Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, MNDCT, FFT, FFL

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for compensation for damage, to retain a portion of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on December 06, 2019 the Tenants' Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in December of 2019 were personally delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord stated that sometime in November of 2019 the Landlord's Dispute Resolution Package and a copy of the tenancy agreement the Landlord submitted to the Residential Tenancy Branch in November were sent to the Landlord, via registered mail. The Tenant stated that he received the Landlord's Application for Dispute Resolution in the mail, which he subsequently showed to his wife. On the basis of the Tenant's testimony, I find that the Landlord's Dispute Resolution Package has been sufficiently served to both Tenants.

On March 27, 2020 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on March 27, 2020. The Tenant acknowledged receiving this evidence. He stated that the tenancy agreement that the Agent for the Landlord testified was served with the Landlord's Application for Dispute Resolution was received in this package of evidence. As the Tenant acknowledged receipt of this evidence, it was accepted as evidence for these proceedings.

On March 26, 2020 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on March 26, 2020. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of double the security deposit?
Is the Landlord entitled to retain all or part of the security deposit in compensation for damage to the rental unit?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on September 01, 2018;
- a condition inspection report was completed on September 04, 2018;
- a security deposit of $1,950.00 was paid;
- the rental unit was fully vacated on October 26, 2019, at which time a final condition inspection report was completed;
- the Tenants provided a forwarding address, in writing, on September 19, 2019 when they served the Landlord with written notice to end the tenancy**;**
- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the $1,950.00 security deposit was returned to the Tenants on November 25, 2020;
- during the tenancy the Tenant installed a "baby gate";
- the Tenant filled and sanded the drywall that was damaged when the "baby gate" was installed;
- on at least two occasions the Tenant asked the Landlord to provide them with the paint color so they could touch up the drywall that had been damaged; and

- the Landlord did not provide them with information regarding the paint color.

The Tenant stated that in October of 2019 they were provided with a copy of the condition inspection report that was completed on September 04, 2018. He stated that this was the first time that report was provided to them.

The Agent for the Landlord stated that in October of 2019 she sent the Tenants a copy of the condition inspection report that was completed on September 04, 2018, in preparation for their move. She stated that she "thinks" she provided them with a copy of this report shortly after it was completed, but "she could be wrong".

The Tenant has applied for the return of double the security deposit, less the $1,950.00 that has already been retuned to them.

The Landlord has applied for $150.00 in compensation for damage to the wall.

The Tenants contend that the damage related to installing the baby gate constitutes reasonable wear and tear. They further submit that they were unable to paint the drywall after it was repaired because the Landlord did not provide them with information regarding the proper paint color.

Analysis:

On the basis of the undisputed evidence, I find that this rental unit was fully vacated on October 26, 2019, at which time a final condition inspection report was completed. I therefore find that this tenancy ended on October 26, 2019, pursuant to section 44(1)(d) of the *Residential Tenancy Act (Act*).

On the basis of the undisputed evidence, I find that the Tenants provided the Landlord with a forwarding address, in writing, in September of 2019.

Section 38(1) of the *Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on October 26, 2019 and the Tenants provided the Landlord with a forwarding address, in writing, in September of 2019, I find that the Landlord had to return the full security deposit or file an Application for Dispute Resolution claiming against the deposit, pursuant to section 38(1) of the *Act*, by November 10, 2019.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. I find that the Landlord did not comply with section 38(1) of the *Act,* because the Landlord did not file Application for Dispute Resolution claiming against the deposit, pursuant to section 38(1) of the *Act*, until November 15, 2019. As the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenants.

Section 23(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(4) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations.

On the basis of the undisputed evidence, I find that the parties complied with sections 23(1) and 23(4) of the *Act* when a condition inspection report was completed on September 04, 2018, which is shortly after the tenancy began.

Section 23(5) of the *Act* stipulates that the landlord and the tenant must sign the report and the landlord must give the tenant a copy of the condition inspection in accordance with the regulations.

Section 18(1)(a) of the *Residential Tenancy Regulation* stipulates that a landlord must give the tenant a copy of the signed condition inspection report, for an inspection made under section 23 of the *Act*, promptly and in any event within 7 days after the condition inspection is completed.

