



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPC, MND, and MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause; for a monetary Order for damages to the rental unit; and for a monetary Order for compensation for money owed or for damage or loss. At the hearing the Landlord withdrew his application for an Order of Possession, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for damages to the rental unit and to losses he experienced as a result of those damages, pursuant to sections 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy was scheduled to begin on February 01, 2009; that both parties understood that the rental unit would be occupied by the Tenant's daughter and her friend; that the monthly rent of \$500.00 was due on the first day of each month; and that the Tenant paid a security deposit of \$250.00 on January 18, 2009.

The Landlord and the Tenant agree that the Landlord gave one of the occupants a One Month Notice to End Tenancy for Cause, which indicated that the Tenant must vacate the rental unit by June 30, 2009. The parties agree that the rental unit was vacated on June 30, 2009.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord is claiming compensation, in the amount of \$2,693.00, for painting the living room, kitchen and master bedroom. The Landlord stated that the walls needed to be painted to rid the rental unit of a strong smell of urine. The Landlord acknowledged that he did not complete a condition inspection report at the beginning of the tenancy. The Landlord stated that the walls in the living room were painted approximately seven years ago and the walls in the bedroom were painted approximately ten years ago.

The Landlord submitted a letter from a female who viewed the rental unit on May 29, 2009. The letter stated, in part, that the rental unit smelled of cat urine/feces and that there was cat hair on the walls. The Landlord also submitted photographs of the rental unit that were taken on May 29, 2009. The photographs show that the rental unit is very untidy and that one or more cats have been living in the rental unit.

The Landlord acknowledged that the Tenant cleaned the rental unit after May 29, 2009, although he contends the rental unit still smelled badly. The Landlord submitted no evidence to corroborate his statement that the walls needed to be painted to eradicate the smell of urine after the rental unit had been cleaned at the end of the tenancy.

The occupant agreed that she had cats but she stated that they did not defecate or urinate on the walls. She stated that the walls were badly marked and needed painting at the beginning of the tenancy and were not significantly worse at the end of the tenancy. The Tenant submitted photographs that demonstrate that the walls were mouldy in places.

The Landlord is claiming compensation, in the amount of \$2,500.00, to replace carpets in the living room, hallway, and master bedroom, which he contends smelled of cat urine. The Landlord acknowledged that the carpets had been cleaned at the end of the tenancy but he contends that they needed to be replaced because of the odour. The Landlord stated that the carpets were approximately 12 years old.

The Landlord submitted a letter from a female who viewed the rental unit on May 29, 2009. The letter stated, in part, that the rental unit smelled of cat urine/feces and that the carpets were stained and dirty.

The Landlord submitted photographs of the rental unit that were taken on June 30, 2009, which show some small stains on the carpet and some larger fluid stains on the rear of the carpet.

The Landlord submitted an estimate from a professional cleaning company, dated June 03, 2009, which stated that carpets in two bedrooms were stained by cat urine/feces and needed replacement; that the carpet in the living room was stained by cat

Residential Tenancy Branch
Ministry of Housing and Social Development

urine/feces and needed replacement; and that the carpet in a hallway needed to be replaced for unspecified reasons.

The Tenant stated that he cleaned the carpets prior to the end of the tenancy and that he did not think they smelled of cat urine. He further stated that the carpets did smell but he believes the smell came from the hallway carpet, which had been repeatedly saturated by water from the washing machine that had been malfunctioning for an extended period of time prior to, and during, the tenancy. He submitted photographs to corroborate his statement that the carpets had been cleaned.

The Landlord is claiming compensation, in the amount of \$300.00, for damage to mattress and box spring. The Landlord stated that the items smelled but that he was able to clean them with a foam cleaner. The Landlord submitted no evidence to corroborate his statement that the mattress and box spring smelled. The Tenant denies that the items were damaged during the tenancy.

The Landlord is claiming compensation, in the amount of \$100.00, for damage that occurred to a love seat that was in the rental unit. The Landlord stated that the love seat and couch was worth approximately \$2,000.00 when new; that the love seat is eight years old; and that he believes the value of the love seat has been reduced by \$100.00 because it was repaired with a material that did not match the upholstery on the couch.

The Tenant acknowledged that the rear of the love seat was damaged during the tenancy and that he attempted to repair it with material that was similar, but not identical, to the original material. The Tenant submitted photographs that demonstrate the repairs to the love seat.

