



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision and Reasons

Dispute Codes: FF, 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 provided by the parties prior to the Hearing. The parties gave affirmed evidence at the Hearing and the Hearing proceeded on its merits.

This is the Landlord’s application for a Monetary Order for damages to the rental unit, to retain the security deposit paid by the Tenant, and to recover the filing fee from the Tenant for the cost of the application.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order?
- (2) Is the Landlord entitled to recover the filing fee from the Tenant?
- (3) Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord testified that he mailed the Tenant the Notice of Hearing package on March 16, 2009, by registered mail, to the Tenant’s forwarding address. The Landlord provided a tracking number for the registered mail package.

Facts on which the parties agree:

- The tenancy started on September 1, 2008.
- The Tenant paid the Landlord a security deposit in the amount of \$460.00 on August 25, 2008. Monthly rent was \$920.00, due on the first day of each month.
- The tenancy was to end on February 28, 2009, but the Tenant moved out on March 1, 2009.
- The rental unit is a basement suite in a house. The Landlord lives on the main floor and shared laundry facilities with the Tenant. The laundry facilities are located in the basement suite.
- There was no written tenancy agreement. There was no move-in condition inspection done. There was no move-out condition inspection done.

Landlord's testimony and evidence:

- The Tenant left the rental unit without cleaning the suite or shampooing the carpets. The carpets and walls were stained and smelled of alcohol.
- The Landlord provided copies of receipted invoices for the carpet cleaning in the amount of \$117.86, and for the cleaning service in the amount of \$60.00 (4 hours @\$15.00 per hour).
- The Tenant damaged a wall, which the Landlord repaired with a wall patch. The Landlord provided a copy of the receipt for the wall patch in the amount of \$2.73.
- The Landlord provided the Tenant with a vacuum cleaner. When the Tenant vacated the rental unit, the vacuum cleaner's wand was missing. The Landlord provided a copy of a receipt for replacing the missing wand in the amount of \$32.47.
- The Landlord provided photographs of the rental unit, which were taken after the Tenant moved out. The Landlord provided receipts for the cost of developing the photographs, in the amount of \$12.51.

Tenant's testimony and evidence:

- The carpets were not cleaned when the Tenant moved into the rental unit.

- When the Tenants vacated the rental unit, there was a small dent, not a hole, in the wall.
- The Tenant does not know anything about the missing vacuum cleaner's wand. She did not use a wand or attachments with the vacuum cleaner, as it was an upright vacuum cleaner.
- The Tenant did leave some recycling materials in the suite, but the garbage depicted in the Landlord's photographs was not left by the Tenant.
- The Tenant agrees that she did not clean the refrigerator before vacating the rental unit.
- The bathrooms in the suite were not ventilated, and as a result water would pool around the shower causing mould to grow.
- The electrical outlets in the kitchen were faulty. The microwave had to be plugged in elsewhere, or the breaker would trip.
- The toaster and the hot plate did not turn off properly and were fire hazards.
- There was no window in a bedroom.
- The rental unit was infested with rats.
- There was no privacy for the Tenant. The Landlord did his laundry in the rental unit. There was no schedule set for laundry, and the Landlord would come and go freely as there were no indoor locks to the rental unit.
- The Landlord breached Sections 23, 24, 27, 28, 29 and 32 of the Act and should not be successful in his claim for damages, or to retain the security deposit paid by the Tenant.
- The Landlord should not recover the cost of the filing fee from the Tenant, as the Tenant called the Landlord twice to arrange for a move-out inspection on March 11, 2009, but were told that the Landlord had already filed his Application for Dispute Resolution.

Landlord's reply to Tenant's testimony:

- The advertisement that was posted at the University for the rental unit was clear that the rental unit had a partial kitchen and that laundry facilities were shared

with the Landlord.

- The previous tenants moved out at the end of May, 2008, and the rental unit was thoroughly cleaned when they moved out.
- The Landlord provided copies of two police reports, one dated February 2, 2009 at 2:39 a.m., and the other dated March 1, 2009 at 3:19 a.m. The Tenant had a noisy party on February 28, 2009, which extended into the early morning hours of March 1st. The Landlord's wife was awakened by noise at 2:00 a.m. and called the police. The Tenant and her guests were drunk and pretending to vacuum the ceiling, calling "rats, rats". The Landlord believes that the vacuum cleaner wand was used at that point. The Tenant and her guests went into the back yard and started barking like dogs.

Analysis

The Tenant brought up several issues during the Hearing including lack of privacy, unsafe appliances and electrical equipment, pests in the rental unit, lack of ventilation in the bathrooms, and the lack of a bedroom window. This is the Landlord's application. The Tenant did not file an Application for Dispute Resolution and I make no findings with respect to these issues.

The onus is on the Landlord to prove his claim for damages he alleges were caused by the Tenant. The Landlord has provided photographic evidence, however there are no photographs of the carpets. There was no move-in or move-out inspection done on the property, which would indicate the condition of the rental unit when the Tenant moved in as well as the condition of the rental unit when the Tenant moved out. A move-in condition report could also include a list of items that were in the suite when the Tenant moved in, i.e. a vacuum cleaner with wand. The Tenant agreed that the fridge was left in an unclean state, and that she left a dent in the wall. I find the Landlord has proven his claim for the cleaning of the unit and the cost of the wall patch. I find that the Landlord has not proven his claim for the carpet shampooing or replacement of the

vacuum cleaner wand. I dismiss the Landlord's claim for the cost of developing the photographs.

The Landlord has been partially successful in his claim and is entitled to recover the cost of the filing fee from the Tenant.

Section 24 of the Act states:

Consequences for tenant and landlord if report requirements not met

- 24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

However, Section 72 of the Act states:

Director's orders: fees and monetary orders

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In this situation, where the Landlord's right to retain the security deposit has been extinguished under Section 24(2), the deposit itself remains available for other lawful purpose under the Act.

The Landlord has established a monetary claim as follows:

| | |
|----------------------------------|----------------|
| Cost of cleaning the rental unit | \$60.00 |
| Cost of patching the wall | \$2.73 |
| Recovery of the filing fee | <u>\$50.00</u> |
| TOTAL: | \$112.73 |

I order that the Landlord may retain \$112.73 from the security deposit paid by the Tenant. I order the Landlord to pay the Tenant the residue of the security deposit, in the amount of \$347.27, and grant the Tenant with a monetary order in that amount.

Conclusion

Pursuant to Section 72(2)(b) of the Act, I hereby grant the Tenant a Monetary Order in the amount of \$347.27 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

June 17, 2009
