Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in December of 2019 were sent to each Tenant, via registered mail, sometime in December of 2019. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 27, 2020 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which the Landlord increased the amount of her monetary claim. The Landlord stated that the amendment was served to the Tenants by regular mail on March 27, 2020. The Tenants acknowledged receipt of the amendment.

On April 29, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via email, on April 29, 2020. Service by email was permitted in April of 2020, due to the COVID-19 pandemic. The Landlord acknowledged receiving this evidence on May 01, 2020 and it was accepted as evidence for these proceedings. The Landlord declined the opportunity to request an adjournment for the purposes of having more time to consider the Tenants' evidence.

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

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on June 30, 2018;
- the Tenants agreed to pay monthly rent of $1,200.00;
- the Tenant paid a security deposit of $600.00;
- the Tenant paid a pet damage deposit of $600.00;
- the pet damage deposit was returned on, or about, December 03, 2019;
- the Landlord attempted to arrange a time to jointly inspect the rental unit on June 29, 2018, prior to the Tenants moving into the rental unit;
- the Tenants did not agree to meet on June 29, 2018, as the Tenants did not know when they were going to be arriving at the unit;
- on June 13, 2018 the Landlord attempted to arrange a time to jointly inspect the rental unit on June 30, 2018;
- the parties were unable to find a mutually agreeable time to meet on June 30, 2018;
- after being unable to schedule a mutually agreeable time to inspect the rental unit on June 29, 2018 or June 30, 2018, the Landlord and the Tenants mutually agreed that the Landlord would leave a partially completed condition inspection report for Tenants to review and add comments,
- the Landlord left a partially completed condition inspection report for the Tenants, which the Tenants received on June 29, 2018;
- the parties met on July 06, 2018 for the purposes of reviewing, signing, and discussing the condition inspection report;
- the Tenants gave the Landlord written notice of their intent to vacate the rental unit at 5:00 p.m. on November 30, 2019;
- the parties agreed to meet on December 01, 2019 at 11:00 a.m., for the purpose of completing a final inspection of the rental unit;

- the parties met on December 01, 2019 for the purposes of completing a final inspection of the rental unit;
- the Landlord began inspecting the unit and completing the final condition inspection report prior to the Tenants arriving on December 01, 2019;
- the Landlord completed a final condition inspection report, which was signed by both parties;
- the Tenants did not agree with the content of the final condition inspection report;
- although the female Tenant has signed the final condition inspection report to indicate she agreed that the Landlord could retain $600.00 of the security deposit, this area was signed in error and no such agreement was reached; and
- the Tenants provided the Landlord with a forwarding address, in writing, on December 01, 2019.

The Landlord stated that when the parties met on July 06, 2018 the rental unit was jointly inspected. The female Tenant stated that when the parties met on July 06, 2018 some areas of the unit were inspected but the unit could not be fully inspected because the Tenants had moved their furniture into the unit.

The female Tenant stated that when they arrived at the rental unit on December 01, 2019 for the final inspection their remaining property had been moved out of the rental unit. She stated that the Landlord verbally agreed they could leave some of their property in the unit until December 01, 2019.

The Landlord stated that the Tenants were fifteen minutes late for the final inspection on December 01, 2019 and, as such, she removed their remaining property out of the rental unit. She stated that she did not agree the Tenants could leave some of their property in the unit until December 01, 2019.

The Landlord is seeking compensation, in the amount of $580.00, for repairing the walls in the rental unit. The Landlord submitted photographs that show small drywall repairs on various walls, which have not been repainted. The Landlord submitted an invoice to show that she was charged $580.00 for repairing and painting walls.

In regard to the claim for painting the Landlord and the Tenants agree that:

- the Tenants made several small drywall repairs to the walls of the rental unit prior to the end of the tenancy;
- in October of 2019 the Tenants contacted the Landlord to ask where they could access “touch-up paint”, for the purpose of painting over the drywall repairs;
- the Landlord told the Tenants the “touch-up paint” was in the furnace room;
- there were cans of paint stored in the furnace room; and

- there was no “touch-up paint” for the walls at the rental unit.

In regard to the claim for painting the female Tenant stated that:

- they did not realize there was no “touch-up paint” for the walls until they were ready to paint the drywall repairs on November 29, 2019;
- many of the marks on the walls should be considered normal wear and tear; and
- they did not have time to obtain the proper “touch-up paint” from the Landlord.

In regard to the claim for painting the male Tenant stated that:

- they fully intended to paint the drywall repairs, but they did not have time to do so after discovering there was no paint; and
- they offered to return after the final condition inspection to paint the drywall repairs, but the Landlord declined that offer.

In regard to the claim for painting the Landlord stated that:

- if the Tenants had informed her, they could not locate the “touch-up paint” in a timelier manner, she would have been able to provide them with the proper paint; and
- she declined the Tenants’ offer to return to complete the painting after the final condition inspection.

The Landlord is seeking compensation, in the amount of $157.50, for removing a piano.

