Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Since this was the landlord's application, I affirmed the landlord first and asked questions, and the landlord became annoyed asking why I hadn't read all of the evidence prior to the hearing. I assured the landlord that I had read most of the evidentiary material, but required the landlord to substantiate the evidence. I also assured the parties that all evidence properly provided would be reviewed prior to completing this Decision. Further, a lot of the landlord's evidence has been uploaded 4 times, and some I find totally irrelevant to this dispute. Also, some of the landlord's evidentiary material was provided on October 7, 2020 with the Application for Dispute Resolution, and additional evidence on January 20, 2021. Any evidence that an applicant wishes me to consider must be provided at least 14 days in advance of the hearing. Therefore, I decline to consider the January 20, 2021 evidence. All other relevant evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 23, 2019 and ended on September 22, 2020. Rent in the amount of $2,500.00 was payable on the 23rd day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $1,250.00, and although the tenancy agreement, a copy of which has been provided for this hearing specifies a pet damage deposit in the amount of $1,250.00, the landlord testified that he only received $625.00 for the pet damage deposit on March 23, 2019. Both deposits are still held in trust by the landlord. The rental unit is a single family rural home which is 4 years old and no others resided on the property during this tenancy.

On August 23, 2020 the tenants gave notice to vacate and moved out September 22, 2020.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy. A copy has been provided for this hearing, but contains no signatures of the tenants. The landlord testified that the move-out inspection was scheduled for the last day of the tenancy by text messaging, but the tenant wanted it to be at 5:00 and the landlord was okay with that. The tenant wife attended, but not the tenant husband.

The landlord didn't hold the tenant to any standard and talked about each item in the report, but didn't have it all completed while the tenant was there. The inspection was based on the move out "Cleaning Checklist" as provided by the B.C. Residential Tenancy website, and a copy was provided to the tenant. The landlord went over the items with the tenant identifying all items of concern, and filled out the report later, which is why the tenant hadn't signed it. The landlord sent a copy within 15 days as required, along with a letter dated October 1, 2020, and asked if there were any issues, but didn't hear back from the tenants.

The landlord has provided a Monetary Order Worksheet setting out claims, but the way it was uploaded, none of the amounts are visible. The landlord testified that the claims are:

- $334.18 for light bulbs and smoke detectors;
- $30.62 for another smoke detector;
- $12.63 battery for smoke detector;
- $12.66 light bulbs;
- $327.61 for a range hood;
- $500.00 for painting; and

- $1,760.00 for labour and materials.

The October 1, 2020 letter to the tenants claims $3,803.04 for damages, which the landlord testified is an error, and less the $1,250.00 security deposit and $625.00 pet damage deposit, the balance of $1,928.84 is owed to the landlord.

The landlord testified that a number of light bulbs were burned out and smoke detectors were missing. The landlord has provided for this hearing a copy of an invoice from Home Hardware dated September 24, 2020 for smoke alarms, batteries and bulbs totaling $334.18, which also includes Krazy Glue and sealant. Another invoice from Home Hardware also dated September 24, 2020 has been provided, for another smoke alarm totaling $30.62. Two more invoices from Home Hardware have been provided dated September 25, 2020 and September 30, 2020 for batteries at costs of $12.63 and $12.66 respectively.

The landlord testified that at the end of the tenancy, the face was ripped off of the range hood/microwave and it was cheaper to replace it than to repair it. An invoice has been provided for this hearing, dated September 24, 2020 at a cost of $327.61.

The landlord has provided an Invoice for painting totaling $1,198.50, however the landlord testified that he only claims $500.00 of that for painting the garage, which was last painted 4 years ago.

The October 1, 2020 letter to the tenants sent with the condition inspection report sets out "Notes: Observations during inspection," for which there are 24 items mentioned, along with a sheet setting out hours and claims for each of the 24 items. The total is $3,622.70, $181.14 for GST and a total amount of $3,803.84. The landlord is in the construction and storage business, as well as other things and charges $55.00 per hour and invoices customers with GST.

