Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL, MNRL, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent and utilities, for a monetary Order for damage to the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Dispute Resolution Package and the evidence the Landlords submitted to the Residential Tenancy Branch in December of 2020 were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 14, 2020 the Landlords submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on January 14, 2020. The Tenants acknowledged receiving this evidence and the Landlords' evidence was accepted as evidence for these proceedings, with the exception of their photographs.

The Landlord and the Tenants agree that the photographs served to the Tenants were black and white. The Landlord stated that the photographs submitted to the Residential Tenancy Branch were colored and of good quality. The male Tenant stated that the photographs they received were distorted and of poor quality. The Landlord acknowledged that the Tenants received photocopies of the photographs and were, therefore, likely not as clear as the originals.

Residential Tenancy Branch Rules of Procedure require parties to serve the other party with identical copies of evidence. As the Landlords did not serve the Tenants with

identical copies of the photographs submitted to the Residential Tenancy Branch, the Landlords photographs were not accepted as evidence for these proceedings.

On February 03, 2021 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlords' service address, via registered mail, on February 03, 2020. On the basis of the undisputed testimony, I find that this evidence was served to the Landlords in accordance with section 88 of the *Residential Tenancy Act (Act*).

The Landlord stated that they have moved from their service address and they did not provide the Tenants with an alternate service address. She stated that they periodically return to their service address but have not received the evidence mailed there by the Tenants.

The Landlord was given the opportunity to request an adjournment for the purposes of receiving the Tenants' evidence. She declined that opportunity and stated that she was willing to allow the evidence even though she has not had the opportunity to review it. As the evidence was properly served to the Landlords and the Landlord declined the opportunity for an adjournment for the purposes of reviewing the evidence, the Tenants' evidence was accepted as evidence for these proceedings.

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

Preliminary Matter #1

The Landlord stated that she understood the matter of the security/pet damage deposit would be considered at these proceedings.

Upon being advised that the Landlords did not apply to retain the security/pet damage deposit, she stated that this was an error and that the Landlords had intended to apply to retain those deposits.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulate that the claim is limited to what is stated in the Application for Dispute Resolution. As the Landlords' Application for Dispute Resolution does not declare they are seeking to retain the

security/pet damage deposit, I find that matter cannot be determined at these proceedings.

Preliminary Matter #2

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include an application to recover the security/pet damage deposit.

The male Tenant stated that the Tenants do not wish to have that matter considered at these proceedings.

As the Tenants do not consent to the amendment and the Tenants were not given notice that the security/pet damage deposit would be considered at these proceedings, I decline the Landlords' application to amend the Application for Dispute Resolution.

Preliminary Matter #3

Both parties referred to a deck in their evidence packages.

At the hearing the Landlord confirmed the Landlords are not claiming compensation for damage to the deck.

As the Landlords are not claiming compensation for damage to a deck, that matter was not considered at these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit and to compensation for unpaid rent and utilities?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began in February of 2019;
- the parties had a written tenancy agreement;
- the tenancy ended on November 30, 2020;
- the Tenants agreed to pay monthly rent of $2,250.00 by the first day of each month;
- on May 26, 2020 the Tenants paid $3000.00 in rent for rent for April, May, and June of 2020;

- no other rent was paid for April, May, or June of 2020;
- no rent was paid by the Tenants for July or August of 2020;
- the Landlords received a COVID rent subsidy of $500.00 for July of 2020;
- the Landlords received a COVID rent subsidy of $500.00 for August of 2020;
- the Tenants sent the Landlords a text message in which they offered to pay the Landlords $3,000.00 in rent "as final payment" for rent for April, May, and June of 2020, "pending the 500 from the rent subsidy program (1500$ total)";
- the Landlords responded to that text message by typing "That's great we will look forward to receiving that"; and
- the parties did not enter into a repayment plan for any of the outstanding rent.

The male Tenant stated that:

- when he sent the test message offering to pay $3,000.00 in rent as a "final payment", he meant that payment would fully satisfy all rent due for April, May, and June of 2020;
- he applied for $1,500.00 in rent subsidies;
- he does not know if the Landlord received the full $1,500.00 in rent subsidies; and
- he would not have paid $3,000.00 in May if he did not believe the Landlords were accepting that payment is full payment of rent for April, May, and June of 2020.

The Landlord stated that:

- the Landlords only received $1,000.00 in rent subsidies;
- when her husband responded to the Tenants' text message about the $3,000.00 rent payment by typing "That's great we will look forward to receiving that", he did not mean to imply that they were agreeing to a rent reduction for April, May, and June of 2020; and
- her husband's response was meant to imply they were grateful for receiving a portion of the rent that was overdue.