In regard to the claim for moving the piano the Landlord and Tenants agree that:

- when this tenancy began there was a piano in the garage/carport of the rental unit;
- at the start of the tenancy the Landlord and the male Tenant agreed that the Tenants could have the piano;
- at the start of the tenancy the Landlord and the male Tenant agreed that the piano would not be moved into the rental unit; and
- the piano was left in the garage/carport at the end of the tenancy.

The male Tenant stated that they did not move the piano because it was damaged a result of being stored in the garage/carport; that they offered to share the cost of disposing of the piano with the Landlord; and that the Landlord declined their offer to share the cost of disposing of the piano.

The Landlord submitted an invoice for removing the piano, in the amount of $157.50.

The Landlord is seeking compensation, in the amount of $40.00, for cleaning. This claim for cleaning was not raised by the Applicant, the Respondent, or me by the end of the hearing. At the end of the hearing each party was asked if they had additional evidence to present and they each indicated they did not.

In the Monetary Order Worksheet included with the Amendment to the Application for Dispute Resolution, the Landlord added the $40.00 claim for cleaning. In a document dated December 03, 2019, the Landlord informs the Tenants that she will be seeking compensation for cleaning the oven.

The Landlord submitted an invoice for cleaning, in the amount of $257.25. This invoice declared that 20 minutes was spent cleaning an oven; that 2 people worked for a total of 7 hours; and the hourly rate was $35.00. On the Tenants' written submission, the Tenants declared that since the Landlord's cleaners only spent 20 minutes cleaning the oven, at an hourly rate of $70.00, the claim should be for $23.33.

The Landlord submitted photographs of the rental unit that were taken at the end of the tenancy. In these photographs the rental unit looks very clean, with the exception of minor scuffs on the wall, a dirty oven, a baseboard corner that needs wiping, and a garage that needs sweeping. The Tenants submitted photographs of the rental unit that were taken at the end of the tenancy, in which the rental unit appears very clean.

In the Tenants' written submission, the Tenants declared that they hired a professional cleaner. The Tenants acknowledge that their cleaner did not fully clean the oven and one baseboard corner.

The Tenants argued that because the Landlord inspected the renal unit at the end of the tenancy prior to them arriving to the unit, the Tenants did not have the opportunity to review the work of the professional cleaner prior to the unit being inspected by the Landlord. They further argued that the Landlord could have allowed them to have their cleaner return to wipe the stove and the corner of the baseboard, or to allow the Tenants to wipe those areas.

Analysis

Section 23(1) of the *Residential Tenancy Act (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. On the basis of the undisputed evidence I find that the parties mutually agreed to meet on July

06, 2018 for the purposes of discussing the condition inspection report that had been provided to the Tenants on June 29, 2018.

I therefore find that the parties complied with section 23(1) of the *Act.* In reaching this conclusion I was heavily influenced by the testimony of the parties and the electronic communications they exchanged about the initial inspection. In my view, both parties were content with the plan to meet on a date after the Tenants moved into the rental unit.

Although the female Tenant contends that the rental unit was not fully inspected on July 06, 2018, I find that it was sufficiently inspected for the purposes of satisfying the requirements of section 23(1) of the *Act*.

Section 23(4) of the *Act* stipulates that the landlord must complete a condition inspection report at the start of the tenancy. On the basis of the undisputed evidence, I find that the Landlord completed a condition inspection report prior to the rental unit being inspected, and that the parties subsequently discussed the content of the report. I therefore find that the Landlord complied with section 23(4) of the *Ac*t.

Section 23(5) of the *Act* stipulates that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report. On the basis of the undisputed evidence I find that both parties signed the report and that the Tenants were provided with a copy of the report. I therefore find that the Landlord complied with section 23(5) of the *Ac*t.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. On the basis of the undisputed evidence that the parties met on December 01, 2019 for the purpose of inspecting the rental unit, I find that the parties complied with section 35(1) of the *Act*.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report at the end of the tenancy. On the basis of the undisputed evidence, I find that the Landlord completed a condition inspection report at the end of the tenancy and I therefore find that the Landlord complied with section 35(3) of the *Ac*t. In adjudicating this matter, I find it irrelevant that the Landlord began completing the report prior to the Tenants attending the unit on December 01, 2019.

Section 35(4) of the *Act* stipulates, in part, that both the landlord and tenant must sign the condition inspection report . On the basis of the undisputed evidence I find that both parties signed the report and that the Tenants indicated on the report that they did not agree with the content of the report. I therefore find that the Landlord complied with this aspect of section 35(4) of the *Ac*t.

Section 35(4) of the *Act* stipulates, in part, that landlord must provide the tenant with a copy of the condition inspection report . As no evidence was submitted that would cause me to conclude that the Tenants were not provided with a copy of the final inspection report in a timely manner, I cannot conclude that the Landlord failed to comply with this aspect of section 35(4) of the *Ac*t.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Although the female Tenant signed the final condition inspection report to indicate she agrees the Landlord may retain $600.00 of the security deposit, both parties agree that this area of the report was signed in error and that the Tenants did not intend to give the Landlord written permission to retain the security deposit. As the Tenants did not intend to sign that portion of the condition inspection report, I find that the Landlord did not have written authority to retain any portion of the security deposit.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

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.

