Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND-S
For the tenants: MNSD, FF

Introduction

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

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenants; and
- authority to keep the tenants' security deposit to use against a monetary award.

The tenants applied for the following:

- a return of their security deposit; and
- to recover the cost of the filing fee.

The landlord, the tenants, and the tenants' legal counsel attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically mentioned by the parties and relevant to the issues and findings in this matter are referenced in this Decision.

Preliminary and Procedural Matters –

The landlord's monetary claim listed in his application was $5,000. Section 59(2)(b) of the Act requires an application for dispute resolution provide full particulars of a claim for compensation. Additionally, Rule 2.5 of the Rules states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicants are provided with instructions in the application package as to these evidence requirements.

The landlord failed to provide a detailed breakdown of his monetary claim of $5,000, as required by the Act and Rules; however, the landlord said that he only wanted to keep the tenants' security deposit due to the hardwood floor damage allegedly caused by the tenants and not pursue any other monetary claims against the tenants.

Rather than refuse to hear the landlord's application as allowed by section 59(5)(c) of the Act, as the tenants did not raise an objection to the landlord's application, I proceeded to hear the applications of both parties.

Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation from the tenants for alleged damage and to use the tenants' security deposit against a monetary award?
2. Are the tenants entitled to have their security deposit returned, that it be doubled, and recovery of the filing fee?

Background and Evidence

The landlord submitted that the tenancy started on April 1, 2018, ended on April 1, 2020, monthly rent was $4,300 and the tenants paid a security deposit of $2,150 at the beginning of the tenancy. The landlord has retained the security deposit, having filed this application claiming against it.

The tenants submitted that the tenancy ended on March 31, 2020, when they vacated.

Landlord's application –

In support of his application, the landlord explained that the rental unit was in the upper level of a 100 year old heritage home, wherein he resided in the lower level, for a period of time. The landlord also said that the rental unit was furnished.

The landlord submitted that during the tenancy, the tenants caused excessive damage to the hardwood floors. The landlord said that there was a move-in inspection report, which noted a scratch on the hardwood floor, but not on the affected area here; however, the tenants left a really long gouge and other deep scratches in the floor. The landlord submitted that the tenants deliberately tried to hide the gouge by pulling a rug over the spot when the rental unit was being inspected.

The landlord submitted that there was an inspection during the mid-way point of the two year tenancy, for insurance purposes. The landlord submitted that there was another inspection with the tenants in February 2020. The landlord also said it was dark when the parties made the inspection on February 25, 2020, and the evidence of the landlord showed he requested a second, follow-up February inspection when it was lighter and to be able to bring an expert. The landlord explained that the condition inspection report for February 2020, was to be used as a base and it would be changed according to any improvements or repairs made to the rental unit made by the tenants prior to their move-out.

In response to my inquiry, the landlord said that the hardwood floors were original to the heritage home, but that they were re-finished in 1997.

The landlord's evidence included email exchanges between the parties relating to several issues, photos of the floor, one from the scratch at the beginning of the tenancy and several from the end of the tenancy, and several condition inspection reports.

As to the condition inspection reports, the landlord said he gave the original report to the tenants, but that the tenants did not sign the document and return to him.

Tenants' response –

The tenants' response was provided by their legal counsel (counsel), while referring to her written submissions.

Counsel submitted that an inspection of the rental unit was done at the beginning of the tenancy; however, there was no signed report. Additionally, there was not a move-out inspection at the end of the tenancy and again, there are no signed condition inspection reports, in violation of the Act. Due to the landlord's failure to provide signed inspection reports, the landlord has extinguished his rights to claim against the tenants' security deposit.

Counsel submitted that the unsigned inspection reports noted a number of deficiencies with the home and that the rental unit showed signs of extreme wear and tear. Counsel submitted that the landlord had lived in the rental unit with his dog prior to the tenancy and there were existing marks on the walls and other damage.

Counsel said there was an inspection in the middle of the tenancy, which showed no changes from the beginning of the tenancy, and on the February 2020 report, the landlord made changes with different coloured ink. Counsel said that there was no inspection at the end of the tenancy, as the landlord did not want to inspect due to Covid-19. The tenants suggested doing the inspection while remaining two metres apart or to complete the inspection during Facetime; however, the landlord declined.

Counsel submitted that the rental unit was furnished, and that towards the end of the tenancy, the tenants noticed that the couches had casters attached to the legs, that the casters were made of cheap plastic and attached to the couch legs. The casters had a central nail and over time, the plastic wore down, leaving the nail exposed. Counsel submitted that the tenants did not notice the floor damage, which had been covered by the carpet, until the end of the tenancy, when cleaning the rental unit.

Counsel submitted that the landlord has failed to substantiate his claim.

The tenants' relevant evidence included the condition inspection reports, pictures of the caster showing a nail, a photo of the caster unattached, text message and email communication between the parties, and floor finishing quotes.

Tenants' application –

The tenants' monetary claim is $4,300, which is the tenants' security deposit of $2,150, doubled.

In support of their claim, counsel submitted the tenants provided their written forwarding address to the landlord on April 1, 2020, in an email attachment requesting their security

deposit, and that the landlord has not returned it and did not file his application within 15 days.

Counsel submitted that there was a minor error on the tenants' written forwarding address; however, that does not eliminate the fact the landlord had extinguished his right to claim against the security deposit.

Filed into evidence was a copy of the written forwarding address in an email requesting a return of their security deposit.

Landlord's response –

The landlord confirmed receiving the written forwarding address. The landlord submitted that he did not return the tenants' security deposit as they provided an incorrect address. The landlord explained that he went to the address provided by the landlords to return some toys, knocked on the door, and someone answered who did not know the tenants.