The Landlord is claiming compensation, in the amount of \$100.00, for damage to a dining room table and chair set. The Landlord stated that the table and chairs was worth approximately \$600.00 when it was new and that it is six years old. The Landlord and the Tenant agree that a chair that belongs to the dining room table set was broken during this tenancy and was replaced with a chair that is slightly different than the original chairs. Photographs of the two chairs were submitted in evidence.

The Landlord is claiming compensation, in the amount of \$500.00, for labour associated with all of the above mentioned claims. He specifically stated that he helped to paint the rental unit, to remove the carpets, and to dispose of the carpets.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord.

After hearing the statements of both parties regarding the walls in the rental unit, I find that the Landlord failed to establish that the walls needed to be painted at the end of the tenancy for the specific purpose of eradicating the smell of cat urine and feces. In reaching this conclusion, I was strongly influenced by the absence of evidence that shows the walls were damaged by urine or feces. I find no evidence of that in the photographs that were submitted by the Landlord. I was also influenced by the Landlord's admission that the living room walls had not been painted for seven years and the bedroom walls had not been painted for ten years; that the photographs submitted by the Tenant show there is mould and/or dirt on the walls in areas; and that walls are not typically damaged by cat urine or feces.

I find that the evidence of the condition of the walls in the rental unit that was provided by the female who viewed the rental unit on May 29, 2009 is of limited evidentiary value, as her observations were made prior to the Tenant cleaning the rental unit.

As the Landlord has not established that the Tenant or the occupants damaged the walls during this tenancy, I dismiss the Landlord's application for compensation for painting the walls.

After hearing the statements of both parties regarding the carpets in the rental unit, I find that the Landlord failed to establish that the carpets needed to be replaced at the end of the tenancy because they had been destroyed by cat urine/ feces. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Landlord's evidence that the carpets smelled of urine/feces at the end of the tenancy.

I find that the evidence of the condition of the carpets that was provided by the female who viewed the rental unit on May 29, 2009 is of limited evidentiary value, as her observations were made prior to the Tenant cleaning the rental unit. I also find the evidence that was provided by the professional cleaning company to be of limited evidentiary value for the same reasons. To be of value in these circumstances, the professional cleaning company should have provided an assessment of the carpets after they had been cleaned.

Residential Tenancy Branch
Ministry of Housing and Social Development

In reaching this conclusion, I was also strongly influenced by the Landlord's acknowledgement that the carpets were over eight years old and by the photographs submitted by the Tenant that show the carpets are in good condition for carpets of that age. Although the photographs that were submitted by the Landlord indicate there are some small stains on the front of the carpet and some fluid stains on the rear of the carpet, the Landlord has submitted no evidence to establish that these stains did not exist prior to the beginning of the tenancy.

As the Landlord has not established that the carpets were unstained at the beginning of the tenancy, I find the Landlord has not established that the Tenant or the occupants damaged the carpets during this tenancy and I, therefore, dismiss the Landlord's application for compensation for replacing the carpets.

After hearing the statements of both parties regarding the mattress and box spring, I find that the Landlord failed to establish that the items were damaged during this tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Landlord's evidence that the items smelled at the end of the tenancy. As the Landlord has not established that the items were damaged during this tenancy, I dismiss the Landlord's application for compensation for this alleged damage.

Based on the undisputed evidence that the Tenant repaired the damage caused to the loveseat during this tenancy, albeit with material that did not match the original upholstery, I find that the Landlord is entitled to compensation for damage to the love seat. As the love seat is eight years old and it is still highly functional, I find that the Landlord is entitled to nominal compensation in the amount of \$40.00.

Based on the undisputed evidence that the Tenant replaced a broken dining room chair with a slightly different chair, I find that the Landlord is entitled to compensation for the reduced value of the dining room set. As the chairs are very similar and the dining room table and chair set is six years old and is still highly functional, I find that the Landlord is entitled to nominal compensation in the amount of \$10.00.

As I have not found that the Landlord is entitled to compensation for any of the repairs that were allegedly required to the rental unit, I hereby dismiss his claims for compensation for losses that relate to those repairs, including labour.

Conclusion

I find that the Landlord has established a monetary Order, in the amount of \$50.00, as compensation for damages that occurred in this rental unit. The Landlord is entitled to



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

retain this amount from the security deposit but is obligated to return the remaining \$200.00 of the security deposit.

A monetary Order is being issued to the Tenant that requires the Landlord to refund \$200.00 to the Tenant. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: July 17, 2009.

Dispute Resolution Officer