to proceeding to respond to the amounts claimed against them. The landlord's agent also requested the landlord's claim be amended to include compensation for wall damage. The tenant was agreeable to permitting the amendment. Accordingly, I amended the landlord's application.

I explained the hearing process to the parties and permitted the parties to ask questions. I also gave the parties an opportunity to settle their disputes.

Also worthy of noting is that during the hearing the landlord's agent requested that the owner of the property be called to join the hearing. I gave the landlord's agent the opportunity to telephone the owner on two different telephone numbers but he was unsuccessful in reaching the owner. When the landlord's agent was unsuccessful in reaching the owner of the property the landlord's agent requested the matter be adjourned; however, I declined to grant an adjournment considering these matters had been scheduled for over six months and arrangements for the owner to appear should have been made before the hearing commenced. I offered the landlord the opportunity to withdraw the landlord's application with leave; however, the landlord stated that he preferred to proceed.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Are the tenants entitled to additional compensation because the owner did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*?
3. Has the landlord established an entitlement to compensation for damage to the rental unit, as amended?

Background and Evidence

The tenancy started on March 1, 2013 and the tenants paid a security deposit of $575.00. The tenants were required to pay rent of $1,150.00 on the first day of every month. The tenancy ended on May 31, 2017.

There were three components to these applications which I have summarized below.

Tenants' claim for return of double the security deposit

Condition inspections were performed at the start and end of the tenancy and the landlord's agent prepared condition inspection reports. The tenant provided her forwarding address on the move-out inspection report that was completed on June 1, 2017. The move-out report indicates the tenant agreed with the landlord's assessment of the condition of the property but there was no written authorization for a deduction from the security deposit. The security deposit has not been refunded to the tenants.

The landlord was of the position that since the tenant had agreed on the move-out inspection report that there was damage to the rental unit the landlord had the right to

retain the security deposit. The landlord acknowledged that his former assistant, who completed the move-out inspection report, did not obtain the tenant's written authorization to make deductions from the security deposit; but, claimed there was an oral agreement that the landlord may retain the security deposit due to damage to the rental unit. The landlord filed an Application for Dispute Resolution to seek authorization to retain the security deposit on August 31, 2017.

Tenants' claim for additional compensation under section 51(2) of the Act

In January 2017 the tenants were contacted by the owner's realtor who indicated the owner was putting the property up for sale. On March 22, 2017 the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with an effective date of May 31, 2017. The 2 Month Notice indicates the reason for ending the tenancy is: the rental unit will be occupied by the landlord or the landlord's close family member.

The tenants did not file to dispute the 2 Month Notice but offered to pay more rent to remain tenants. The tenant stated that her offer was rejected with the explanation that the owners needed the rental unit for their own use.

The tenant testified that after the tenancy ended the rental unit remained vacant until December 1, 2017 when new people moved in. The tenant explained that she is frequently in the area of the rental unit as she has friends and family nearby. The tenant pointed out that the rental unit was sold as of October 26, 2017 according to the Multiple Listing Service (MLS) data sheet. The tenant submits that the owner did not use the rental unit for the purpose stated on the 2 Month Notice and the tenants are entitled to additional compensation under the Act.

The landlord's agent testified that he was informed by the owners that their son would be moving in to the rental unit when he prepared the 2 Month Notice. The landlord's agent was unaware that the rental unit remained vacant and then sold on October 26, 2017 until the tenant raised this issue.

Both parties were in agreement that the tenants did received compensation equivalent to one month's rent for receiving the 2 Month Notice by withholding last month's rent.

Landlord's claim for damage to the rental unit

The landlord's monetary claim for damage to the rental unit is as follows:

Hardwood flooring damage	$1,228.00
Door, casing and baseboard damage	912.00
Original claim	$2,140.00
Add: wall damage	256.00
Amended claim	$2,396.00

The landlord submitted that at the end of the tenancy the hardwood flooring in the living room, dining area and hallway was damaged by deep scratches. The landlord submitted that the walls, doors, casing and trim was damaged by numerous marks, scuffs and scratches. The tenant was in agreement with the landlord's assessment regarding the condition of the property.