The Landlords are seeking unpaid rent. The Landlords are also seeking unpaid utilities for the period between April 01, 2020 and October 20, 2020.

In support of the claim for unpaid utilities the Landlord stated that:

- the tenancy agreement does not include water and garbage service;
- the Tenants agreed to pay $80.00 per month for these services; and
- the Tenants have not paid this $80.00 utility fee since March 01, 2020.

In response to the claim for unpaid utilities the Landlord stated that:

- the tenancy agreement does not include water and garbage service;

- the Tenants did not agree to pay $80.00 per month for these services;
- the Tenants were paying an extra monthly fee of $80.00, which they thought was additional rent; and
- the Tenants have not paid the additional $80.00 since March 01, 2020.

The Landlords are seeking compensation, in the amount of $500.00, for cleaning the rental unit.

The Landlord stated that she and the co-Landlord spent approximately 40 hours cleaning the rental unit, which included time spent picking up dog feces from the yard, cleaning liquified compost from below the sink, and cleaning many areas in the unit that had not been cleaned.

The male Tenant agreed that the area beneath the kitchen sink had not been cleaned, that they did not clean the bathroom, the wiped 90% of the cupboards, they vacuumed the floors, but they did not wash the floors. He stated that he and his co-tenant spent some time cleaning the unit and he estimates it would have taken he and his co-tenant 8 hours (each) to finish cleaning the unit.

The Landlords are seeking compensation, in the amount of $1,250.00, for replacing the carpet.

The Landlord stated there was a strong smell of pet urine on the carpets in the two downstairs bedrooms when this tenancy ended. The male Tenant stated that the carpets smelled of urine prior to the start of the tenancy and that the Landlords' dog urinated on the carpet in one of the bedrooms when the male Landlord was showing them the unit. The Landlord stated that she does not know if the Landlords' dog urinated on the carpet when the Tenants viewed the unit, as she was not present. She stated that even if that were true, the carpets did not smell of urine smell at the start of the tenancy.

The Landlords are seeking compensation, in the amount of $2,200.00, for refinishing the cabinets.

In support of the claim for cabinets the Landlord stated that:

- during the tenancy the cabinets were marked up;
- during the tenancy one of the cabinet doors was broken;
- the Tenants installed "child locks" on many of the cabinet doors;

- at the end of the tenancy there were approximately 10 child locks on the cabinets;
- when the Landlords removed the “child locks” the cabinets were damaged;
- the Landlords got better at removing the “child locks” and were able to remove some of them without damaging the cabinets; and
- the cabinets were 15 years old at the end of the tenancy.

In response to the claim for cabinets the male Tenant stated that:

- the cabinets were not marked up at the end of the tenancy;
- one cabinet door “collapsed” but that was due to poor workmanship and was not the result of the Tenants’ actions;
- the Tenants installed “child locks” on many of the cabinet doors, some of which they removed without damaging the cabinets;
- they did not have time to remove all of the “child locks”;
- the left approximately 5 “child locks” on the cabinets;
- the Landlords would not have damaged the cabinets if they had known how to remove the “child locks” properly; and
- they did not give the Landlord instructions on how to safely remove the child locks.

Analysis

On the basis of the undisputed evidence, I find that the Landlords and the Tenants entered into a rent tenancy agreement and that one of the terms of that agreement was that the Tenants would pay monthly rent of $2,250.00.

Section 14(1) of the *Act* stipulates that a tenancy agreement may be amended to add, remove, or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

I find that the Tenants submitted insufficient evidence to support their submission that the Landlord agreed to reduce the monthly rent to $1,000.00 for the months of April, May, and June of 2020. In reaching this conclusion I have considered the series of text messages exchanged between the Landlords and the Tenants in May of 2020, in which they are discussing rental arrears.

On the basis of the testimony of the male Tenant and the text message itself, I am satisfied that when the Tenants offered the Landlords a “final payment” for rent for April, May, and June of 2020, he was proposing that the monthly rent for those months would

be reduced to $1,000.00. On the basis of the testimony of the female Landlord, however, I am not satisfied that the Landlord was agreeing to that rent reduction when he responded with “That’s great we will look forward to receiving that”. The nature of that response, when considered in the context of the entire email chain, appears more consistent with a landlord expressing gratitude for receiving at least part of the rent that was due, rather than a landlord agreeing to reduce the rent. In the absence of clear evidence that the Landlords were explicitly agreeing to a rent reduction, I am not satisfied that there was a mutual agreement to reduce the rent for April, May, and June of 2020.

