Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, MNSD, MNDC, FF

Introduction

In the first application the tenants seek to cancel a two month Notice to End Tenancy for landlord use of property and to recover a $500.00 security deposit. At hearing it was made clear that rather than cancel the Notice, the tenants sought the two month rent equivalent penalty imposed by s. 51(2) of the *Residential Tenancy Act* (the "*Act*") where a landlord fails to carry out the stated purpose in the Notice.

In the second application the landlords seek significant damages for cleaning and repair of the premises after the tenants left.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the landlords in breach of s. 51 of the *Act*? Are the landlords entitled to recover any damages for cleaning or repair?

Background and Evidence

The rental unit is a one bedroom condominium apartment with a sunroom and den. There is a written tenancy agreement. The tenancy started September 1, 2015 and ended August 31, 2017 as the result of a two month Notice to End Tenancy served on the tenants in June. The landlords' Notice gave that date as its effective date.

The monthly rent was $1895.00, due on the first of each month. The tenants paid and the landlords hold a $947.50 security deposit.

On July 28 the tenants emailed the landlord Ms. S. purporting to give a ten day short notice to end tenancy earlier than the effective date in the landlords' two month Notice, as permitted by s. 51 of the *Act* where a tenant has received a two month Notice. The landlord Ms. S. was out of the country and did not look at the email until August 9.

The two month Notice stated that it was the landlords' intention to renovate the rental unit in a manner that required it to be vacant. At the August 31 move-out inspection the tenants learned that the landlords did not have a permit from the strata council to conduct any renovations.

The landlords sold the rental unit at the end of October 2017 pursuant to an offer made October 12.

The landlord Ms. S. testifies that there was a move-in condition inspection report but that it was not in the standard form. She refers to a document signed by the parties titled "Rental Condition Checklist." It sets out the cleaning and repair requirements expected of the tenants at the end of the tenancy. It is not a record of the state of the premises at the start of the tenancy. She says none of the listed things were done.

During the tenancy, in February 2017, the landlords had an opportunity to view the rental unit. At that time they noticed that a large commercial item (a refrigerated restaurant "sandwich station" according to the tenants and a restaurant "prep table" according to the landlords) had been located in the den. They noticed that the wood transition strip at the front door had been damaged. They email the tenants, who agreed to fix it. Ultimately, the tenants did not fix it.

Ms. S. testifies she and her co-landlord bought the rental unit new about ten years ago as an investment. In the spring of 2017, for various reasons, they had decided to sell. They had not realized that they could give a two month Notice to the tenants if a purchaser requested it. Se says that the renovations she and her co-landlord had contemplated were: refinishing the wood flooring, painting and changing the carpets. The tenants were agreeable to leaving after receiving the two month Notice. The tenants received free rent for August, as they were entitled to under a two month Notice.

The parties conducted a move-out inspection August 31. The landlords did not prepare the move-out condition inspection report required by s. 35 of the *Act*.

All had been well between the parties until the landlords raised the issue of damage to the rental unit. On September 2 the landlords emailed the tenants listing complaints about the state of the premises.

According to Ms. S. the tenants had done no cleaning. As well, the kitchen area was coated in a greasy film. She reviewed a series of nineteen sets of photos, some with "before" pictures, to show:

- The stove had not been cleaned,
- The kitchen sink had not been cleaned,
- The toilet had not been cleaned and the tub stopper was missing,
- Some of the drawers had not been wiped,
- Windows had not been cleaned,
- The fridge needed cleaning and the tenants had left a jar of pickles in it,
- There was water damage to the bamboo flooring as well as chips and discolouration,
- The kitchen backsplash was greasy, requiring replacement,
- Blinds were damaged and not cleaned,
- The fireplace mantel was worn and stained,
- The carpet was soiled, even the underlay,
- The closet doors sliders were damaged,
- The door frames were damaged by hooking things over them,
- The microwave filters were clogged and the display broken, requiring replacement,
- The stove top air grill was covered in grease,
- There was saranwrap over the ceiling smoke detector,
- The metal cover of the cable box located in the entrance closet had been pried open and damaged.

