

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This is the Landlord's' application for a Monetary Order for damages and compensation for damage or loss under the Act; to apply the security deposit towards her monetary award, and to recover the cost of the filing fee from the Tenant. The matter was originally heard on November 24, 2009, and adjourned to January 7, 2010 in order to complete the parties' testimony as we had run out of the allotted time.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a monetary order, and if so, in what amount?
- (2) Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

The rental unit is a fully furnished house. The tenancy began on October 1, 2008. It was a one year term lease, ending September 30, 2009. The Tenant ended the tenancy early, moving out of the rental unit on July 31, 2009.

Monthly rent was \$1,400.00, due on the first day of each month. The Tenant paid a security deposit and a pet deposit, each in the amount of \$700.00, on September 30, 2008.

The Landlord gave the following testimony and evidence:

The Landlord testified that the Tenant was allowed one small dog, but that at a regular inspection of the rental unit in April, it was discovered that the Tenant had 2 cats. There were cat feces, vomit and a vile smell in the rental unit. The Tenant had haphazardly stored furniture in the garage, making it difficult to discern which belonged to the Tenant and which belonged to the Landlord. The Tenant was warned to remove the cats, but did not do so for 60 days.

After the Tenant moved out, it became apparent that the cats had been urinating on the carpets and drapes in the rental unit. The Landlord testified that the carpets were 25 years old. The carpet was ruined and the Landlord replaced it with wood at a similar cost to replacing it with more carpet. The Landlord's agent performed a Condition Inspection report with the Tenant when the Tenant moved out, and noticed an odd smell, but thought it was the chemicals used in the carpet cleaning solution. After the Tenant moved out, on closer inspection, it was apparent that dishes had been returned to the cupboards while still dirty, the oven and dishwasher had not been cleaned, a door had been broken. A new vacuum cleaner had been removed from the rental property and an old broken one left in its place. The walls were marked and had to be repainted. Cupboards were broken, but the Landlord has not been able to locate replacements due to the unusual measurements. There were feces in the master bedroom closet. The Tenant had left garbage behind.

The Landlord provided photographs in evidence, depicting the rental unit's condition when the Tenant moved out. The Landlord referred to the 38 photographs during the Hearing and gave testimony with respect to each of them in turn.

The Landlord provided some of the invoices in support of her claim, and requested a monetary order as follows:

Costs of cleaning, 3 people for 3 days (no invoice)	\$1,000.00
New flooring (some invoices provided)	\$1,868.45
Cost to replace vacuum cleaner (no invoice or receipt)	\$200.00
Cost of painting and touch-ups (invoices provided)	\$607.69
Estimated cost to replace bedroom cupboards (no invoice)	<u>\$700.00</u>
TOTAL	\$4,376.14

The Tenant and her agent gave the following testimony and evidence:

The Tenant removed the cats from the rental unit on April 30, 2009, in accordance with the Landlord's warning letter written April 13, 2009.

The Tenant moved out of the rental unit early because the Landlord or her agent had entered her home when she was away for a long weekend, without her knowledge and consent. The Tenant believes the photographs the Landlord entered in evidence were taken during that time. The Tenant was not the best house keeper, but she removed her garbage and the rental unit was clean and ready for new tenants when she moved out. The carpets were wet because she had them steam cleaned. The curtains were washed and rehung. The vacuum cleaner the Landlord provided was not new and did not work, and the Tenant believes she threw it out.

She and the Landlord's agent performed a move-out inspection together. The Tenant provided a copy in evidence. The only two items the Tenant agreed to having deducted from the security deposit were broken screens and blinds in the living room. The Landlord's agent commented to the Tenant that it was too bad the carpet looked so good, because the Landlords were going to replace it with hardwood.

The Landlord gave the following rebuttal testimony:

The Landlord denied entering the Tenant's home without her knowledge, and stated that the photographs were taken after the Tenant moved out.

The Landlord's Witness gave the following testimony:

The Witness was present at the move-out inspection, but did not take a lot of time to inspect the rental unit or look in the closets. It appeared to be fairly clean, but had a funny smell. Two or three days later, the carpets smelled like urine. The dirty dishes in the cupboards were not apparent until she removed them after the move-out inspection.

The Witness wrote "looks good" on the Condition Inspection Report because the back yard was in better shape than it had been in the past. The Tenant had not been watering it and it was brown, but the Tenant started watering it and it was looking greener.

The Witness stated that neither she, nor the Landlord, had entered the Tenant's home without her permission or knowledge.

The Witness denied telling the Tenant that the Landlord would be replacing the carpets with wood floors.

The Tenant's Witness gave the following testimony:

The Witness is the Tenant's mother. She was present at the rental unit when the Tenant moved out and spent 10 hours cleaning windows, cupboard, walls and draperies. The carpets were cleaned by a professional carpet cleaning company. The Witness is a property manager and stated that there is always a chemical smell when carpets are professionally cleaned.

The Witness asked the Landlord's agent if the Landlord would be renting the house again, and the Landlord's agent replied that the Landlord would be doing renovations.

The Witness stated that she did not closely inspect the dishes, but simply took them out to clean the cupboards and then placed them back in the cupboards.

:Analysis

This Hearing was challenged by contradictory testimony by the parties and their witnesses. This is the Landlord's application and therefore the onus is on the Landlord to prove her claim. When the evidence consists of conflicting and disputed verbal testimony, and without documentary evidence to support the testimony, then the party who bears the burden of proof will not likely prevail.

The Landlord provided photographs of the rental unit, which she testified were taken immediately after the Tenant moved out. I note that one photograph in particular appears to have been taken to embarrass or humiliate the Tenant, as there doesn't appear to be any other reason for it to be included in the Landlord's evidence. In any event, the Tenant disputes that the photographs were taken at the time she moved out, and states that they were most likely taken when the Landlord entered her home without her knowledge or consent a few months prior to the end of the tenancy. The Landlord disputed this.

The Landlord's agent and the Tenant performed a Condition Inspection Report at the end of the tenancy and both signed the Report. The Report clearly states that the rental unit "looks good". The only exception, to which the Tenant agreed she was responsible, was some broken blinds and screens in the living room. The Landlord did not provide receipts for the repair or replacement of these items, however, I award the Landlord a nominal amount for these damages in the amount of \$100.00.

The Tenant stated that the vacuum cleaner that was provided by the Landlord was not new and did not work properly. She believed she may have thrown it away. There was no evidence that the Tenant advised the Landlord that the vacuum cleaner was broken and in any event, it was not the Tenant's vacuum cleaner to dispose of. The Landlord did not provide any documentary evidence to support her claim in the amount of \$200.00 for the vacuum cleaner, and I award the Landlord a nominal amount for these damages in the amount of \$100.00.

The Landlord has not provided sufficient evidence to prove the remainder of her claim for damages, and therefore I dismiss the remainder of the Landlord's damage claim without leave to reapply.

The Landlord has been largely unsuccessful in her claim, and I order that the Landlord and Tenant split the cost of the filing fee equally.

The Landlord has established a monetary award of \$225.00 against the Tenant. In accordance with the provisions of Section 72 of the Act, the Landlord may deduct this amount from the security deposit.

I hereby order that the residue of the security and pet deposits, together with accrued interest, be returned forthwith to the Tenant. I hereby provide the Tenant with a Monetary Order against the Landlord, calculated as follows:

Security and pet deposits	\$1,400.00
Plus accrued interest	\$5.34
Less Landlord's monetary award	<u>-\$225.00</u>
Balance due to the Tenant after set-off	\$1,180.34

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$1,180.34 against the Landlord. 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.

January 20, 2010

Date of Decision
