Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: MNDL, FFL
For the tenants: MNDCT, FFT

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlords applied for a monetary order for alleged damage to the rental unit, with a claim against the tenants' security deposit, and for recovery of the filing fee paid for this application.

The tenants applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receipt of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary and digital evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral, digital, and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue -

The tenants did not attend the hearing and instead, another person attended of whose name I was not aware. I questioned the individual and he said he was representing the tenants, as they were traveling. I note that the tenants did not notify the Residential Tenancy Branch (RTB) prior to the hearing, nor was there a signed authorization from the tenants. This individual said he was a family friend.

I informed him, after due consideration, that I would allow him to stay in the teleconference hearing; however, he was informed that his testimony would be considered hearsay, as to responses to the landlords' application.

Issue(s) to be Decided

1. Are the landlords entitled to monetary compensation from the tenants due to alleged damage to the rental unit and to recovery of the filing fee paid for this application?
2. Are the tenants entitled to monetary compensation from the landlords and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on August 1, 2017, ended on September 30, 2019, monthly rent was $5,250.00, and that the tenants paid a security deposit of $2,625.00. The undisputed evidence also shows that the landlords' agent and the tenants had a final, move-out inspection on an unknown date.

The landlord said they have retained the tenants' security deposit, having made this application claiming against it.

The landlords' relevant evidence included the written tenancy agreement, including an addendum, and the move-in and move-out condition inspection report (CIR).

Landlords' application-

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Oven cleaner	$23.25
2. Light bulb replacement	$44.12
3. Electrical faceplate	$15.52
4. Light bulb and epoxy glue	$29.24
5. Cleaning/window washing	$300.00
6. Grease stain removal	$1,218.00
7. Hood fan filter replacement	$237.20
8. Manual garage opener	$80.00
9. Wall repairs/paint/supplies	$420.00
10. Filing fee	$100.00
TOTAL	**$2,467.33**

I note that the landlords' calculation was $2,463.33.

In support of their application, the landlord, RW, testified that the tenants failed to properly clean the rental unit at the end of the tenancy and left damage, requiring the landlords to clean and repair the unclean and damaged items.

In particular, the landlord noted that the tenants left 15 nail holes and did not patch and repair them, as required by the addendum portion of the written tenancy agreement. The landlord said that there was spare paint in the storage room.

The landlord also submitted that the tenants left a long gash in one of the walls, which also had to be repaired.

As the tenants failed to paint and repair, it was necessary to hire a painter.

The landlord further submitted that the oven, refrigerator and toilet seats, among others, were not cleaned, resulting in having to hire a cleaner. The landlord pointed out that per the tenancy agreement, they could have charged $500.00, but instead elected to mitigate their loss by hiring a cleaner.

The landlord submitted that the grease build-up on the counter-top and backsplash could not be cleaned by regular methods and instead, it was necessary to hire a restoration company, who had to grind and re-polish the granite.

The landlord said that the tenants failed to return the manual garage door opener provided to them at the start of the tenancy. The strata then charged the landlords an $80.00 fee.

The landlords' relevant evidence included invoices and receipts for the claimed costs and expenses.

Tenants' agent's response-

The agent said the tenants were okay to be charged a cleaning fee; however, the tenants would deny any other costs, including the manual garage door opener as they do not have it.

Tenants' application-

The tenants claim the return of their security deposit, doubled. The tenants provided their written forwarding address in a letter sent by Xpress post on October 3, 2019, and it has not been returned within 15 days, according to the tenants' application and agent.

Analysis

Based on the evidence before me and the balance of probabilities, I find as follows:

Landlords' application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

The claimant has the burden of proof to substantiate their monetary claim on a balance of probabilities.

Section 37 of the Act, in part, requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Oven cleaner/degreaser, electrical faceplate, cleaning/window washing, grease stain removal, and hood fan replacement-

In this case, the landlord's agent and the tenant conducted a move-out inspection, as required by the Act.

When reviewing all the landlords' evidence, I note inconsistencies and contradictions. For instance, on the move-out CIR, while the landlord's agent wrote in a few comments on some of the items, such as "greasy above the stove", the landlord's agent also wrote "G" in that and every other column noting the condition on each item inspected.

The CIR code list shows that "G" denotes "Good", which is the highest mark available on the condition codes list. The landlord's agent very well could have written "P" for poor, "DT" for dirty, or "ST" for stained for any of the items claimed by the landlords on their application.

The landlord's agent also wrote that the condition of the rental unit would not be acceptable to the new tenants. This caused me to conclude that the landlords' expectation was that the rental unit should be left in the same condition as when the tenants moved in. In other words, move-in ready for the next tenants.

I also find support for this conclusion in the written tenancy agreement addendum #15 and the landlord's agent's letter, dated October 2, 2019.

I note that in this letter, the landlord's agent also said that the rental unit showed little to no major damage and overall, the tenants had maintained the property very well over the 2 years plus tenancy.