Ms. S. opines that the tenants, who were operating a restaurant or bakery at another location, were carrying on significant cooking or baking in the rental unit, thus the grease and the commercial equipment in the den. She says that when the landlords had replaced the stove in October 2016 she saw a number of pots and tops on the old stove, indicative of heavy use.

Ms. S. has filed invoices to show that the kitchen cabinets were refinished at a cost of $1470.00, a new kitchen backsplash was purchased for $643.05, window blinds were replaced for $1674.85, a new fireplace mantel was purchased for $228.93, new carpets were supplied and installed for $5750.00, bi-fold doors and moldings were bought for $802.90, a painter was paid $2730.00, installation costs of $1785.00 were paid for the mantel, backsplash and closet bi-fold doors, a microwave was bought for $365.24 and installed for $162.75 as well as various other small item purchases such as a tub stopper, photo reproduction costs, toilet seats and shelf liners plus $50.00 for visitor parking passes allegedly not returned by the tenants.

In response, the tenant Mr. Y. testifies that the premises were not in immaculate condition at move-in. There had been at least two other tenants before he and Ms. C. took possession.

He refers to a statement from a realtor who saw the place at around the time the tenants moved in. The landlord Ms. S. says she did not receive that statement in the tenants' evidence package. I'm not satisfied the landlords did receive it and so I give it no evidentiary weight in this decision.

Mr. Y. says that he and Ms. C. were actually considering purchasing the premises themselves for a period of time. He notes that there was no move-in condition report. He says Ms. S. seemed a nice person and so he did not worry about it.

During the tenancy there was a water leak into the rental unit from the unit above. He attributes some of the flooring damage shown in the landlords' photos to that.

In his view the landlords changed the kitchen back splash because the existing one (installed during this tenancy as a result of damage caused during a stove installation) did not particularly match the kitchen in its shading.

He says the tenants thought to stay another year before they received the two month Notice.

Mr. Y. acknowledges responsibility for the door transition damage and claims he did not repair it before leaving because it is bamboo and he couldn't' find anyone who sells it anymore.

He says that at the move out he asked about renovation permits and when he brought it up with the landlords that they might be liable for a penalty, they started raising the damage issues.

He produces a receipt from a cleaning service showing that four cleaners worked for 1.5 hours cleaning the rental unit on August 10. 2018.

Regarding windows, he thinks they got dusty from being open in the latter part of August with dusty construction going on across the street.

He says the floor damage was either pre-existing or the result of the flooding from upstairs. He says it was not mentioned until after the day of the move-out inspection.

It was his understanding that the landlords were going to sand the floors, repaint, fix minor things and then sell.

In his view the bi-fold door tracks were simply worn out and failing. He and Ms. C. just lived with them coming off their tracks.

He denies putting anything on the doors that would cause the rubbing damage observed on the underside of the upper frame.

He says the microwave was working when he left.

He testifies that there was no saran wrap over the smoke detector while he lived there.

He denies tampering or damaging the cable box cover and says he did not even know it was there and that he used the Telus service whereas the landlord Ms. S. indicated it was a Shaw cable box.

Mr. Y. admits to the pickles but denies there was any greasy buildup in the rental unit and says he and Ms. C. did not cook greasy foods other than pan fried steaks every two weeks or so and the occasional stir fry. Most meals were cooked in the oven.

He says he “constantly” cleaned the microwave filter. He says the commercial “sandwich station” was being stored but not used in the rental unit.

He says the blinds were slightly damaged before he moved in.

He admits to keeping plants of the fireplace mantel but says the wear shown in the landlords' photos was pre-existing.

He says the carpets were soiled from the previous tenant and that he had them professionally steam cleaned. Still not happy with their condition, he rented his own steam cleaner and did them again before move out. He says the marks shown in the landlords' photos are likely moisture still in the carpets from the last cleaning.

