



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF
 MNSD, MNDC, (FF)

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income and damages to the rental unit as well as to recover the filing fee for this proceeding and to keep the Tenant's security deposit in payment of those amounts. The Tenant applied for compensation for his time to attend this hearing as well as for the return of his security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on July 1, 2008 and ended on September 5, 2009 when the Tenant moved out. Rent was \$1,300.00 payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$625.00 at the beginning of the tenancy.

The Landlord initially agreed that the Tenant could move out on September 5, 2009 and that he would only be responsible for 5 days of rent. The Landlord claimed, however, that he had to make a number of repairs to the rental unit due to damage caused by the Tenant and therefore he lost rental income for the whole month of September 2009.

The Parties' written tenancy agreement states that electricity, heat, certain appliances and laundry were included in the rent. The Landlord claimed that water and garbage collection were not included in the rent and that the Tenant did not pay for them during the 14 month tenancy. The Tenant claimed that the Landlord told him that all of the utilities were included in the rent and never asked him to pay for water or garbage collection until he filed his application in this matter.

A condition inspection report was not completed by the Landlord at the beginning or at the end of the tenancy. On September 5, 2009, the Parties did an inspection of the rental unit, however the Tenant had not completed cleaning at that time. The Tenant

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said the Landlord told him he would return the security deposit in a couple of days but later told the Tenant he wanted the Tenant to pay for the cost of paint. The Tenant said he initially agreed to pay \$100.00 for paint because he wanted to stay on good terms with the Landlord but that the Landlord later presented him with a list of supplies for repairs of approximately \$500.00.

The Landlord said that he did not agree to return the security deposit but instead told the Tenant that he would have to wait a couple of days until the Landlord could assess the damages. The Landlord said he contacted the Tenant about a week after the tenancy ended and asked him to come to the rental unit to look at the damages and the Tenant agreed to pay for the cost of materials.

The Landlord claimed that the rental unit had to be cleaned and in particular, he said that the stove and the areas behind some appliances were left dirty. The Landlord also claimed that the Tenant left small rust stains on the carpet which had to be cleaned and treated to try to remove them. The Landlord said that the walls had to be repaired and repainted due to a number of marks and scratches on them. The Landlord further claimed that there was damage to the baseboards and floor in the bathroom from a toilet leak.

In support of his claim for damages, the Landlord relied on copies of photographs he said he took of the rental unit on or about September 25, 2009 (without the Tenant present). The Landlord also relied on the evidence of another tenant who resided in the rental unit until April 2008 (prior to the Tenant taking possession of it). The Landlord's witness claimed that at the end of his tenancy the rental unit was in good condition and in particular, it did not have any marks or dents in the walls (other than a storage room) and there was no damage in the bathroom. The Landlord's witness also claimed that he viewed the rental unit at the end of September 2009 at the request of the Landlord and found the bathroom to be in bad condition and the storage room walls had numerous marks and scratches.

The Tenant argued that the rental unit was reasonably clean at the end of the tenancy as his spouse spent a day cleaning it. The Tenant admitted that he was responsible for small rust stains on the carpet and contributing to some pre-existing marks on the wall of the storage room under the stairs. The Tenant denied that there was any damage to the bathroom at the end of the tenancy and noted that the Landlord showed the suite on approximately 8 occasions in August 2009 to prospective Tenants and viewed it again on September 5, 2009 but never said anything about damages other than that he wanted the Tenant to pay for paint.

The Tenant also argued that some of the Landlord's photographs were unreliable. In particular, the Tenant claimed that the stove was clean at the end of the tenancy and that there were no missing baseboards in the rental unit.

The Tenant said he gave his forwarding address to the Landlord on September 23, 2009 by e-mail but that in any event the Landlord knew where he lived because the Landlord visited him at his new residence after the tenancy ended. The Tenant said he gave the Landlord verbal authorization to deduct 5 days of rent from the security deposit as well as \$100.00 for paint.

Analysis

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. 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 he 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.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean and caused damages that were not wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that the photographs taken by the Landlord are unreliable as they were taken in the absence of the Tenant approximately 3 weeks after the tenancy ended. Furthermore, the Tenant argued that some of the Landlord's photographs were not taken in the rental unit. As a result, I do not give a lot of weight to the Landlord's photographs. I also find that the evidence of the Landlord's witness cannot be given a lot of weight as he was simply stating what the *general* condition of the rental unit was at the end of his tenancy (or 3 months prior to this tenancy) as well as the condition when he viewed it with the Landlord 3 weeks after the tenancy ended.

The Tenant admitted that he caused rust stains on a carpet in the rental unit and I find that the Landlord is entitled to recover his carpet cleaning expenses of \$157.50. However, I find that there is no other reliable evidence to corroborate the Landlord's claim that the rest of the rental unit was not reasonably clean on September 5, 2009 and therefore the balance of his claim for cleaning expenses is dismissed.

For similar reasons, I find that the Landlord's claim for repairs cannot succeed. There is little reliable evidence as to what the condition of the rental unit was when the Tenant took possession of it on July 1, 2008. Consequently, I cannot conclude that the damages the Landlord claims were caused by the Tenant actually occurred during the tenancy. Furthermore, based on the Landlord's witness's evidence, I find that there were some pre-existing marks and scrapes on the storage room wall. I also find that these marks and scrapes are more in the nature of reasonable wear and tear from normal usage of a storage area. Consequently, the Landlord's claim for repairs is dismissed.

The Landlord claimed that he was unable to re-rent the rental unit for September 2009 because he had to make repairs. However, given that I have found that the Tenant is not responsible for the repairs, I find that the Landlord is only entitled to recover 5 days of rent in the amount of \$216.67.

With respect to the Landlord's claim for unpaid utilities, I find that water and garbage removal were not included in the rent. I also find that the Tenant is responsible for paying these amounts even if the Landlord did not ask the Tenant to pay for water or garbage collection during the tenancy. However, in the absence of a utility statement or other evidence to corroborate the Landlord's claim as to the Tenant's share of this utility, I find that there is insufficient evidence to make an award and this part of the Landlord's claim is dismissed.

The Tenant claimed compensation of \$150.00 for the time he took off of work to attend this hearing. However, the Tenant provided no evidence in support of this claim and it is dismissed without leave to reapply. As the Parties are each entitled to recover their \$50.00 filing fees for this proceeding, I find that they are offsetting and make no award to either party for it.

Sections 24 and 36 of the Act say that if a Landlord fails to complete a move in or a move out condition inspection report, his right to claim against the security deposit for damages to the rental unit is extinguished. 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 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 \$391.67 from the Tenant's security deposit in full satisfaction of his claim.**

I further order the Landlord to return the balance of the security deposit in the amount of \$233.33 to the Tenant.



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Conclusion

A monetary order in the amount of **\$233.33** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: January 26, 2010.

Dispute Resolution Officer