As I am not satisfied that the Landlords agreed to reduce the rent April, May, and June of 2020, I find that the Tenants remained obligated to pay monthly rent of $2,250.00. I therefore find that the Tenants were obligated to pay rent of $11,250.00 for the period between April 01, 2020 and August 31, 2020.

On the basis of the undisputed evidence, I find that the Tenants only paid $3000.00 of the rent that was due between April 01, 2020 and August 31, 2020 and that a rent subsidy of $1,000.00 was paid to the Landlords by the Government for July and August of 2020. I therefore find that the Tenants still owe $7,250.00 in rent for the period between April 01, 2020 and August 31, 2020.

On the basis of the undisputed evidence, I find that the Tenants were paying an additional monthly fee of $80.00. I favour the Landlord’s testimony that this fee was a monthly payment for water and garbage service over the male Tenant’s testimony that it additional rent. I find that the Landlord’s testimony is corroborated by the undisputed evidence that the tenancy agreement does not include water and garbage service. Conversely, there is nothing to support the male Tenant’s testimony that it was an additional rent payment, which would be highly unusual.

As I have concluded that the Tenants were required to pay a monthly utility fee of $80.00 and they have not paid that fee since March 01, 2020, I find that the Tenants owe the Landlord $560.00 in utility fees for the period between April 01, 2020 and October 30, 2020.

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* requires tenants to leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I find that the Landlords submitted insufficient evidence to establish that it would have taken 40 hours to clean the unit at the end of the tenancy. As I did not accept the Landlords' photographs as evidence, I am unable to make an independent assessment of the amount of time it would have taken to clean the rental unit.

On the basis of the male Tenant's testimony that it would have taken them a total of 16 hours to complete the cleaning, I find that the Landlords are entitled to compensation for at least 16 hours labour. I therefore grant the Landlords compensation of $400.00 for time spent cleaning the rental unit. I based this on an hourly rate of $25.00, which I find to be reasonable compensation for labour of this nature.

I find that the Landlords submitted insufficient evidence, such as a condition inspection report, to corroborate their submission that the carpets in the lower bedrooms did not smell of urine at the start of the tenancy or to refute the Tenants' submission that they smelled of urine at the start of the tenancy. As the Landlords have failed to establish the carpets did not smell at the start of the tenancy, I dismiss their claim for compensation because they smelled of urine at the end of the tenancy.

I find that the Landlords submitted insufficient evidence to corroborate their submission that the cabinets were marked up at the end of the tenancy or to refute the Tenants' submission that they were not marked up at the end of the tenancy. As I did not accept the Landlords' photographs as evidence, I am unable to rely on those photographs when considering the claim for damage to the cabinets. As the Landlords have failed to establish the cabinets were marked up, I cannot conclude they are entitled to compensation for damage of that nature.

On the basis of the undisputed evidence, I find that one of the cabinet doors broke during the tenancy. In the absence of a photograph of the door or some evidence to establish how the door was broken, I find there is insufficient evidence to establish that the door was damaged due to the actions or neglect of the Tenants. I find it entirely possible that the door was poorly constructed and that it broke due to normal wear and tear, as the Tenants contend. As the Tenants are not obligated to repair damage that is

the result of reasonable wear and tear, I cannot conclude that the Landlords are entitled to compensation for the broken cabinet door.

On the basis of the undisputed evidence, I find that the Tenants installed “child locks” on several of the cabinet doors, and that they failed to remove between 5 and 10 of them at the end of the tenancy. On the basis of the testimony of the Landlord, I find that some of the cabinet doors were damaged when the Landlords removed the “child locks”. As the Tenants did not provide the Landlords with instructions on how the remove the locks, I find that the Landlords are entitled to compensation for any damage arising from removing the ”child locks”.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlords failed to establish the true cost of repairing the damaged cabinets, as they did not submit an invoice or an estimate for the repair. When invoices or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present that evidence. As the Landlords did not submit evidence to establish the cost of repairing the damage caused by the “child locks”, I dismiss their claim for compensation for those repairs. I find, however, that the Landlords are entitled to compensation, in the amount of $100.00, for the time they spent removing the “child locks”.

I find that the Landlords’ Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $8,410.00, which includes $7,250.00 in unpaid rent, $560,00 for utility fees, $400.00 for cleaning, $100.00 for removing “child locks”, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for $8,410.00. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: February 15, 2021

Residential Tenancy Branch