He notes that though Ms. S. testifies she took pictures at the move-in, none had been submitted in evidence.

He says when he moved in the premises needed painting. There were mudded holes in the walls that had not been painted. It is not disputed that the landlords authorized him to paint but he never did.

In response the landlord objects generally to the tenant's description of the premises at move in. She refers to a move in "checklist," her documents #10 and #11 but only #11 had been filed as evidence. It is the document describing what the tenants were required to do on moving out. She takes strong issue with the tenants' cleaning bill as, in her view, there was no indication that any cleaning had been done by the end of August.

Analysis

Both the landlord and the tenant who gave evidence did so in a consistent and convincing manner.

I The Landlord's Claim

Cleaning
In regard to the cleaning of the premises, s. 37(2) of the *Act* requires that a tenant leave the rental unit "reasonably clean." That standard is imposed by the statute regardless of the cleanliness of the premises at the start of the tenancy.

Needless to say, the opinions of a landlord and a tenant often differ widely about what is or is not "reasonably clean."

The question is always a subjective one. Nevertheless, the *Act* has imposed a duty on its arbitrators to make a determination. I have carefully reviewed the evidence presented and conclude that in all the circumstances, some additional cleaning was required despite the tenants' use of a cleaning service. Some cupboards and drawers needed wiping. The stove was not clean. The fridge should have been wiped.

Whether the carpets required further cleaning is irrelevant as the landlords intended to replace them as part of the renovation.

The landlords have not satisfied me on a balance of probabilities that there was an excess of grease anywhere but around the stove and the underside of the cabinets above it. The evidence does not establish that any other cleaning was required to meet the standard of "reasonably clean."

I award the landlords $200.00 for the extra cleaning noted above.

Repairs
Section 37(2), *supra*, imposes on a tenant the requirement that a rental unit be returned to a landlord free of damage but for reasonable wear and tear.

In regard to repairs to the premises, the landlords have put themselves in a very difficult position by failing to attend to their obligation to prepare a proper move-in or move-out condition report. Section 35(3) of the *Act* imposed a duty on landlords to prepare a report in accordance with the Regulation at move-in and move-out.

The Residential Tenancy Regulation s. 20 is very specific about what must be contained in such a report. It states:

> A condition inspection report completed under section 23 or 35 of the Act must contain the following information:
>
> (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
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> (b) the address of the rental unit being inspected;
>
> (c) the date on which the tenant is entitled to possession of the rental unit;
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> (d) the address for service of the landlord;
>
> (e) the date of the condition inspection;

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

(i) entry;
(ii) living rooms;
(iii) kitchen;
(iv) dining room or eating area;
(v) stairs;
(vi) halls;
(vii) bathrooms;
(viii) bedrooms;
(ix) storage;
(x) basement or crawl space;
(xi) other rooms;
(xii) exterior, including balcony, patio and yard;
(xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I, ...
Tenant's name
[ ] agree that this report fairly represents the condition of the rental unit.
[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:
.....
..
.....
..;
(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
(ii) the tenant's signature indicating agreement with the deduction, and
(iii) the date on which the tenant signed.

The requirement for such a report is, needless to say, an effort to avoid disputes over what damage occurred during a tenancy and to direct the parties to address their differences at the end of the tenancy in order to pinpoint what is in dispute. With that knowledge and with modern day devices such as the camera contained in even the most primitive cell phone, the parties can garner evidence to support their position.

Without a move-in report a landlord is put to the task of proving the condition of the premises as it was, in this case, over two years ago.

Without a proper move-out report a tenant can be put at a distinct disadvantage having to answer to issues that have not been distinctly and definitively raised regarding the condition of a rental unit that he or she can no longer lawfully enter and examine.

