Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following remedies:

1. compensation of $1,707.25 for, as claimed in the landlord's application, "Damage to the unit (wall repairs/paint-baseboard heaters and PVC window frames) as well as cleaning services (suite and blinds)" pursuant to section 67 of the Act; and,

2. compensation of $100.00 for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on February 4, 2019, and the landlord's two agents and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to compensation in the amount of $1,707.25 pursuant to section 67 of the Act?

2. Is the landlord entitled to compensation in the amount of $100.00 pursuant to section 72 of the Act?

Background and Evidence

The landlord's agent (hereafter the "landlord" for brevity) testified and confirmed that the tenancy commenced on August 2, 2017 and ended on September 30, 2018. Monthly rent was $2,225.00 due on the first of the month. The tenant paid a security deposit of $1,112.50 and a pet damage deposit of $1,112.50, both deposits of which are currently held by the landlord. A copy of the written tenancy agreement was submitted into evidence. The rental unit is one of 91 units in a relatively new building that was completed and opened in July 2017. The building is near a river.

The landlord seeks compensation for, as listed in their submitted Monetary Order Worksheet, the following items and amounts, totalling $1,707.25:

wall repairs and paint	$845.25
suite cleaning	210.00
blind cleaning	147.00
replacement base board and labour	250.00
replacement screens	255.00

Copies of invoices for the suite cleaning, wall repairs and painting, blind cleaning, replacement screens, and the replacement baseboard heaters and labour were submitted into evidence. Regarding the receipt for the replacement screens, I note that the amounts handwritten on the invoice are rather illegible; I shall turn to this later. I also note that the landlord claims $250.00 for the baseboard heaters, though the invoice is for an amount of $324.84.

The landlord testified that the Condition Inspection Report (a copy of which was submitted into evidence) was completed on August 2, 2017, and again on September 27, 2018. The landlord testified that the tenant had agreed to use the landlord's in-house cleaning employee to clean the rental unit upon move-out. The blinds also needed to be cleaned. Regarding the walls, the landlord testified that "every wall had a mark to be done" that required mudding and repainting. Copies of photographs of the walls where there was mudding were submitted into evidence.

There was burn damage to two baseboard heaters, likely caused by something leaning against them. The heaters needed to be replaced. Two photographs of the heaters were submitted into evidence. Regarding the replacement screens on the windows, the tenant had attached screens to the windows that were screwed into the PVC frame. The tenant took the screens off when he moved out.

I asked the landlord why the Condition Inspection Report was not signed by the tenant, and he explained that the tenant had refused to sign.

The Condition Inspection Report was signed by the tenant upon the start of the tenancy. In the “End of Tenancy” section on page 3 of the Condition Inspection Report the following is the description of damage to the rental unit: “Holes in brick wall (4), holes in 3 PVC windows (4), holes/chips in [illegible] drywall – burn marks on 2 baseboard heaters.” The condition codes and comments within the “Condition at End of Tenancy” column reflects the damage as claimed by the landlord.

The landlord’s second agent, the property manager, testified that a tenant must obtain written permissions before any permanent alterations are made to a rental unit. Screwing holes into the window frames is making just such an alteration, he argued.

The tenant testified that he had agreed to the cleaning lady, and, while not aware of the in-house blind cleaning requirement, was “O.K.” with the blinds being cleaned. However, the tenant disputed that he should be liable for the chips and dings in the wall, and that it is normal wear and tear. He testified that these were there at the start of the tenancy. The tenant disputed that the landlord’s photographs submitted do not accurately reflect the actual damage, and that the holes were less than the size of a dime. Further, the tenant testified that he accidentally drilled a hole into the brick of one wall on which a TV was mounted.

Regarding the screens screwed into the window frame, the tenant submitted that there are no clear documents that suggests that screens screwed into the frames is a permanent fixture. He noted that there was a problem with gnats and bugs, and in an email dated September 12, 2017 it was stated that the “number and size of the spiders is unreal.” He was not aware, he added, that he was required to leave the screens installed.

