

DECISION

Dispute Codes:

MND; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages; to keep the security deposit; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided prior to the Hearing. Both parties were given the opportunity to be heard and respond to the other party's submissions. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages caused by the Tenant?
- Is the Landlord entitled to retain the security deposit paid by the Tenant?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The parties agreed on the following facts:

- The parties entered into a written tenancy agreement on November 9, 2008.
- The tenancy was a term tenancy, from November 15, 2008 to May 14, 2009.
- Rent was \$2,300.00 due on the 15th day of each month.
- The Tenant paid a security deposit in the amount of \$1,150.00 on November 9, 2009.
- The rental unit is a fully furnished downtown apartment in Vancouver, B.C.

The Landlord gave the following testimony:

- The Tenant was required, under the tenancy agreement, to move out on May 14, 2009 at noon. The Tenant did not move out until the evening of May 15, 2009.

- The Tenant did not return the key fob or keys to the rental unit. The Strata Corporation required that the fob and key had to be replaced for security reasons.
- The Tenant did some cleaning of the rental unit before moving out, but it was not completely clean.
- The Tenants removed a coffee maker and carafe; two glass candle holders; and twenty five towels from the rental unit.
- Several area rugs were damaged with stains and burns and had to be replaced.
- The Tenant's child locked the door to one of the bedrooms in the fall of 2008, and the lock had to be replaced.
- A sofa was damaged and had to be repaired.
- Window coverings were damaged and had to be repaired.
- The kitchen floor, stove and wall adjacent to the stove were damaged and had to be repaired.
- The Landlord provided photographs of the rental unit along with copies of invoices for repairing the kitchen wall and floor, and for photocopies along with a detailed list of monetary claims for the damaged and missing items. The Landlord requested to be reimbursed for the filing fee, cost of registered mail and photocopies.
- The Landlord purchased the rental unit in July, 2008, and spent the months of August and September redecorating it. The Tenant was the first tenant in the rental unit after the redecorating was completed. When the Tenant moved in, the rental unit was in new condition.
- The Landlord and Tenant performed a move-in and a move-out inspection.

The Landlord's witness gave the following testimony:

- The Landlord's witness is the building manager for the rental property.
- He helped the Landlord to do the redecorating to make the rental unit ready for tenancy.
- The rental unit was clean and in perfect condition when the Tenant moved in.
- The Landlord's witness was present on the day the Tenant moved out. The rental unit was not clean. There was a burn mark on the wall next to the stove

and the floor was damaged. The oven was not cleaned and the blinds were broken.

- The Tenant was the first tenant in the rental unit after the Landlord purchased the suite.

The Tenant gave the following testimony:

- Her child accidentally locked the bedroom door and the Tenant could not unlock it because she was not given a key to the bedroom door.
- The coffee maker was broken when the Tenant moved in. The Tenant bought a new coffee maker and took it with her.
- The Tenant's child broke the candle holders accidentally.
- All of the towels that were provided by the Landlord were left in the cupboard under the sink when the Tenant moved out. The Tenant did not use any of the Landlord's towels, because she had her own towels.
- The wall in the kitchen was damaged when the Tenant moved in. The Tenant did not cook meals in the kitchen, other than occasionally breakfast, because they usually went out for dinner.
- The sofa was damaged when the Tenant moved in.
- The rental unit was dirty when the Tenant moved in. The Tenant did not leave burn marks in the area rugs. The Tenant does not smoke and did not allow her children to play with matches. The Tenant did not burn any candles while she was living in the rental unit, because she was concerned about safety issues.
- The Tenant mailed the fob and the key to the building manager and the Landlord mailed it back to her.
- The window coverings were lying on the floor when the Tenant moved in. They were broken, so the Tenant stapled them back together at the top, so she could hang them up.
- The Tenant thoroughly cleaned the rental unit before she left.
- There was no move-in inspection, or move-out inspection done.

Analysis

The testimony of the Landlord and the Tenant was almost totally contradictory. The onus is on the Applicant Landlord to prove her claim. I accept the testimony of the Landlord, corroborated by the Landlord's witness, with respect to the damages to the kitchen wall; floor; blinds; and area rugs. I also accept the testimony of the Landlord, corroborated by the Landlord's witness, that the rental unit required cleaning. However, with the exception of the damages to the kitchen wall and floor, the Landlord did not provide documentary evidence to prove the cost of repairing/replacing these items and cleaning the unit.

Based on the evidence of both parties, I accept that the Tenant did not return the fob and keys. However, the Landlord did not provide evidence of the cost of replacement.

The Tenant testified that her child broke the glass candle holders. However, there is no documentary evidence of the cost of replacing the glass holders.

There is no documentary evidence with respect to the cost of repairing the sofa and the blinds.

There was contradictory evidence as to whether or not a move-in inspection and a move-out inspection were done. In any event, the Landlord did not provide a copy of the Condition Inspection Report to indicate how many towels were left for the Tenant and whether they were there when the Tenant moved out.

Without documentary evidence of the cost of replacing or repairing most of the items the Landlord claims, the Landlord has failed to prove her monetary claims, except for the cost of repairing the kitchen floor and wall. The remainder of the Landlord's application for damages is dismissed without leave to re-apply.

I dismiss the Landlord's request to be reimbursed for the cost of registered mail and photocopies, as these are the cost of doing business.

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

The Landlord has established a monetary claim in the amount of \$450.00, being comprised of the cost of repairing the kitchen wall and floor and recovery of the filing fee. The Landlord is holding a security deposit in the amount of \$1,150.00, which has accrued interest in the amount of \$2.50. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct the amount of \$450.00 from the security deposit and accrued interest. I order that the Landlord return the balance, in the amount of \$702.50, to the Tenant. I provide the Tenant with a monetary order against the Landlord in that amount.

Conclusion

The Landlord has established a monetary claim in the amount of \$450.00 against the Tenant, which the Landlord may deduct from the security deposit and accrued interest in the amount of \$1,152.50. The balance, in the amount of \$702.50, is to be returned to the Tenant forthwith.

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$702.50. 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.

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: September 4, 2009.