The owner obtained an estimate to repair the hardwood flooring on August 23, 2017 in the amount of $1,228.50. The owner subsequently provided receipts and invoices to show repairs made after the tenancy ended but there was not receipt/invoice provided for repairs to the hardwood flooring. The landlord's agent was uncertain as to whether the hardwood flooring repair was made and at what cost but stated that the photographs taken of the rental unit when it was listed for sale show the hardwood flooring as looking good.

The owner obtained an estimate to repair and paint the doors, walls and trim on June 4, 2017 in the amounts of $912.00 and $256.00, excluding tax. The owner subsequently provided a receipt dated October 21, 2017 to show this work was done at a cost of $900.00 and $250.00 plus tax for a total of $1,207.50. The receipt indicates the walls were patched and repainted and the door and trim was filled, sanded and repainted.

The landlord's agent stated that the rental unit was last painted approximately 4.5 to 5 years ago.

While the tenant took responsibility for causing the damage described above, the tenant questioned having to pay the amounts claimed. The tenant pointed out that there was only an estimate for the hardwood flooring damage; the property was sold and there was no receipt or invoice to show the repairs were made. The tenant also submitted that aging and wear and tear was not taken into account in claiming for the repainting of the wall and trim.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each component of the applications before me, as amended.

Tenants' claim for return of double the security deposit

As provided in section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. Pursuant to section 38(6) of the Act, if the landlord does not return the security deposit or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's written agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, I am satisfied the landlord had been provided the tenant's forwarding address in writing during the move-out inspection that took place on June 1, 2017. Accordingly, the landlord had until June 16, 2017 to either refund the security deposit; file an Application for Dispute Resolution to claim against it; or obtain the tenant's written consent to retain the security deposit or make deductions from it. Although the landlord and the tenant agreed with the assessment of the condition of the rental unit during the move out inspection, the landlord had not obtained the tenant's written consent to retain or make deductions from the security deposit at that time or any time after that. The landlord did not refund the security deposit and did not make a claim against the security deposit until August 31, 2017 which is well beyond the 15 day time limit. Accordingly, I find the landlord failed to comply with section 38(1) of the Act and must now pay the tenants double the security deposit pursuant to section 38(6) of the Act. Therefore, the tenants are awarded double the security deposit, or $1,150.00, as requested.

Tenants' claim for additional compensation under section 51(2) of the Act

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice as provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice.

The tenants in this case received the compensation payable under section 51(1) by withholding last month's rent and are seeking compensation provided under section 51(2) of the Act. Accordingly, the issue for me is to determine whether the tenants are entitled to additional compensation provided under section 51(2) of the Act.

Section 51(2) provides:

> (2) In addition to the amount payable under subsection (1), if
>
> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[My emphasis underlined]

Section 49 provides for a variety of reasons a landlord may end a tenancy for landlord's use of property. Accordingly, I find the application of either paragraph (a) or (b) of section 51(2) depends on the reason given for ending the tenancy. To illustrate my reason for this finding, a landlord may end a tenancy for landlord's use where the unit is to be demolished and in such cases paragraph (b) would not apply and paragraph (a) would be most applicable.

In this case, the landlord's agent indicated the reason for ending the tenancy was so that the owner or the owner's close family member could occupy the rental unit. So as to dissuade landlords from ending a tenancy for an ulterior motive and occupy the rental unit for a brief period of time before selling or re-renting the unit, I find the application of paragraph (b) is most appropriate in the circumstances before me.

I heard the rental unit remained vacant after the tenancy ended and I was provided documentary evidence to show the rental unit was sold by the owners effective October 26, 2017. Since the property was sold on October 26, 2017 I find the owners of the rental unit, or the owner's close family member, did not hold possession of the rental unit for at least six months after the tenancy ended. Accordingly, I find the tenants are entitled to additional compensation pursuant to section 51(2) of the Act and I grant the tenants' request for an award of $2,300.00.