Another inconsistency noted from that letter of October 2, 2019, was the landlord's email to the tenant, dated October 2, 2019, telling the tenant that the toilets, ceiling fans, and vanity mirrors in the three bathrooms were not cleaned and that they looked like there were never cleaned during the tenancy.

The landlord also sent the tenant various other emails noting other items and fixtures not being clean.

What this CIR and the landlord's agent letter substantiates to me is that the tenants met their responsibility to leave the rental unit reasonably clean, less reasonable wear and tear.

I also find the claim of $365.00 for restoring, polishing and sealing the kitchen cooktop granite top and $795.00 for restoring, polishing and sealing the kitchen backsplash to be unreasonable. The invoice provided said that this extra work was to restore the granite pieces back to a like new finish, which I find does not account for reasonable wear and tear.

Due to the above noted inconsistent and contradictory evidence provided by the landlords, I find they have not met their burden of proof on a balance of probabilities.

I therefore dismiss their claim for oven cleaner/degreaser, electrical faceplate, grease stain removal, and hood fan replacement.

Although I would have likewise dismissed the landlords' claim for cleaning/window washing, for the reasons set out above, I grant the landlords a monetary award of $300.00, as the agent agreed to the costs and the text message of the tenants, provided by the landlords, shows they agreed to it.

Wall repairs/paint/supplies-

Tenancy Policy Guideline 1 addresses the matter of nail holes. Under this section, a landlord may set rules as to how a tenant will put up pictures in the rental unit. If a tenant follows these rules, it is not considered damage and they are not responsible for filling the holes or the cost of the same.

The tenant must pay for repairing walls where there are an excessive number of holes, or large nails, or where screws, large nails or tape have left wall damage.

In this case, I have reviewed the landlords' photographic evidence and find that the nail holes were not excessive. I also find that the landlords have submitted insufficient evidence that they provided rules to the tenants as to how they hang pictures or other items.

The clause in the written tenancy agreement, #15 of the addendum, on which the landlords rely, states that the tenants must repair and paint a nail hole to match the paint as when they moved in.

I do not find it reasonable that the re-painting would even match the colour from the beginning of the tenancy, due to the natural deterioration of paint over time.

Despite this, I do not find any requirement for a tenant to repair and paint a nail hole to match in the Act, the Regulation or the Policy Guideline.

I have reviewed the landlord's photographic evidence which shows a long gouge in the wall. I find it reasonable to conclude that this gouge is above reasonable wear and tear and that the landlords incurred a cost due to that repair.

I also find that it is reasonable and necessary for the landlords to have the bolt holes from the television mount repaired, as shown by the photographic evidence.

As discussed above, I do not find the tenants are responsible for the regular nail holes. I also find it should not have been necessary for there to be paint costs, as the landlord said there was spare paint in the rental unit.

In reviewing the painter's invoice, the painter included costs for patching all the nail holes and for supplies, such as paint. The painter did no break down the costs of painting, repairing, filling and sanding, nor did they break down the costs of materials.

Overall, as there was no breakdown of costs, I find it reasonable to grant the landlords a monetary award for a portion of the painter's invoice, or half. I therefore find the landlords are entitled to $210.00, from the total of $420.00.

Manual garage opener-

I find the landlords submitted sufficient evidence that the tenants were given a manual garage door opener and did not return it.

I therefore award the landlords' their monetary claim of $80.00.

Light bulb replacements-

I find it reasonable that during a tenancy, light bulbs may burn out. During the tenancy, I find that the tenants are to be held responsible for their replacement for their own use.

I do not find that, after the tenancy is over, the tenants should be responsible for the costs of replacement. There was no proof of the age of the light bulbs at the beginning of the tenancy.

I dismiss the landlords' claim for light bulb replacement.

Due to the above, I find the landlords are entitled to a total monetary award of $590.00, for the cleaning costs of $300.00, for partial costs of repairing and painting the walls in the rental unit of $210.00, and the costs of the manual garage door opener of $80.00.

Tenants' application-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In this case, I find the tenants provided their written forwarding address on the CIR, or on September 30, 2019.

A review of the RTB records show that the landlords made their application on or about October 5, 2019, claiming against the security deposit. I find the landlords filed within 15 days of receiving the tenants' written forwarding address.

I therefore find the tenants are not entitled to double recovery of the deposit, and I dismiss that portion of the tenants' application.

I however find they are entitled to a return of their security deposit, less any monetary award granted to the landlords.

Both applications-

As both parties have been partially successful with their applications, I dismiss their request to recover the filing fee.

The landlords have been granted a monetary award of $590.00.

The tenants have been granted a monetary award of $2,625.00.

I deduct the landlords' monetary award of $590.00 from the tenants' monetary award of $2,625.00, and grant the tenants a monetary order for the balance due, or $2,035.00, pursuant to sections 62(2) and 67 of the Act.

The monetary order is included with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the order may be served on the landlords and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if it becomes necessary. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords are granted a monetary award of $590.00. The tenants are granted a monetary award of $2,625.00.

These two amounts were offset, giving a monetary award to the tenants in the amount of $2,035,00.

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: February 7, 2020

Residential Tenancy Branch