



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property and cleaning costs, to keep the remainder of the security deposit and to recover filing fee from the tenant for the cost of this application.

The landlord and tenant appeared and gave affirmed testimony in turn.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to a monetary Order under section 67 of the *Residential Tenancy Act* for damages or loss.
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:
 - a) that the damage was caused by the tenant and
 - b) a verification of the actual costs to repair the damage

- c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenant moved in on April 1, 1997. A deposit of \$325.00 was paid. No move-in inspection report was completed at that time. However, a move-out Inspection report was submitted into evidence which was completed by the landlord and signed by the tenant.

The landlord testified that when the tenant left there were numerous condition issues and the landlord was claiming \$420.00 for the cleaning and repairs and \$516.00 for a replacement stove. The landlord submitted an invoice from an individual with the notation, "*Project – Cleaning Apartment 104*" indicating charges from July 24 2009 to July 26, 2009 for 16 hours at \$25.00 for a total of \$400.00 plus \$20.00 GST. No details were provided. However the landlord provided the following information:

- The unit was not sufficiently cleaned and required additional cleaning
- The blinds, which were approximately 15 years old were stained and damaged
- The cupboards, which were approximately 40 years old were chipped and damaged
- Bi-fold closet doors, original to the structure, were in need of repair
- The asphalt in the driveway was stained with oil
- The water faucets, approximately 15 years old, were loose.
- The stove, which was no more than 15 years old, was in such an unclean condition that it required replacement at a cost of \$516.00

The landlord provided photos of the unit showing inside and outside the cupboards, under the stove, on the balcony, inside the toilet water tank, blinds, and the oven door.

The tenant, who could not attend due to serious medical issues, was represented by her two daughters, (hereto known as “the tenant”). The tenant testified that the tenancy ended after twelve years because of an illness which required the occupant to move in with family. The tenant testified that the rental unit was left in a reasonably clean condition with wiped down counters, fixtures, floors and appliances. The tenant acknowledged some condition problems with the closet doors, blinds and faucets and cupboards. However, the tenant’s position was that the items had been subject to normal wear and tear and some of the damage predated the tenancy. In regards to the stove, the tenant testified that the stove itself was spotless but that it was impossible to get the glass door clean despite using two cans of oven cleaner. The tenant testified that one of the cupboard doors was designed so that it could bump against the oven hood every time it was opened wide enough to access stored items inside. The tenant denied that the “oil stain” damage was caused by the tenants. The tenant pointed out that the landlord’s request to be reimbursed for a brand-new replacement for a vintage well-worn stove was not warranted and that the invoice from the landlord’s cleaner was not sufficiently detailed to justify the expenses being claimed. The tenant also stated that no move-in inspection was done, despite false indications otherwise shown on the documents submitted by the landlord.

The tenant disputed all of the landlord’s claims.

Analysis: Damage Claim

In regards to the landlord’s monetary claim of damages to the unit, I note that, in order to support compensation under section 67 of the *Act*, the landlord had the burden of proving the following:

- (1) Proof that the damage or loss existed

(2) Proof that this damage or loss happened solely because of the Respondent and in violation of the Act or agreement

(3) Verification of the actual amount or cost of repairing or rectifying the damage.

(4) Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

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.

I find that the landlord's testimony and evidence does show damage some condition issues and I find that element one of the test for damages has been successfully met.

In regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenant during the course of this tenancy. I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. I find that the landlord had submitted a copy of the tenant's move-out condition inspection report, but there was no move-in inspection report. This impedes the accurate determination of the "before and after" picture of the unit. And therefore fails to satisfy element 2 of the test for damages. I also note that the average useful life of the items in question had all been exceeded. I find that the life expectancy of blinds is ten years, a stove is deemed to have an expected useful life of 15 years, water faucets last 15 years and cupboards have a life of 25 years. Even if the items were found to be damaged by the tenant in violation of the Act during the tenancy, the value to which the landlord would be entitled would be pro-rated to reflect the age.

I accept the tenant's testimony that the unit was cleaned by the tenant. I find that the landlord's assertion that it was not adequately cleaned to the landlord's high standards would not suffice to impose additional costs for the cleaning to bring the unit up to that higher standard. I find that section 32 of the Act imposes responsibilities on both the

landlord and the tenant for the care and cleanliness of a unit. According to the Act, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant, while a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. A tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant but is not required to make repairs for reasonable wear and tear. Section 37(20) of the Act states that when a tenant vacates a rental unit the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

I find that “reasonable wear and tear” would refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I find that this tenant would not be held responsible for anything that could be considered as reasonable wear and tear to the rental unit or the premises. I also find that the tenant could not be required to clean up the unit to bring the premises to a higher standard than that set out in the Legislation, where the applicable standard is “reasonably clean”, regardless of the subjective expectations of the landlord.

In regards to the cleaning, I find that, even if element two of the test for damages had been successfully met by the landlord, meeting element three of the test for damages is still required. I find that the landlord did not offer sufficient evidence to support and verify the amounts being claimed for the cleaning and repairs because the invoice submitted for the work is not sufficiently detailed to show what was actually cleaned or repaired. I find that it is evident that the unit was long overdue to be painted and that some additional preparatory work would have been necessary and there is no way to confirm what tasks and materials pertained to each job. In any case, I accept the tenant’s testimony that the unit was left in a reasonably clean condition and that the condition issues related to normal wear and tear over this twelve-year tenancy.

Based on the testimony and the evidence discussed above, I find that the test for damages was not satisfied. I find that the landlord has not sufficiently met the burden of proof to the extent required to support any of the landlord's claims against the tenant and I therefore I find that the landlord is not entitled to monetary compensation or to retain the tenant's security deposit. I find that the Landlord's claim must be dismissed.

Conclusion

Given the above, I find that the tenant is entitled to a refund of the security deposit of \$325.00 plus interest of \$42.63 for the total amount of \$367.63.

I hereby issue a Monetary Order in favor of the tenant in the amount of \$367.63 pursuant to section 38 of the *Act*. The landlord must be served with the monetary order. Should the landlord fail to comply with the order, the order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I hereby dismiss the landlord's application for a monetary order, in its entirety, without leave to reapply.

November 2009
Date of Decision

Dispute Resolution Officer