In rebuttal, the landlord testified that pursuant to term 29 of the tenancy agreement there are to be no permanent changes made to the property, which would include drilling holes into the window frames and into the reclaimed brick.

The parties briefly argued back and forth about whether PVC holes can be covered or filled in or not.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In respect of the landlord's claim for compensation for the rental unit cleaning and blind cleaning, the tenant did not dispute these claims. As this is an undisputed claim I grant the landlord a monetary award in the amount of $357.00 for these two claims.

In respect of the landlord's claim for compensation for the wall repairs and painting, regardless of the size of the holes (made to appear "larger" by the mudding"), the tenant did not dispute that there were holes in the wall, but rather, that they were as bad as the landlord was making them out to be. There was an email, dated September 12, 2017, in which the tenant advised the landlord about "a number of paint spots both inside and outside my apartment that are needing repairs, many that were here on move in."

While this email certainly addresses an issue with paint spots, it does not mention anything in respect of holes in the walls.

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Holes in walls is not reasonably wear and tear. Rather, it is damage (however innocuous) purposely caused by a tenant. It is not unreasonable for a landlord to repair those holes by filling them and having the wall repainted. I do not find that the landlord's photographic evidence makes the damage worse than it actually was, but, rather, that there was indeed damage to the rental unit's walls. But for the holes in the wall the landlord would not have had to incur losses in repairing them. The painting and repairs claimed are, I find, reasonable.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for the wall repairs and painting. Accordingly, I grant them a monetary award in the amount of $845.25.

In respect of the landlord's claims for replacement screens, there was disagreement between the parties as to whether holes drilled into the PVC frame was permanent or not. Having reviewed term 29 of the tenancy agreement addendum, I do not find that the term is clear and unequivocal as to whether or what is meant by "permanent." The tenant argued that PVC holes can be filled and are therefore not permanent. Conversely, the landlord argued that such holes cannot be filled, and are therefore permanent. Term 29 does not refer to permanence.

That having been said, subsection 37(2) of the Act—reasonable wear and tear—still applies, regardless of the terms of the tenancy agreement. Residential Tenancy Policy Guidelines 1. *Landlord & Tenant – Responsibility for Residential Premises* defines "reasonable wear and tear" as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
In addition, any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. A landlord may claim against a tenant for costs related to repairing the rental unit as a result of any changes made.

In this case, holes being drilled into a PVC window frame is not a natural deterioration or caused by natural forces, regardless of why the holes were drilled (in this case to install screens to keep out a rather bothersome bug problem). There is also no evidence that the landlord gave written or explicit consent to the tenant to drill the holes and install the screens. The holes were there when the tenant moved out, and the screens were not.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation for the replacement screens.

As noted above, while the landlord claims $255.00 for the window screens, the invoice submitted into evidence is extremely illegible. The total amount scribbled is $22[intelligible] and possibly, but not definitively, sixty cents. I am prepared, based on the discrepancy between the amount claimed and the invoice, to award the landlord $220.00, which is the lowest possible amount.

In respect of the baseboard heaters, the heaters, which approximately a year old when the tenancy ended, were burn stained. The photographs establish this. And, while the tenant did attempt to remove the stains, he was ultimately unsuccessful in doing so.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has further met the onus of proving their claim for the cost related to replacing the two baseboard heaters.

As the landlord was successful in its application I grant it a monetary award in the amount of $100.00 for the filing fee, pursuant to section 72 of the Act.

A total monetary award of $1,772.25 is thus granted to the landlord. The landlord may retain this amount from the tenant’s security and pet damage deposits in full satisfaction of its claim. The balance of $452.75 of the security and pet damage deposit must be returned to the tenant, and I issue a monetary order for the tenant reflecting this amount.

Conclusion

The landlord is granted a monetary award in the amount of $1,772.25. The landlord may retain this amount from the tenant's security and pet damage deposits in full satisfaction of this award.

I grant the tenant a monetary order in the amount of $452.75, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 4, 2019

Residential Tenancy Branch