While I heard the property manager issued the 2 Month Notice to the tenants based upon instruction or information supplied to him by the owners of the property, that submission has no impact on the tenants' entitlement to compensation payable under section 51 of the Act. Rather, any misrepresentation to the property manager by the owners is a matter between the property manager and the owners which is outside of my jurisdiction.

Landlord's claim for damage to the rental unit

Where a party seeks compensation from another party, the applicant has the burden to prove the other party violated the Act, regulations or tenancy agreement; that they suffered a loss as a result of the violation; provide verification for the value of the loss; and, show reasonable steps were taken to mitigate losses.

Section 32 and 37 of the Act provide that a tenant is responsible for repairing damage caused by their actions or neglect. Sections 32 and 37 also provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for compensation to rectify damage to the property caused by the tenant's actions or neglect but not pre-existing damage or reasonable wear and tear.

In this case, the tenant took responsibility to damaging the rental unit as reflected on the move-out inspection report; however, the tenant was not agreeable to compensating the landlord the amounts claimed. Accordingly, the primary issue for me to determine is the landlord's entitlement to compensation for damage caused by the tenants.

Awards for damages are intended to be restorative. Where a fixture, appliance or other building element is so damaged that it requires replacement, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

1. Hardwood floor damage

It was undisputed that there were some large and deep gouges in the hardwood flooring at the end of the tenancy. However, I also note that the move-in inspection report indicates there were some scratches in the hardwood flooring at the start of the tenancy, by the sliding glass door and the fireplace. Clearly, these floors were not in new condition at the start of the tenancy and the age of the flooring was not provided to me.

I was provided an estimate to sand and refinish the flooring in the sum of $1,228.50. Although I was not provided a receipt or invoice to show the work was done, I accept the property manager's submission that the floors looked good in the MLS pictures as evidence the work was likely done by the owners.

Since the flooring was a number of years old, with some pre-existing damage, and the tenants are not responsible for pre-existing damage or reasonable wear and tear, I find it appropriate to award the landlord a portion of the amount claimed. Based on the photographs provided to me, taking into account the estimate provided, and taking into account wear and tear, I find estimate a reasonable award to be $500.00 for hardwood flooring damage.

2. Wall and trim damage
It was undisputed that the walls and trim were scuffed and marked at the end of the tenancy. However, I also note that the move-in inspection report indicates there were some signs of wear on the walls and trim. The walls were described as being in "fair" condition only at the start of the tenancy and a notation that the paint and trim were showing standard wear throughout. Clearly, the walls and trim had not been freshly painted immediately prior to this tenancy.

Residential Tenancy Policy Guideline 40 provides that interior paint has an average useful life of 4 years.

Considering the walls and trim were not freshly painted prior to the start of the tenancy and the landlord ought to expect additional wear and tear over the next four years of tenancy that followed, I make no award for repainting the rental unit. Rather, I limit the landlord's award costs associated to having the deeper gouges patched.

The estimate and the receipt provided to me do no provide a breakdown of the cost or patches versus repainting. Accordingly, I find it appropriate to provide the landlord with a nominal award in recognition of the damage the tenants acknowledge. Based on the estimate/receipt and the photographs I provide the landlord with a nominal award of $200.00.

Filing fee and Monetary Order

Both claims had merit and I order both parties to absorb the cost of the filing fee they paid for their respective applications.

Pursuant to section 72 of the Act, I offset the landlord's awards against the amounts awarded to the tenants and I provide the tenants with a Monetary Order for the net amount calculated as follows:

Tenants' awards:	
Double security deposit	$1,150.00
Compensation under section 51(2)	2,300.00
	$3,450.00
Less: landlord's awards:	
Damage to hardwood flooring	$ (500.00)
Patch walls and trim	(200.00)
	$ (700.00)
Monetary Order for tenants	$2,750.00

Conclusion

The tenants were successful in their application and were awarded compensation totalling $3,450.00. The landlord was partially successful in its claims and was awarded compensation totalling $700.00. After offsetting, the tenants are provided a Monetary Order in the net amount of $2,750.00 to serve and enforce upon the landlord.

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: March 19, 2018

Residential Tenancy Branch