The landlord believes the rental unit was re-rented for October 1, 2020, and the tenants have not served the landlord with an Application for Dispute Resolution claiming the security deposit or pet damage deposit. The landlord received 2 forwarding addresses from the tenants by email, one for female tenant on September 23, 2020; one for the male tenant on October 16, 2020 and an alternate on October 27, 2020.

The first tenant (CWN) testified that he didn't attend for the move-out condition inspection because it ought to have been easy and he didn't see fit to take a day off work for that. The *Residential Tenancy Act* permits one of the tenants to attend.

The move-out condition inspection report was not done correctly; it was not completed with either tenant present, or signed by either tenant. If any items were noted by the landlord, the tenants would have dealt with it. Most of the damages claimed by the landlord are not mentioned in the report. The tenant asked the landlord for a copy of a signed report, but he wouldn't provide it – because there wasn't one. The tenant received the unsigned report on or about October 5, 2020.

The second tenant (BK) testified that the tenants are professionals, and she is a teacher.

The tenant did a great job of cleaning at the end of the tenancy, including baseboards and everything on the Residential Tenancy Branch list except for blind cleaning. The tenant agrees that she overlooked vacuuming vents, but basically, it was spic and span. The tenants have provided a letter from a friend who was there and saw how clean it was. The tenant always kept the rental unit in immaculate condition.

During the move-out condition inspection, the tenant acknowledged marks where the tenants' cat had scratched a wall in the garage, and some light bulbs were out. The landlord pulled out the stove, so the tenant went about cleaning it. The landlord and tenant walked around the property, and the landlord asked about smoke detectors.

As the tenant left, she thought that she would be happy as a landlord to have the property back in that state and was absolutely shocked about the landlord's claim. The landlord didn't mention any other items that required attention or ask the tenant to make any markings on the report, or sign the report. The landlord never mentioned that the tenants would be charged for any of the items in his claim.

The garage didn't need painting or fixing, and there is no evidence that the landlord expected the tenants to pay for it. The landlord knew about the microwave hood.

The landlord's claim of $330.00 to mow a lawn is outrageous. It had been mowed 3 weeks prior to move-out but the tenants' mower broke and she was honest with the landlord about it, and the landlord has a riding mower.

The tenant agrees to the landlord's claim of $179.00 for light bulbs and a few hours to clean blinds, but not painting, driveway repair, or outside windows. The Residential Tenancy Branch Policy Guideline specifies that it's a landlord's responsibility to clean outside windows, which the landlord never did during this tenancy.

The tenants did not do any mechanic work in the drive-way other than to change tires; just normal drive-way use, and the other tenant power-washed it.

The landlord's claim of $55.00 per hour to return the house to show-room standard is not accepting responsibility as a landlord.

SUBMISSIONS OF THE LANDLORD:

The landlord and his wife are also professionals, and charge a standard rate for labour and keep track of hours.

The tenants gave notice to end the tenancy and had lots of time to do the work but chose not to do it.

SUBMISSIONS OF THE TENANTS:

The tenant disagrees with the landlord; the rental home was left in good condition. There is a disagreement on what was done, but there is no signed documentation about what was done or not. The inspection was not completed appropriately.

If the tenant had any indication that the landlord was not happy with anything, it would have been completed, but there was no mention of any of it.

The landlord sent the tenants a copy of the report that the landlord made alone, along with invoices, which was the first time the tenants found out about the landlord's claims. The lawn needed mowing and some other minor things, such as light bulbs, but this is an outrageous cash-grab by a wealthy man who pulls these kinds of things.

Analysis

Firstly, the *Residential Tenancy Act* puts the onus on the landlord to ensure that the move-in and move-out condition inspection reports are completed and the regulations go into detail of how that is to happen, including a statement identifying any damage or items in need of maintenance or repair and an appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item and any additional comments. If the landlord fails to do so, the landlord's right to make a claim against the security deposit or pet damage deposit for damages is extinguished. A landlord may only complete and sign the report without the tenant if the tenant failed to attend for the inspection or had abandoned the rental unit.

