



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 15, 2018, the landlord made an application for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord is seeking compensation for costs related to repairing and cleaning the rental unit, and compensation for recovery of the filing fee.

Attending the dispute resolution hearing was the landlord’s agent (referred to as the “landlord” in this decision), the tenant, and a witness for the tenant (who stated that he was an advocate for the family), and who were given a full opportunity to be heard, to present testimony, and to make submissions. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted by the landlord and the tenant, only relevant testimony and documentary evidence presented pursuant to Rules 3.6 and 7.4 of the *Rules of Procedure*, under the Act, will be considered in my decision.

Issues to be Decided

1. Is the landlord entitled to compensation for costs related to repairing and cleaning the rental unit?
2. Is the landlord entitled to compensation for recovery of the filing fee?
3. If the landlord is successful with its application, is the landlord entitled to retain some or all of the tenant’s security deposit in full or partial satisfaction of its claim?

Background and Evidence

The landlord testified that the tenancy commenced on June 1, 2017, and ended on May 31, 2018. Monthly rent was \$1,350.00, due on the first of the month, and the tenant paid a security deposit of \$675.00, which the landlord currently retains.

At the start of the tenancy, the landlord completed a move-in Condition Inspection Report ("Report"), which both the tenant and the landlord (or landlord's agent) signed. Under the "START OF TENANCY" section of the Report, there is a hand-printed notation next to the "Repairs to be completed at start of tenancy" which reads "None, except as noted above." Below that, the box next to the statement "agree that this report fairly represents the condition of the rental unit" is ticked, and the tenant's name is hand printed above. A copy of the Report was submitted into evidence, and referred to by both parties during the hearing. The landlord testified that it was not he who completed the Report, but an employee.

The tenant moved out on May 28, 2018, and the landlord completed a move-out Report on that date. The tenant signed the Report and ticked off the box that states "agree that this report fairly represents the condition of the rental unit." Above that, the tenant entered the following notation in the "Damage to rental unit or residential property for which the tenant is responsible": "Scuff marks are wear & tear – Shower glass was dirtier, far dirtier when I moved in."

Regarding the various marks and damage to the rental unit, the landlord testified that he had a general contractor come in and make the following repairs, which are listed in an invoice submitted into evidence, and for which each item is monetized: repair marks outside entrance closet (\$100.00), patch and paint walls (\$500.00), cover track from closet (\$100.00), repair 2 loose doors from lazy susan (\$150.00), replace burnt out bulb (\$20.00), repair marks on wall in master bedroom (\$250.00), repair closet door dangling from closet in master bedroom (\$100.00), clean dirty glass doors, toilet seats and shower floor (\$100.00), and construction cleaning (\$250.00). The landlord's total claim for compensation is in the amount of \$1,648.00.

The landlord testified that the repairs as listed in the invoice correspond with items marked as such on the Report, though I note that there is no reference to toilet seats or the shower floor being dirty, on the Report. The landlord submitted several photographs of the rental unit in support of his claim.

Finally, the landlord testified that he attempted to settle the matter prior to the hearing, but that the tenant refused to settle.

The tenant testified that he refused to settle because he commented that it is “unjust and unfair that I should for damages [that] I didn’t cause.” He testified that there was no change in condition of the rental unit between when he moved in and when he moved out. Further, he submitted that the landlord did not provide any photographs to substantiate its claim that the walls were worse than before.

Regarding the Report, the tenant testified that he never received a copy of the Report either at the beginning of the tenancy or at the end of the tenancy. Regarding the amounts claimed, the tenant submits that the amounts are “wildly unjust” and constitute excessive overbilling. For example, the tenant argued, twenty dollars for a lightbulb is disproportionate to what a lightbulb costs.

When I asked him if he remembered signing the Report, the tenant stated that he did not remember signing the Report, but did not deny that he signed it. Further, the tenant testified that he sent a list of about twenty items that needed to be repaired to the landlord at the start of the tenancy, and that only about two items were repaired. This list was in an email, which the tenant was unable to submit into evidence.

As for the move-in inspection, the tenant testified that due to complications with the moving company, he did not move in until sometime between 10:00-10:30 p.m., which made an inspection difficult in low light, that he was in a hurry, and that he does not remember any move-in inspection being done.

