Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOW TIDE PROPERTIES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 15, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for damage to the unit, site, or property; and
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by M.M., an agent. The Tenants attended the hearing on their own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Application package was served on the Tenants by registered mail on April 18, 2019. The Tenants acknowledged receipt. Further, the Tenants testified they served the Landlord with documentary evidence by delivering a package to the Landlord's office on July 15, 2019. M.M. acknowledged receipt. No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to retain the deposits held in satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on April 1, 2018. The parties testified the tenancy ended on March 31, 2019, at which time the Tenants vacated the rental unit. During the tenancy, rent in the amount of $2,980.00 per month was due on the first day of each month. The Tenants paid a security deposit of $1,490.00 and a pet damage deposit of $1,490.00, which are held by the Landlord.

The Landlord's claim was set out in a Monetary Order Worksheet, dated April 15, 2019. The Landlord claims $735.00 to repair damage to walls and doors in the rental unit. On behalf of the Landlord, M.M. testified that the Tenants performed some repairs but that the surfaces remained unfinished and bumpy.

In support of the claim, the Landlord submitted a descriptive quote for the amount claimed, dated April 13, 2019. The quote refers to bedroom walls and doors, and living room walls. M.M. confirmed that $735.00 was paid to repair and paint only damaged areas.

In further support of the claim, the Landlord submitted move-in and move-out condition inspection reports. The move-in condition inspection report confirms the inspection was attended by both Tenants, each of whom signed the report. The report makes no reference to damage to walls or doors at the beginning of the tenancy. The move-out condition inspection report confirms the inspection was attended by P.G., who signed the report but did not agree to a proposed deduction of $110.00. The move-out condition inspection report refers to a need to paint the living room, a bedroom, and a bathroom. It does not refer any door damage.

Further, the Landlord submitted 10 pictures of the interior of the rental unit, which depict patched wall damage and paint damage to 2 doors.

Finally, the Landlord sought to recover the filing fee paid to make the Application, and requested that the Landlord be permitted to retain the security deposit held in satisfaction of the claim.

In response to the Landlord's evidence and submissions, the Tenants testified the rental unit was not clean at the beginning of the tenancy. Their concerns regarding cleaning and "structural issues" were summarized in an email dated April 5, 2018, a copy of which was submitted into evidence.

The Tenants also testified that the Landlord's agent, during the move-out condition inspection, offered to complete the wall and door repairs for $110.00. This amount is indicated on the move-out condition inspection report and was proposed as a deduction from the deposits held by the Landlord. According to M.M., the Landlord's agent, the Tenants did not agree to the proposed deduction. Further, the Tenants questioned why the proposed deduction indicated on the move-out condition inspection report was only $110.00 and the eventual cost was $735.00. M.M. responded by testifying that since the Tenants rejected the offer, the Landlord decided to proceed with a contractor to repair the damage.

The Tenants also referred to photographs they submitted into evidence. These included a number of thumbnail-sized black-and-white images that did not include the walls or doors, and 4 images of walls in the rental unit. The images are undated and it is not clear that the images depict the damaged areas referred to by the Landlord. Further, the Tenants noted there is no reference to door repairs in the move-out condition inspection report. The Tenants also suggested the Landlord had an obligation to paint the rental unit every 4 years; M.M. responded by testifying the rental unit was likely last painted in late-2017.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 37 of the *Act* confirms that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find that the testimony of the parties, and the photographic and documentary evidence, supports the conclusion that the Tenants caused damage to the walls and doors of the rental unit that was not present at the beginning of the tenancy. Although it appears the Tenants made efforts to repair the damage, what remained was beyond reasonable wear and tear.

With respect to the Tenants' suggestion that the Landlord has an obligation to repaint the rental unit every 4 years, Policy Guideline #40 acts as a "general guide" for determining the useful life of building elements that may be used when considering an application for damages. Policy Guideline #40 suggests the useful life of interior paint is 4 years. However, in this case, I find that the need to paint the walls and doors arose due to intentional or negligent damage caused by the Tenants, some of which they tried to repair. In my view, the purpose of Policy Guideline #40 is not to excuse tenants from the consequences of causing damage to a rental unit that is beyond reasonable wear and tear. I also note the undisputed testimony of M.M. was that the rental unit was likely painted in late-2017, less than 2 years ago. Accordingly, I reject the Tenants' assertion that the Landlord had an obligation to paint the rental unit at the end of the tenancy despite the damage caused during the tenancy.

With respect to the Tenants' evidence that the move-out condition inspection report does not specifically reference door damage, I find the quote and the photographic evidence are sufficient to support the conclusion that the Tenants intentionally or negligently caused damage to the doors that was not present at the beginning of the tenancy. The damage was beyond reasonable wear and tear.

In light of the above, I find the Landlord has demonstrated an entitlement to a monetary award for repairs to damage to the rental unit of $735.00. Having been successful, I also find the Landlord is entitled to recover the $100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain $835.00 ($735.00 + $100.00) from the deposits held in satisfaction of the claim.

Policy Guideline #17 confirms that when a landlord applies to retain the security and pet damage deposit and a balance remains, the arbitrator must order the return of the balance to the tenant. Therefore, pursuant to Policy Guideline #17, I find the Tenants are entitled to a monetary order in the amount of $2,145.00, which has been calculated as follows:

Claim	**Amount**
Repairs:	$735.00
Filing fee:	$100.00
LESS deposits:	($2,980.00)
TOTAL:	**($2,145.00)**

Conclusion

Pursuant to section 67 of the *Act* and Policy Guideline #17, the Tenants are granted a monetary order in the amount of $2,145.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 24, 2019

Residential Tenancy Branch