I find that the Landlord did not comply with section 23(5) of the *Act* because the Tenants were not provided a copy of the condition inspection report that was completed on September 04, 2018 within 7 days of the report being competed, as is required by section 18(1)(a) of the *Residential Tenancy Regulation*.

In concluding that the Tenants were not provided with a copy of the inspection report that was completed on September 04, 2018 within 7 days of the report being competed, I was heavily influenced by the Tenant's testimony that it was not received until sometime in October of 2019. I found the Tenant's testimony was consistent and forthright throughout this hearing and I can find no reason to disregard this particular testimony.

In concluding that the Tenants were not provided with a copy of the inspection report that was completed on September 04, 2018 within 7 days of the report being competed, I was further influenced by the email the male Tenant sent to the Agent for the Landlord on September 27, 2019, in which the Tenant declares they have “never seen this report”. I find this email corroborates the Tenant’s testimony that a copy of the report was not provided to them within 7 days of being completed.

In concluding that the Tenants were not provided with a copy of the inspection report that was completed on September 04, 2018 within 7 days of the report being competed, I considered the Agent for the Landlord’s testimony that she “thinks” she provided them with a copy of this report shortly after it was completed, but “she could be wrong”. As the Agent for the Landlord was not certain the report was given to the Tenants and the Tenant was certain it was not, I placed significantly greater weight on the Tenant’s testimony.

Section 24(2)(c) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As I have concluded that the Landlord did not give the Tenants a copy of the inspection report that was completed on September 04, 2018 within 7 days of the report being competed, I find that the Landlord’s right to claim against the deposit for damage was extinguished, pursuant to section 24(2)(c) of the *Act*.

When the Landlord’s right to claim against the security deposit has been extinguished, pursuant to section 24(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I therefore find that the Landlord would be obligated to return double the security deposit even if the Landlord had filed the Application for Dispute Resolution within 15 days of the tenancy ending and the date the forwarding address was received.

Section 37(2)(a) of the *Act* stipulates 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.

I must determine whether damage constitutes reasonable wear and tear based on my own consideration of the facts and my understanding of the legislation and policy guidelines, not on what previous Arbitrators have decided. I am well aware that some Arbitrators have found installation of a baby gate constitutes normal wear and tear and that different Arbitrators have found otherwise.

Residential Tenancy Branch Policy Guideline #1, with which I concur, reads, in part:

> 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.
>
> ……
>
> Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
>
> The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

On the basis of the photographs submitted in evidence, I find that large screws were used to install the baby gate. As suggested by policy guideline #1, I find that the damage to the wall associated to the installing of the baby gate required the use of large screws exceeds normal wear and tear. I therefore find that the Tenants were obligated to repair the resulting damage.

On the basis of the undisputed evidence, I find that the Tenants repaired the drywall that was damaged when the baby gate was installed. On the basis of the undisputed evidence, I find that they did not comply with section 37(2)(a) of the *Act* when they did not complete the repair by painting the wall after the drywall repair.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that the Landlord did not take reasonable steps to minimize their damage or loss.

In adjudicating this matter, I was heavily influenced by the undisputed evidence that the Tenants asked an agent for the Landlord for information about the paint color, so that

they could paint the drywall repair, and that the Landlord did not provide the requested information. In the absence of such evidence, I find it reasonable that the Tenant did not paint the patched area, as it would be difficult, if not impossible, to match the existing paint without the information they had requested.

Had the Landlord provided the Tenants with information about the paint color, I would expect the Tenants to paint the damaged area. As the Landlord did not provide the requested information about the paint color, I find that the Landlord did not take reasonable steps to minimize their loss and I dismiss their claim for painting the damaged area.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file an Application for Dispute Resolution.

I find that the Landlord has failed to establish the merit of their Application for Dispute Resolution and I dismiss the Landlord's application to recover the fee paid to file an Application for Dispute Resolution.

Conclusion:

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

The Tenants have established a monetary claim of $4,000.00, which includes double the security deposit of $1,950.00 and $100.00 as compensation for the cost of filing this Application for Dispute Resolution. I find that this claim must be reduced by the $1,950.00 that was returned to the Tenants after the tenancy ended.

On the basis of these calculations, I grant the Tenants a monetary Order for $2,050.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: April 14, 2020

Residential Tenancy Branch