



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, (MNSD), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2006 and ended on June 29, 2009 when the Tenant moved out. Rent was \$1,400.00 but increased to \$1,500.00 per month for the last month of the tenancy. The Tenant paid a security deposit of \$700.00 at the beginning of the tenancy.

The Landlord said that she did not do a move in condition inspection report at the beginning of the tenancy but claimed that the rental unit had been newly renovated approximately 4 years earlier and was in good condition at the beginning of the tenancy. The Landlord claimed that at the end of the tenancy, the rental unit was damaged and had not been cleaned by the Tenant. The Landlord said she did not do a move out condition inspection report but she took photographs of the rental unit during a move out inspection with the Tenant's co-tenant.

The Landlord said that she asked the Tenant if she would be cleaning the rental unit and the Tenant advised her to hire cleaners. The Tenant did not dispute the amount claimed by the Landlord for general cleaning or carpet cleaning. The Tenant also did not dispute amounts claimed by the Landlord for replacing a microwave filter and vanity knobs.

The Landlord claimed that despite cleaning the carpet twice, stains on the carpet throughout the rental unit could not be removed. The Landlord said the carpet was 3 years old at the beginning of the tenancy and argued that its value had been reduced by

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\$1,000.00 due to the damage. The Tenant argued that any damage to the carpet was the result of reasonable wear and tear. The Tenant claimed that the carpet was a light grey colour and was hard to keep clean especially in high traffic areas like the entrance. The Tenant also claimed that on one occasion, the dishwasher leaked and stained the carpeting at the edge of the kitchen.

The Landlord also claimed that the rental unit had to be repainted due to dirt and other damage to the walls. The Landlord admitted that the rental unit had not been painted at the beginning of the tenancy but she claimed that it did not need painting at that time. The Landlord also claimed that the Tenant got black paint on the balcony and that it had to be re-painted as well. The Tenant argued that there were stains and nail holes on the walls when she moved in and that the Landlord was supposed to touch these up but didn't. The Tenant claimed that the walls had not been painted for approximately 6 years (by the end of the tenancy) and that there was a crack in a bedroom wall from the building shifting. The Tenant also claimed that the black paint on the balcony was there at the beginning of the tenancy but was covered by a mat (or a piece of Astroturf).

The Landlord said that the Tenant's co-tenant broke a mirrored closet door which had to be replaced. The Tenant did not dispute that the mirror on the closet door cracked in a lower corner during the tenancy but claimed that when she showed it to the Landlord, the Landlord said not to worry about it.

The Landlord claimed that the Tenant did not use the fan in the bathroom while taking showers and as a result, water vapour condensed on the ceiling and caused staining. The Landlord also claimed that the Tenant removed a metal cap between the shower head and the hole in the tiles on the wall with the result that moisture got into the drywall behind the shower tiles. The Landlord admitted that she did not know if the drywall had been damaged but argued that mould on the grout and under the caulking was evidence that the drywall had probably been damaged and that it could cause problems in the future.

The Tenant denied causing any damage to the bathroom or that she didn't use the fan. The Tenant claimed that there was peeling paint and condensation stains on the ceiling at the beginning of the tenancy which she tried to remove with bleach. The Tenant also claimed that she did not move a metal piece away from the tile wall and argued that it was an example of the Landlord's failure to repair and maintain the rental property.

The Landlord said that the Tenant damaged custom vertical blinds in the bedroom because they were missing a weight and chain (which she replaced). The Landlord said she intended to replace the blinds with blinds of a similar quality because the edges were also damaged. The Tenant claimed that there was no damage to the

edges of the blinds and that they were fully functional (even without the weight and chain).

The Landlord claimed that the Tenant removed a fabric shower curtain and a mat from the balcony that were in the rental unit at the beginning of the tenancy. The Tenant did not dispute that she removed a shower curtain, but argued that the mat on the balcony was worn and threadbare and that she removed it because it was making it difficult to keep the balcony clear of pigeon droppings.

The Landlord argued that due to the state of the rental unit at the end of the tenancy, prospective tenants were not willing to rent it. The Landlord claimed that based on her research, she should have been able to re-rent the rental unit for between \$1,700.00 and \$1,800.00 per month but ended up re-renting it for a one year period commencing July 2, 2009 for \$1,600.00 per month. Consequently, the Landlord sought a loss of rental income of \$100.00 per month for the one year term of the subsequent tenancy. The Tenant argued that the market rent for the rental unit was lower than the Landlord claimed due to a larger number of vacancies in the market. In particular, the Tenant claimed that at the end of the tenancy, similar rental units in the rental property were being advertised for \$1,550.00 and \$1,600.00 per month.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 at p. 1 defines reasonable wear and tear as “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

As the Tenant did not dispute the amounts claimed by the Landlord for general cleaning, carpet cleaning, a microwave filter and vanity knobs, I find that the Landlord is entitled to recover those amounts.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

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From the photographs provided by the Landlord, I find that there is some staining to the carpet that could not be removed by carpet cleaning. I find that most of the stains are not from soiled high traffic areas as suggested by the Tenant and therefore I conclude that they are not reasonable wear and tear. However, I find that the Tenant is not responsible for the staining caused by the dishwasher. Consequently, I find that the Tenant must compensate the Landlord for the reduced value of the carpet which I assess at \$300.00.

I also find based on the photographs provided by the Landlord that the Tenant left some large holes in the walls that were not the pre-existing nails holes she described. I find that these holes are not reasonable wear and tear although I find that other scuffs and nicks on the doors and baseboards are reasonable wear and tear. In the absence of a move in condition inspection report, I find that there is insufficient evidence that the Tenant is responsible for the black paint on the balcony. Given that the rental unit has not been painted for 6 years, I find that the Tenant should only be responsible for the cost of painting the damaged wall and as a result, I award the Landlord \$200.00 for that part of her claim.

I find that the Tenant is responsible for replacing the broken closet (mirror) door, the shower curtain and the weight and chain on the vertical blinds and as a result, I award the Landlord compensation for those items. I find that there is insufficient evidence that the vertical blinds have any other damage and need to be replaced. I also find that the Tenant is not responsible for replacing a worn piece of Astroturf as I find that due to its age and condition, it likely had no value and therefore that part of the Landlord's claim is dismissed. I also find that there is insufficient evidence to conclude that there are damages to the bathroom in the rental unit and that part of the Landlord's claim is dismissed.

The onus is on the Landlord to show that the rental unit could have rented for \$1,700.00 per month as she alleged. However, given the contradictory evidence of the Tenant and in the absence of any corroborating evidence from the Landlord, I find that there is insufficient evidence to conclude that market rent for the rental unit is more than \$1,600.00 per month. Consequently, this part of the Landlord's claim is dismissed.

As the Landlord has been successful on most of her claims, I find that she is also entitled to recover her expenses for photographs, registered mail and the filing fee for this proceeding.

Section 36(2) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished if the Landlord does not complete a condition inspection report at the end of the tenancy. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order

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offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the Tenants' security deposit and accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Carpet cleaning:	\$189.00
General cleaning:	\$160.00
Carpet damage:	\$300.00
Wall Repair:	\$200.00
Mirror Door:	\$300.00
Shower curtain:	\$35.00
Microwave filter:	\$23.03
Vanity knobs:	\$12.43
Blind repair:	\$49.28
Photographs:	\$22.72
Registered mail:	\$13.99
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,355.45
Less: Security deposit:	(\$700.00)
Accrued interest:	<u>(\$23.90)</u>
Balance owing:	\$631.55

Conclusion

A monetary order in the amount of **\$631.55** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: November 02, 2009.

Dispute Resolution Officer