Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1210 HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDL-S, FFL

Introduction

The landlord applied for compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act") and for recovery of the filing fee under section 72 of the Act.

A representative for the landlord's agent, an agent for the landlord, a witness for the landlord, and both tenants, attended the teleconference hearing on March 5, 2021. No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

I have reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues. As explained to the parties, I would not consider hearsay evidence or evidence pertaining to events post-tenancy. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy started February 1, 2017 and ended on October 31, 2020. Monthly rent was $1,435.00 and was due on the first day of the month.

The tenants paid a $700.00 security deposit and a $700.00 pet damage deposit. $900.00 of the deposits was returned to the tenants on November 13, 2020, and $500.00 was retained by the landlord pending the resolution of this application.

The landlord seeks the following compensation (as described in their submission):

> The costs for making good damages and cleaning by the Tenants (overall dirtiness of the Suite, floors, wall scratches and gouges, and nail holes) as follow:
>
> 1) This does not include cleaning done by [A.M.], this should be the Tenants' responsibility and cost.
>
> 2) The damage to the floor was difficult to repair, it will require taking off many floor panels to replace, cost will be very high. The Tenants' damage resulted is permanent and costly to rectify, it will cost many hundreds of dollars additional cost to the Landlord. This should be the Tenants' responsibility and cost.
>
> 3) $90.00 for additional cleaning paid to the New Tenants.
>
> 4) $504.00 for the walls, including patching, repair, sanding and painting (see evidence)
>
> The total costs is $594.00. The Landlord requests to keep the $500 plus $100 for application filing fee to be paid by the Tenants.

Submitted into evidence by the landlord was a thirty-nine-page document which included a three-page summary of the claim, seventeen pages of photographs of various parts of the interior of the rental unit, copies of email correspondence between various parties, a Condition Inspection Report for move-in (dated February 2, 2017), a condition inspection summary dated October 30, 2020 (when new tenants moved in), an acknowledgement from the new tenant in which they accept $90.00 from the landlord to pay for cleaning the rental unit, and an estimate from a painter in the amount of $504.00. It should be noted that the estimate is dated February 2, 2021.

The landlord's agent testified that the reason there is in evidence an estimate, versus an invoice for work done, is that there was a very quick turnaround time between when the tenants vacated the rental unit (between 12:30-12:45 PM, approximately) and when new tenant or tenants took possession of the rental unit later that afternoon.

He explained that there was no opportunity to patch up the walls or paint the rental unit in that short timespan; he also stated that this work has not been done but will be done after the current tenants vacate at some time in the future.

The landlord's witness testified about the move-out inspection that occurred on October 30, 2020. The witness works for the landlord's agent and does most of the agent's move in and move out inspections. He referred to the condition inspection report of February 2017 in which the rental unit was noted as being "satisfactory." Also, he noted that the rental unit had been renovated just before the tenants took possession. On the day of the move out inspection he walked throughout the rental unit and made notes of various issues, including dirt on walls, bangs, scratches, and so forth. What "stood out for me" was the large number of nail holes in the walls, he added. There were also chips in the laminate flooring. After the inspection, he locked up and went on his way. He is, by all accounts, a busy individual.

Under cross-examination, the tenant asked the witness why he had not used the proper condition inspection report (presumably referring to the Condition Inspection Report #RTB-27 available from the Residential Tenancy Branch). The witness answered, "that's not how I do it. I write it on a separate paper." I then excused the witness from the hearing at 2:03 PM.

The tenants testified that there were issues with the inspection documentation and argued that the notes taken by the witness were added after the fact. They also objected to photos that the landlord had submitted that were apparently taken by the new tenants upon moving in, after the inspection had been completed.

The landlord's agent (D.L.) briefly testified about the unknown cost of repairs at the time of the move out, and the tenant (B.D.) responded with additional testimony regarding their claim that the inspection notes had been added after the inspection was over.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the landlord gave evidence that the tenants left the rental unit damaged and unclean. There was a completed condition inspection report from the beginning of the tenancy in evidence. This report indicated that the condition of everything in the rental unit was “satisfactory.” In evidence is a one-page “Move-out Inspection & Return of Keys” document along with a one-page paper on which various problems (for example, “OVEN NEEDS ADDITIONAL CLEANING”) were hand-printed by the landlord’s employee who conducted the inspection.

At this point, it is worth citing section 35(3) of the Act which states that “The landlord must complete a condition inspection report in accordance with the regulations.”