In this case, the landlord filled in the report himself after the parties had been through the rental unit, and did not give the tenants any opportunity to agree or not disagree with it, or even see it until mailing it to the tenants. I find that the landlord has not complied with the

law and the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished.

The law also specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit. Having found that the tenants had absolutely no involvement in completing the move-out portion, I am not satisfied that it can be relied upon.

However, the landlord's right to make a claim for damages is not extinguished. In order to be successful, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate the damage or loss suffered.

I have reviewed all of the evidentiary material, excluding the landlord's January 20, 2021 evidence, but including the landlord's evidence that was uploaded 4 times to the Residential Tenancy Branch case management system. No photographs have been provided by either party.

The landlord's claim reads as though the tenants hired the landlord's company, however they certainly did not, and would not have agreed to pay a contractor $330.00 to mow a lawn even if there were dog feces, regardless of whose dog left it there. Further, the letter to the tenants dated October 1, 2020 also claims an additional $100.00 for cleaning dog feces. Whatever the landlord does for a living, it is not related to this tenancy. I find the landlord's claim for mowing the lawn to be an exaggeration, and I dismiss the landlord's claims for cleaning dog feces and mowing the lawn.

The tenant testified that the house was left without damages other than scratches from her cat on a wall, and was left very clean. I also take note of the letter provided by the tenant's friend and helper. The tenant also testified that during the move-out inspection the landlord mentioned pulling out the appliances, which the tenant did and cleaned, and if the landlord had mentioned anything about any other issues that the landlord claims, the tenant would have dealt with it at that time. The landlord did not dispute that testimony, and I find that the landlord has failed to establish mitigation with respect to any cleaning.

I also note that the October 1, 2020 letter to the tenants claims man hours of $55.00 per hour twice for item #11, and no receipts have been provided for changing locks or

purchasing keys or purchasing an additional garage door opener, and I dismiss those claims.

The tenants do not deny the burned out light bulbs and the smoke detectors and batteries for smoke detectors, and I find that the landlord has established those claims, less the Krazy Glue and sealant costing $5.11 and $3.71 respectively ($334.18 + $30.62 + $12.63 + $12.66 = $390.09 - $5.11 - $3.71 = **$381.27**).

With respect to the range hood/microwave, the parties agree that it was reported to the landlord in July that the handle was broken. The landlord testified that it was 4 years old, and at the end of the tenancy the door had been ripped off but the handle was attached. I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of a microwave at 10 years. The landlord has provided evidence that the replacement cost was $327.61, and I find that the landlord should not have had to replace it for at least 6 more years. The landlord has established a claim of 6 years use, or **$196.57** ($327.61/10 = $32.76 x 6 = $196.57).

Interior paint has a useful life of 4 years, and since the landlord testified that the garage was last painted 4 years ago, I am not satisfied that it would not have needed painting in any event, and I dismiss the landlord's $500.00 claim for painting the garage.

The *Residential Tenancy Act* requires a landlord to return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

The landlord testified that he received forwarding addresses of the tenants by email, which is not an acceptable method of serving documents:

> **88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> (a) by leaving a copy with the person;
>
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;

(j) by any other means of service prescribed in the regulations.

The tenants have 1 year from the date the tenancy ended to provide the landlord with a forwarding address in writing by one of the methods outlined above. If the tenants fail to do so, the landlord may keep the security deposit and pet damage deposit. If the tenants provide the landlord with a forwarding address in writing within a year, the landlord must return the deposits to the tenants in full within 15 days, failing which the tenants will be entitled to double the amounts. Given that the landlord's right to claim against the deposits is extinguished, the landlord may not make a claim for damages against the deposits.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the **$100.00** filing fee.

In summary, I find that the landlord has established claims of **$381.27** for light bulbs, smoke detectors and batteries, as well as **$196.57** for the microwave/range hood and the **$100.00** filing fee, for a total of **$677.84**. The balance of the landlord's monetary claim is hereby dismissed, as well as the landlord's application for an order permitting the landlord to keep the security deposit or pet damage deposit.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **$677.84.**

This order is final and binding and may be enforced.

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 02, 2021

Residential Tenancy Branch