To compound the difficulty for the landlords in this case, they gave the tenants a two month Notice to End Tenancy claiming that they intended to renovate the rental unit. Such a Notice can only be lawfully given (under s. 49(6)(b) of the *Act*) where the intention is to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. It is only a very extensive renovation that would, as practical matter, require the tenants to move out as opposed to putting up with some inconvenience or staying away a few nights. The fact that it would be more convenient to conduct a renovation without the tenants being there is not a factor under the law (*see, Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257).

At hearing Ms. S. testified to having planned a relatively moderate renovation. However, the landlords by giving the Notice they did are taken to have intended renovations to an extent implied by the law, that is, very extensive renovations during which even a home owner would move away..

This significantly diminishes the potency of their claim that the tenants should be responsible for all the listed repairs. It is not fair for the landlords to now come before this tribunal and be able to pick or chose what areas of the home they did or did not intend to renovate back in June 2017.

To further compound the landlords' difficulties, in considering the loss caused by the need to repair or replace an item in the rental unit it, one must consider the depreciated value of the item in question so that a landlord is not put in a better monetary position than had no damage occurred.

Residential Tenancy Policy Guideline 40, "Useful Life of Building Elements" sets out the normal life span of building elements. It gives a ten year life for carpets, a four year life for interior painting, a twenty year life for a hardwood floor, a ten year life for a microwave, a twenty five year life for cabinets and a ten year life for blinds. The building elements in this rental unit were about eleven years old according to Ms. S. The paint and microwave were past their useful life according to the guideline. The carpet may have been a bit newer, but still nearing the end of its normal useful live.

Having regard to the foregoing I make the following findings:

Kitchen Cabinets

The landlords' photographic evidence shows cabinets in a state commensurate with reasonable wear and tear over ten or eleven years of rental life. I dismiss this item.

Backsplash

It has not been shown that the backsplash was inordinately greasy or that the grease required the backsplash to be replaced. I dismiss this item of the claim.

Window Blinds

It has not been satisfactorily shown that the blinds were damaged during this tenancy. In any event, they are beyond their ten year useful life. I dismiss this item of the claim.

Fireplace Mantel

It has not been satisfactorily shown that this item was damaged to the extent claimed during the tenancy nor that replacement as opposed to sanding and refinishing was the only remedy. I dismiss this item of the claim.

Carpets & Flooring

The state of the carpets at the start of this tenancy remains uncertain. It cannot be determined that during this tenancy they were damaged or soiled to an extent requiring replacement. In any event they were near the end of their useful life and the landlords intended to replace them after these tenants left. I dismiss this item.

The landlords' photos show what appears to be water damage to areas on and underneath the flooring as well as marks or scratches in at least two locations. It is conceded that there was a flood from the unit above, though Ms. S. says it was over a different area than the damage shown.

On the competing testimony and without a proper move-in condition report it is not determinable that the marks occurred during this tenancy nor that the water damage was caused by these tenants. Nor has it been shown by evidence of a professional or qualified floor repairer/refinisher that the floor required replacement rather than the refinishing contemplated in the landlords' renovation plans. I dismiss this item of the claim.

It is conceded the tenants damaged the hardwood transition strip at the front door and the landlords had to have it replaced. I award the landlords $300.00 for this item.

Bi-fold Doors and Moulding

The damage alleged was to the mounting and sliding apparatus. The doors would come out of their tracks. This damage is consonant with reasonable wear and tear over a ten year period. I dismiss this item.

New Toilet Seats

It was not shown why the tenants should pay for new toilet seats. This item is dismissed.

Bathtub Stopper and Shelf Liners

It was not disputed that the bathtub stopper went missing. I award the landlords $17.87, as claimed. While some of the shelves might have needed wiping there is no basis to award the landlords the cost of shelf liners.

Doors and Frames

The damage to the inside of the door frame appears to be damage from rubbing. It is consonant with a tightly fitting door rubbing on its frame at various locations over a long period of time. That damage can be seen not only in the middle of the frame but also at the hinge side, an area no one would place hooks or the like. It is not consonant with damage caused by the placing of hooks or apparatus over the top of a door and then closing it. I dismiss this item of the claim.