Section 20(1)(f) of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 lists the required information that must be contained within a condition inspection report:

> statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
>
> (i) entry;
> (ii) living rooms;
> (iii) kitchen;
> (iv) dining room or eating area;
> (v) stairs;
> (vi) halls;
> (vii) bathrooms;
> (viii) bedrooms;
> (ix) storage;
> (x) basement or crawl space;
> (xi) other rooms;
> (xii) exterior, including balcony, patio and yard;
> (xiii) garage or parking area;
> (g) 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;

The landlord's "Move-out Inspection & Return of Keys" document contained virtually none of this information. (And, going forward, I must opine that the landlord would be wise to use a more comprehensive, modern inspection document, such as the #RTB-27 mentioned above.) However, the landlord's employee's one-page hand-printed notes do contain information of various damages that, taken together with the move-in condition inspection, are evidence of uncleanliness and damage that were not present at the start of the tenancy. While the burden of proof rests on the shoulders of the applicant landlord to prove their case, it is nevertheless worth noting that the tenants did not explicitly dispute that there were, in fact, a large number of nail holes in the wall.

Finally, I note that section 21 of the *Residential Tenancy Regulation* states the following:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

Based on the notes taken at the move-out inspection, I find that this documentary evidence, along with the witness' oral evidence, provides a preponderance of evidence that there were indeed nail holes in the walls, uncleanliness, and some damage to the walls that were not present at the start of the tenancy. Moreover, I note that *Residential Tenancy Policy Guideline 1* states that tenants are responsible for repairing walls where there are an excessive number of nail holes; nail holes are not normal wear and tear.

I am not persuaded by the tenants' argument that some of the move out notes made by the witness were added after the fact. A "squishing" of notes and a pen ink colour change are not, in the absence of other evidence of fraudulent conduct, sufficient to establish that a document was fraudulently altered after the fact. Moreover, even if some notes were added after the fact, this does not necessarily lead to a conclusion that the information is incorrect. I found the landlord's witness to be straightforward, succinct, and otherwise credible. There is no reason for me to doubt the veracity of his testimony that he made the notes at the time of the inspection or that his notes were anything but accurate. Based on the witness' conduct at the hearing, I am inclined to find that he is more interested in completing his work for the landlord and moving on to the next task at versus, as opposed to engage in extra work such as adding notes.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenants breached 37(2) of the Act.

That said, I am not persuaded that the landlord has proven any actual monetary loss resulting from that breach. Only one estimate for repairs and painting was in evidence, and this estimate was dated February 2, 2021, three months after the tenancy ended and three months (plus a day or two) during which new tenants have since occupied the rental unit. This estimate of potential costs, while perhaps based on current market rates, cannot accurately reflect the cost to repair and paint a rental unit after new tenants have been occupying for some time now. If the estimate had been obtained after the tenants left and before the new tenants took possession, then there would be a reasonable basis on which I could consider this quote. That there "was no way to do it," as explained by the landlord's agent, is not an excuse or justification: a tenant ought not to be made to pay for something simply because it is inconvenient for a landlord to obtain a proper estimate of costs. Moreover, the landlord has not in fact suffered any loss. Why? The repairs and painting never took place.

For this reason, I do not find that the landlord has established the amount of any monetary loss caused by the tenants' breach.

Further, while the new tenant accepted $90.00 to clean the rental unit, there is in evidence nothing to substantiate how long they may have taken to clean or even if they did clean. In short, I am not satisfied that the landlord has established a loss for the cost of cleaning.

Having found that the landlord has proven a breach of the Act, but not the dollar amount, I will only award the landlord nominal damages. Nominal damages are a minimal award and are awarded where there has been no significant loss or no significant loss has been proven, but where it has been proven that there has been an infraction of a legal right, such as a breach of the ACt. (See *Policy Guideline 16.)*

I award the landlord a nominal damage award of $1.00.

As the landlord was only partly successful in their application, insofar as proving a breach of the Act, I award the landlord a reduced award of $25.00 toward the cost of the filing fee pursuant to section 72(1) of the Act.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain $26.00 of the tenants' security and pet damage deposits in satisfaction of the above-noted awards.

The landlord is ordered to return the balance of the tenants' security and pet damage deposits in the amount of $474.00.

Conclusion

I hereby award the landlord compensation in the amount of $26.00. The landlord is authorized to retain this amount from the tenants' security and pet damage deposits.

I hereby order the landlord to return $474.00 of the tenants' security and pet damage deposits within 15 days of receiving this decision. A monetary order is issued in conjunction with this decision, to the tenants, should it be necessary for the tenants to enforce the order made in this decision.

This decision is final and binding, except where otherwise permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 5, 2021

Residential Tenancy Branch