

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, FF, MND, MNDC, MNSD

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. All parties gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matters

The Tenant has vacated the rental unit. Therefore, an order of possession is not necessary and the Landlord’s application for an order of possession is dismissed.

The parties attended a dispute resolution hearing on December 8, 2008. At that hearing, the dispute resolution officer made an order regarding the security deposit. Therefore, the Landlord’s application to keep all of the security deposit is dismissed.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for rent arrears in the amount of \$3,395.00?
2. Is the Landlord entitled to a monetary order for damages in the amount of \$1,336.00?
3. Is the Landlord entitled to a monetary order for out-of-pocket expenses for cleaning the rental unit in the amount of \$825.00?
4. Is the Landlord entitled to recover the \$100.00 filing fee for the cost of this application?

Background and Evidence

The parties agreed on the following facts:

- The parties entered into a tenancy agreement on November 19, 2007. It was originally a 6 month term lease, and continued thereafter on a month-to-month basis. Rent was \$975.00 per month, due on the first day of each month.

Landlords' evidence

The Landlord provided evidence to the case file and gave the following affirmed oral testimony:

- The Tenant abandoned the rental unit some time in October.
- The Tenant left the rental unit without cleaning it or shampooing the carpets. The rental unit was in such a poor state that it took two cleaning ladies a total of 24 hours (at \$15.00 per hour) to wash and vacuum all of the floors; wash all windows and walls; clean toilets, tub, and shower in the bathrooms; clean the counter tops, cupboards, fridge/freezer and oven; clean the basement; and scrape off spilled paint from basement concrete floor. The cleaning took place for several hours a day on October 15, 16, 17, 21 and 22, 2008.
- The carpet in the master bedroom was damaged beyond repair and has to be replaced. The Landlord provided a written estimate to replace the master bedroom carpet, in the amount of \$586.02. The Landlord testified that he has not yet replaced the carpet in the master bedroom.
- The Tenant had smashed all of the light bulbs in the basement; broken two of the light fixtures in the basement; splattered paint on the concrete floors and walls in the basement; dumped paint cans upside down into the washing machine; abandoned an old couch in the basement; left profanities on the kitchen walls; left holes in the walls in the upstairs of the house; and left garbage in the rental unit, requiring three trips to the dump.
- The Landlord has to repaint the walls in the basement and repair and paint some of the walls in the upstairs of the house. The Landlord estimates \$350.00 to

repaint the basement and \$400.00 to repair and repaint the walls in the upstairs of the house. The Landlord did not provide any estimates for the painting.

- The Landlord provided copies of invoices: \$105.00 for carpet shampooing and \$720.00 for cleaning.
- The Landlord provided 11 photographs of the rental unit depicting: dirty fridge; dirty oven; holes in walls; dirty bathroom floor and window; and spilled/splashed paint on concrete floors and walls. The Landlord testified that he took the pictures of the rental unit when he discovered the Tenant had left the rental unit and requested her security deposit back.
- The Landlord testified that the front door to the rental unit had been left unlocked by the Tenant.
- The Landlord testified that he never received written notice from the Tenant that she would be vacating the rental unit. The Landlord testified that the only written documentation of anything he received from the Tenant were two envelopes containing the Tenant's application for dispute resolution (heard December 8, 2008) and supporting evidence.
- The Landlord provided a copy of a Statement or arrears for the rental unit, showing a balance outstanding of \$3,395.00 as at October 10, 2008. The Landlord testified that the Statement was prepared by chartered accountants, Schmitz de Grace.

Testimony of Landlord's Witness

- The Landlord's witness testified that she works in the Landlord's real estate office.
- The Landlord's witness testified that the Landlord received two brown envelopes at his place of business, but that she did not know what the envelopes contained.

Tenant's evidence

The Tenant provided evidence to the case file and gave the following affirmed oral testimony:

- The Tenant testified that she left the rental unit clean and in good repair.

- The Tenant suggested that anyone could have broken into the rental unit and vandalized it after she vacated the rental unit, and she was not responsible for the splattered paint and the holes in the walls.
- The Tenant testified that the photographs of the fridge and stove were not the fridge and stove that were in the rental unit and that she did not recognize them.
- The Tenant testified that she left the front door of the rental unit locked when she left.
- The Tenant disputes the amount owing for rent. The Tenant testified that she owes the Landlord arrears in the amount of \$1,350.00 only. The Tenant stated that she had receipts for all of the disputed months, which prove that she paid rent for those months.
- The Tenant testified that she moved because the Landlord did not fix the roof; windows and doors to the rental unit and that therefore she could no longer live there.
- The Tenant testified that she delivered her written notice to vacate the rental unit at the Landlord's real estate office.
- The Tenant testified that she steam cleaned the carpets before she vacated the rental unit.

Testimony of Tenant's Witness

- The Tenant's witness testified that she was present when the Tenant moved out of the rental unit.
- The Tenant's witness testified that they cleaned everything, including the fridge and the stove, and that they used a truck to remove garbage and debris from the rental unit. The Tenant's witness stated that they did leave a few boxes.
- The Tenant's witness suggested that someone else did the damage to the rental unit.

Analysis

The parties' testimony is, for the most part, completely contradictory.

The Landlord provided photographs which clearly show that the rental unit was dirty, and had been vandalized with paint splatters and holes in the walls. The Landlord provided a statement from a chartered accountant with respect to the rental arrears owing. The Tenant stated that she owed some, but not all, of the rental arrears alleged by the Landlord, but did not provide documentary evidence (i.e. receipts) to prove that she had paid some of the alleged arrears. The Landlord provided copies of itemized invoices from the cleaners indicating what work the cleaners performed on October 15, 16, 18, 21 and 22. The Landlord provided a copy of an invoice dated November, 2008, from a carpet cleaning company indicating that the carpets were cleaned at the rental unit.

After careful consideration of the oral testimony and documentary evidence on the case file, I accept the Landlord's testimony with respect to the rent arrears and the cleaning costs. The Landlord did not provide evidence of the cost of repairing and repainting the walls and has not completed the painting. I dismiss this portion of the Landlord's claim with leave to reapply. The Landlord provided an estimate for replacement of the carpet, but provided no evidence with respect to the age of the carpet or corroborative evidence with respect to the condition of the carpet. The Landlord testified that he has not yet replaced the carpet. I dismiss this portion of the Landlord's claim with leave to reapply.

Based on the evidence and oral testimony, I find that the Tenant has failed to prove that she provided the Landlord with written notice ending the tenancy. Therefore, I find that whether the Tenant vandalized the rental unit or someone else did, the Tenant remained responsible for damages to the rental unit.

The Landlord has been partially successful in his claim and is entitled to recover half of the filing fee in the amount of \$50.00 from the Tenant.

The Landlord has established a monetary claim in the amount of \$4,270.00, calculated as follows:

Outstanding rent as per chartered accountant's

Statement dated October 10, 2008

\$3,395.00

Cleaning	\$720.00
Carpet shampooing	\$105.00
Cost of application	<u>\$50.00</u>
TOTAL	\$4,270.00

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a monetary order for \$4,270.00 against the Tenant. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

The Landlord's claim for damages regarding the repairing of holes, painting of walls and replacement of carpet in the master bedroom, is dismissed with leave to re-apply once these items have been completed.

March 30, 2009