Microwave

On the competing evidence it has not been shown that the microwave was damaged by these tenants or was not working at the end of the tenancy. In any event, it had reached the end of its useful life. I dismiss this item of the claim.

Visitor Passes

The tenants were issued two visitor passes for parking. Mr. Y. says he left one on top of the fridge. Ms. S. says neither was returned. In my view, Ms. S.'s recollection is preferred on this item. She contacted the strata council for replacements and I do not think she would have done so had the tenants' passes been returned. I award the landlords $50.00 as claimed.

Grease Filters

It is not reasonably determinable on this evidence that the tenants should be responsible for replacing two grease filters on the microwave (a five dollar charge).

Photocopying and Registered Mail

An arbitrator's has the power to award recovery of the filing fee but not other "costs and disbursements" incurred by a party pursuing dispute resolution. I must dismiss this item of the claim.

In result, the landlords are entitled to a monetary award totalling $567.87.

II The Tenants' Claim

The $947.50 Security Deposit and s. 38 Doubling

The tenants are entitled to recover the balance of their deposit.

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant provides the landlord with a forwarding address in writing, a landlord has fifteen days to either repay the deposit money or to make an application to keep all or a portion of it. If a landlord fails to meet that fifteen day period she must account to her tenant for double the deposit amount owing at the end of the tenancy.

In this case the tenancy ended, at the latest, on August 31, 2017. The tenants brought their application in early September and served it on the landlords on September 6.

The application contains the tenants' address for delivery of documents and is a forwarding address within the meaning of s. 38. The landlords did not repay the deposit money or make an application within the following fifteen days. Their application was made December 19, 2017.

I find that the landlords did not comply with s. 38.

The tenants have not specifically requested the doubling in their application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" requires that the doubling penalty be imposed despite the lack of a request, unless specifically declined by the tenants. The question was put to Mr. Y. at hearing and he did not refuse the doubling.

The landlords are liable for double the amount of the deposit. The amount to be doubled is not the net amount after the award granted to the landlords in this proceeding. It is the amount remaining due at the end of the tenancy. In this case that amount is $947.50. The tenants are entitled to an award of $1895.00.

The Equivalent of Two Months' Rent (s. 51(2))

Section 49 of the *Act* states that a landlord issuing a two month Notice for the purpose of repairing or renovating the rental unit, must have all necessary approvals and permits in hand. It would appear that the renovations contemplated by the landlords required approval from the strata council and that approval had not been received by the end of August, well after the Notice was issued.

Section 51 of the *Act* provides:

> 1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
>
> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenants' claim for the equivalent of two months' rent under this provision must fail. Their opportunity to challenge the Notice on the ground that the landlords did not have the necessary permits or approvals was during the fifteen day period following receipt of the Notice. Had it been shown then that the landlords did not have the required permits or approvals the Notice would have been cancelled and the tenancy would have continued.

The lack of permits is not a ground listed in s. 51(2). Indeed, it is apparent that the landlords did "take steps" to "accomplish the stated purpose for ending the tenancy" namely, renovations.

Other Claims

During the hearing the landlord Ms. S. and the tenant Mr. Y. raised the issue of whether or not the tenants ended the tenancy earlier than August 31 by giving the ten day Notice contemplated by s. 50 of the *Act*. The argument concerned whether or not such a Notice could be properly given by email.

The tenants have not claimed a rent rebate for the remainder of the month of August and so this issue is not properly before me and I decline to adjudicate it.

Conclusion

The landlords are entitled to recover the amount of $567.87. As they have achieved only very limited success, I award them recovery of $50.00 of the filing fee, for a total of $617.87.

The tenants are entitled to a monetary award of $1895.00 plus recovery of the $100.00 filing fee, for a total of $1995.00.

The tenants will have a monetary order against the landlords for the difference of $1377.13.

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 14, 2018

Residential Tenancy Branch