The landlord submitted that he contacted the tenants and when he received their corrected forwarding address, he made his application, on April 21, 2020.

Filed into evidence by the landlord was the tenants' email of April 1, 2020, along with his written response of the same date, informing the tenants he would not return the security deposit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application –

Test for damages or loss

A party making 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 in sections 7 and 67 of the Act. Accordingly, 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 instance, the burden of proof is on the landlord to prove the existence of the damage/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 landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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

Under sections 23(4) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the document and the landlord must give the tenant a copy of that report.

Among other things, section 20 of the Residential Tenancy Regulation requires that the condition inspection report contain:

- *the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;*
- *the address of the rental unit being inspected;*
- *the date on which the tenant is entitled to possession of the rental unit;*
- *the address for service of the landlord;*
- *the date of the condition inspection;*
- *a statement of the state of repair and general condition of each room in the rental unit.*

Additionally, the inspection report must contain other required information, such as

- *a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;*
- *any other items which the landlord and tenant agree should be included;*
- *a statement identifying any damage or items in need of maintenance or repair;*
- *appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*
- *the following statement, to be completed by the tenant:*
- *I, ...*
  Tenant's name

[ ] agree that this report fairly represents the condition of the rental unit.
[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:
.....
.....
.....

I find one of the purposes of a condition inspection report is to allow both a landlord and tenant to inspect the rental unit together and have the opportunity to notate their own comments and to allow a tenant to acknowledge their agreement or disagreement with the contents of the report.

I have reviewed the landlord's evidence and find the condition inspection reports he filed into evidence to be vague and confusing. There was an excessive amount of writing all over the documents. I find it was not clear if the tenants had the opportunity to notate their own comments on the reports and neither condition inspection reports contained the tenants' signature, the move-in or move-out inspection date, all required information.

Further, section 35(1) of the Act, requires the inspection be on or after the day the tenant ceases to occupy the rental unit, here, March 31, 2020, or another mutually agreed day. In this case, the evidence showed the landlord performed what can be described as an interim, final inspection, on February 25, 2020. The evidence shows that an inspection with the tenants on or after the tenancy ended was not requested or scheduled by the landlord, resulting in no final inspection of the rental unit with the tenants present.

As the landlord failed to comply with his requirements under section 23 and 35 of the Act and failed to complete and provide a compliant condition inspection report, I could not assess the condition at the end of the tenancy compared with the beginning of the tenancy.

Therefore, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I find the tenants' evidence about the caster on the couch compelling and persuasive and find it just as likely as not the exposed caster caused floor damage. The photos provided by the tenants showed a worn caster.

I therefore find that the landlord submitted insufficient evidence to meet his burden of proof on a balance of probabilities. I therefore dismiss the landlord's claim for floor damage and to retain the tenants' security deposit.

Additionally, even had I not found the landlord submitted insufficient evidence that the tenants caused damage over and above reasonable wear and tear, I would still find the landlord's claim fails for two additional reasons.

The Residential Tenancy Policy Guidelines show that the life expectancy of hardwood flooring is 20 years. The evidence shows that the hardwood floors were 100 years old and that the refinished hardwood floors were 23 years old. I therefore find that the hardwood flooring was fully depreciated at the time the tenancy ended and had exceeded its useful life.

The second additional reason the landlord's claim fails is due to his insufficient evidence that he has quantified his loss. I do not find that the flooring quotes adequately showed that the landlord has suffered a loss, and due to the existing floor scratches at the beginning of the tenancy, I was not convinced the landlord would ever suffer a loss.

For these reasons, the landlord's application is dismissed, without leave to reapply.

Tenants' application –

Under section 38(1) of the Act, at the end of a tenancy, 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.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

There was no evidence presented that the tenants had extinguished their rights towards their security deposit, although submissions were made that the landlord had extinguished his right to claim against the security deposit.

In the case before me, I find the evidence shows that the tenancy ended on March 31, 2020, when the tenants vacated, and that the landlord received the tenants' written forwarding address in a letter by email on April 1, 2020. Email service of documents were approved by the Director's Order of March 30, 2020, in effect on that date. In this case, the landlord confirmed and submitted evidence that he received the tenants' forwarding address on April 1, 2020, by replying to their email on the same date.

Due to the above, I find the landlord was obligated to return the tenants' security deposit, in full, or make an application for dispute resolution claiming against the security deposit by April 16, 2020, 15 days after he received the forwarding address on April 1, 2020. In contravention of the Act, the landlord kept the security deposit, without filing an application until April 21, 2020.

I therefore find the tenants are entitled to a return of their security deposit of $2,150 and that this security deposit must be doubled.

I also award the tenants recovery of their filing fee of $100, due to their successful application.

Due to the above, I therefore find the tenants have established a total monetary claim of $4,400, comprised of their security deposit of $2,150, doubled to $4,300, and the filing fee paid for this application of $100.

To give effect to this monetary award, I grant the tenants a monetary order in the amount of $4,400 and it is included with this Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord to be enforceable and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

In addressing the landlord's argument that he did not return the security deposit due to the tenants providing an incorrect forwarding address, the evidence shows that there was one incorrect number in the street address number. I find the tenants made a clerical error.

It is not required or necessary that the landlord investigate as to whether the address provided by the tenants was accurate. There is nothing in the Act that allows a landlord to withhold a security deposit in the case of an error in the address. In this case, it was the landlord's choice to try to locate the tenants at the address provided. Nonetheless, the landlord failed to meet his lawful obligation to return the tenants' security deposit within 15 days to the address provided by the tenants or file his application for dispute resolution claiming against it.

Conclusion

The landlord's application is dismissed due to insufficient evidence.

The tenants' application is successful and they are granted a monetary award in the amount of $4,400 as noted above.

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 30, 2020

Residential Tenancy Branch