The tenant’s witness introduced a written witness statement from the tenant’s mother; the statement provides considerable detail regarding the condition of the rental unit, that no copies of reports were provided, and that the inspection was conducted at 10 p.m.

In rebuttal, the landlord testified that they “always gives” copies of the Report to tenants, and that the amounts claimed are reasonable.

Analysis

The landlord seeks compensation for costs related to repairing and cleaning the rental unit. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming

compensation must provide evidence establishing that they are entitled to compensation. In determining whether compensation is due, I must determine whether:

1. a party to the tenancy agreement failed to comply with the Act, regulation, or tenancy agreement;
2. loss or damage resulted from their non-compliance;
3. the party who suffered the damage or loss can prove the amount or value of the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably in minimizing their damage or loss.

The landlord did not submit a copy of the written tenancy agreement, so I must turn to section 37(2) of the Act, which states that “when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.”

In this case, the landlord submitted the Report which lists damage to the rental unit, including damage to the walls, damage to the Lazy Susan, broken closet tracks, and a dangling door, among other items. In addition to the Report, the landlord submitted several photographs depicting the various damages to the rental unit. And, while the tenant disputes that he caused the damage as described by the landlord, he signed the Report both at the start, and at the end, of the tenancy. He has, therefore, accepted the accuracy of the Report and what is described therein, at the start and end of the tenancy.

On the matter of the inspection being done late at night, I am not persuaded by his argument that a proper inspection cannot have been carried out due to light levels. Finally, while the tenant frequently referred to a list of repairs provided to the landlord at the start of the tenancy, he did not submit a copy of this list, or any corroborating evidence to support his claim that he provided such a list to the landlord. I place little weight on this aspect of his oral evidence and shall not consider it further.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord

has established the first part of the four-part test, namely, that the tenant failed to comply with the Act. I further find that but for the tenant's non-compliance with the Act, damage to the rental unit would not have occurred.

Turning now to the amount, or value, of the loss or damage, the party seeking compensation must "present compelling evidence of the value of the damage or loss in question" (Residential Tenancy Policy Guideline 16 - Compensation for Damage or Loss, page 2).

The landlord submitted into evidence two copies of an invoice from a general contractor who purportedly made the repairs to the rental unit. The landlord submitted a copy of the invoice on August 29, 2018, for which the invoice total was \$1,320.00. A further copy of the invoice was submitted on August 31, 2018, for which the invoice total was \$1,648.50. The two copies submitted are for the same invoice: the invoices are both dated June 11, 2018, and the invoice numbers are the same on both copies ("18KGC - 010"). The copy submitted on August 31 includes an additional item, "Construction cleaning" in the amount of \$250.00. What I find peculiar between the two copies is that one copy is a PDF while the other document is a Word document. I further find it peculiar that, while the invoice is dated June 11, 2018, the revision appears in a copy submitted more than two months after the invoice date.

Regarding the amounts itemized within the invoice, the tenant disputes these, and submits that this is "wild overbilling." I agree. Not only do I find that the amounts are unreasonable, I find that the rather arbitrary round numbers of each item (e.g., \$100, \$500, \$100, \$150, \$250, \$100, \$100), without an accounting of time spent on each repair, are arbitrary and inconclusive. \$500.00 to patch and paint a wall is unreasonable, as is \$100.00 to repair a loose door. Regarding the \$100.00 to "Clean dirty glass doors, toilet seat and shower floor," the landlord's Report only indicates that the "glass doors dirty"; the landlord cannot claim for cleaning that is not reflected in the Report in circumstances where a tenant disputes the claim, and where the landlord has presented no compelling evidence that such cleaning was required. As such, \$100.00 to clean a dirty shower is unreasonable. Indeed, I find that all the amounts claimed are unreasonable, and without an accurate accounting of the time spent on each repair, I do not find that the invoices submitted are compelling evidence of the value of the damage or loss. I find that the invoiced amounts lack an air of reality.

As such, having not met the onus of proving its claim regarding the value of the damage or loss borne by the landlord from the tenant's breach of the Act, I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

Having dismissed the landlord's application, I order that the landlord return the tenant's security deposit and hereby grant the tenant a monetary order in the amount of \$675.00. The landlord must return the tenant's security deposit within 15 days of receipt of this decision. Should the landlord fail to return the security deposit as ordered above, the order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as a judgment or an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 19, 2018

Residential Tenancy Branch