On the basis of the undisputed evidence I find that the Tenants repaired several small drywall repairs in the rental unit prior to the end of the tenancy. Even if I accepted that the damage to the drywall prior to the repairs made by the Tenants should be considered normal wear and tear, I find that the Tenants were obligated to complete the drywall repairs once those repairs were initiated. In my view drywall repairs are entirely different that small scratches and holes, because drywall repairs are highly visible until

they have been painted. While a landlord may opt not to repair small scratches and holes prior to the start of another tenancy, I find it highly unlikely a landlord would choose not to paint over partially completed drywall repairs prior to the start of another tenancy.

I find that the Landlord has submitted insufficient evidence that the Tenants were obligated to repair the drywall in any location other than the areas repaired by the Tenants. In reaching this conclusion I was heavily influenced by the absence of any photographs that show drywall damage that exceeds normal wear and tear. I therefore find that the Landlord is not entitled to any compensation for repairing drywall damage.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to paint the drywall repairs they initiated.

Although I accept the Tenants' submission that they would have repainted the drywall after the final condition inspection was completed on December 01, 2019, I find that they did not have the right to do so without the consent of the Landlord. On the basis of the undisputed evidence, I find that this tenancy ended on November 30, 2019 and, as such, the Tenants had an obligation to complete all of the repairs by that date. The Landlord was under no obligation to allow the Tenants to continue making repairs after November 30, 2019.

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 the loss she experienced as a result of the Tenants not painting the drywall repairs.

In concluding that the Landlord did not take reasonable steps to minimize the loss she experienced, I was heavily influenced by the undisputed evidence that the Landlord mistakenly informed the Tenants that there was "touch-up paint" in the furnace room.

On the basis of the testimony provide by the Tenants and the electronic communications submitted in evidence, I find it reasonable to conclude that the Tenants would have painted over the drywall repairs if the proper paint had been available to them on November 29, 2019. I find the Landlord's mistake prevented the Tenants from completing the drywall repairs, and that the Tenants should not be held accountable for the Landlord's mistake. In short, I find that the Landlord failed to mitigate her loss by

failing to ensure the Tenants had the appropriate paint to complete the repair or, at least, the appropriate codes to obtain the correct paint.

In adjudicating this matter, I have placed little weight on the Landlord's submission that if she had been informed that the Tenants could not locate the "touch-up paint" in a timelier manner, she would have been able to provide them with the proper paint. While that submission may be true, I find it reasonable that the Tenants did not contact her in a timelier manner, as they did not discover the problem until the day before the tenancy ended. I find that there would not have been a problem if the Landlord had provided accurate information to the Tenants initially, and that the Tenants should not be held to an unreasonable standard in regard to remedying the Landlord's error.

As the Landlord failed to mitigate her losses by ensuring the Tenants had a reasonable opportunity to paint the drywall repairs, I dismiss the Landlord's claim for painting.

On the basis of the undisputed evidence, I find that the Landlord gave the Tenants a piano at the start of the tenancy and, as such, the Tenants were required to remove it at the end of the tenancy. I find that they were required to remove the piano, even if it was damaged. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to remove the piano and I find they must compensate the Landlord for the cost of removing it, in the amount of $157.50.

As neither party testified about the claim for cleaning, the decision about cleaning is based on the written submissions of each party.

Section 37(2)(a) of the *Act* only requires that a rental unit be left reasonably clean at the end of a tenancy. It does not demand that a rental unit be left in pristine condition. tenant. As Residential Tenancy Branch Policy Guideline #1 suggests, I have authority to may determine whether 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.

On the basis of the photographs submitted in evidence, I find that the rental unit was left in very clean condition, with the exception of minor scuffs on the wall, a dirty oven, a baseboard corner that needs wiping, and a garage that needs sweeping. In spite of these few areas that required cleaning, I find that the rental unit was left in reasonably clean condition at the end of the tenancy. As the rental unit was left in reasonably clean condition, I dismiss the Landlord's claim for cleaning.

In concluding that the rental unit was left in reasonably clean condition I was influenced, in part, by the fact the Landlord is only claiming compensation of $40.00 for cleaning. On the basis of the cleaning invoice, which indicates an hourly rate of $35.00, I find this suggests that it took approximately one hour to clean the few areas left by the Tenants. I find this to be a minimal amount of cleaning, which supports my conclusion that the rental unit was left in reasonably clean condition.

In adjudicating this claim I have not considered the undisputed evidence that the Landlord removed some of the Tenants' personal property prior to the final inspection on December 01, 2019, as that issue is not relevant to the claims before me.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $257.50, which includes $157.50 in damages and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain $257.50 from the Tenants' security deposit of $600.00 in full satisfaction of this monetary claim. The remaining $342.50 must be returned to the Tenants.

Based on these determinations I grant the Tenants a monetary Order for $342.50. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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 *Act*.

Dated: May 13, 2020

Residential Tenancy Branch