



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, (MND), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning expenses and repairs, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in satisfaction of those amounts. On the first day set for hearing, the Landlord withdrew her claims for a loss of rental income, for unpaid utilities and for advertising expenses. This matter was adjourned for hearing to today's date so that the Tenant could resubmit her evidence to the Residential Tenancy Branch.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit and if so, how much?

Background and Evidence

This month to month tenancy started on November 1, 2009 and ended on December 31, 2009 when the Tenant moved out. Rent was \$800.00 per month but was reduced to \$775.00 as of December 1, 2009 as the Tenant agreed to be responsible for paying for the cable. The Tenant paid a security deposit of \$400.00 on October 31, 2009.

Approximately a week after the tenancy started, the Tenant contacted the Landlord to advise her that mould was starting to grow on one of the bedroom walls. The Landlord said she gave the Tenant some disinfectant supplies the following day and did not hear from the Tenant again until December 6, 2009. On that day, the Tenant contacted the Landlord and advised her that there was more mould in the rental unit. The Landlord said she inspected the rental unit on December 6, 2009 and noticed damp walls and windows and mould patches on two outside walls in the master bedroom and on one wall in the Tenant's son's bedroom under the window but above the baseboard heater.

The Landlord claimed that she had never had problems with mould in the rental property previously and provided written statements of other tenants to that effect. The Landlord said on December 7, 2009 she contacted an experienced property manager and a retired public health officer to discuss the mould issue. The Landlord claimed that these individuals told her to treat the mould with bleach but she did not believe that would be adequate so instead she treated the mouldy walls with a disinfectant recommended by CMHC. The Landlord said she also borrowed a dehumidifier and set

Residential Tenancy Branch
Ministry of Housing and Social Development

up some table fans in the bedrooms until the humidity was “stabilized.” The Landlord claimed that the mould has not returned since the walls were treated on December 7, 2009. The Landlord argued that it was the Tenant’s failure to properly ventilate the rental unit with the kitchen and bathroom fans that caused the mould to grow. Consequently, the Landlord sought to recover the cost of the mould treatment supplies.

The Tenant claimed that she did use the bathroom and kitchen fans but that the problem was due to the rental property not being properly ventilated. In particular, the Tenant claimed that her advocate, B.H., inspected a crawl space under the bedrooms at the end of December 2009 and discovered there was no vapour barrier, insulation was inadequate or missing and there was a high level of humidity in the wood joists (which suggested they were rotten) and moisture on the ground. The Tenant said that B.K. took photographs of these things and showed them to a former chief home inspection for Vancouver Island as well as a research contractor for CMHC who deals with moisture issues. The Tenant said it was the opinion of these persons that the moisture from the crawl space was a contributing factor to the mould in the rental unit.

The Landlord objected to the Tenant’s evidence on this point as she claimed that the Tenant did not have her permission to enter the crawl space area and she argued that the Tenant’s advocate (who is also her partner) was not objective. The Landlord admitted that the crawl space did not have a vapour barrier and that it was missing insulation. The Landlord argued that the rental unit was built in 1960 and did not have to comply with the B.C. Building Code of 1983.

The Landlord and Tenant participated in a move out condition inspection on January 9, 2010 and completed a report. The Landlord said she also took photographs of the rental unit sometime after the tenancy ended but prior to the move out inspection date and that they represent the condition of the rental unit on the date of inspection. The Landlord claimed that the Tenant did not adequately clean the kitchen floor because she found bits of food in the corner. Similarly, the Landlord claimed that the Tenant did not adequately clean out kitchen drawers and cabinets because there were some items left in them and the paper liner was stained. The Landlord further claimed that the Tenant did not pull out a stove to clean beside it or behind it and said that the top of the stove was greasy. The Landlord also said that the Tenant did not properly vacuum and left a small red stain on some blinds.

The Tenant claimed that she did clean the kitchen floor but missed a few crumbs in the corner which she picked up when the Landlord pointed them out. The Tenant said she also removed items that she had forgotten in the cupboards. The Tenant denied that the stove top was greasy and claimed that its shiny appearance was due to the vinyl material. The Tenant also claimed that she vacuumed the carpets but that the Landlord pointed out a small piece of string which she picked up. The Tenant said she had no

knowledge of how a small, red stain got on the blinds and suggested that it was there at the beginning of the tenancy but that she had overlooked it during the move in inspection.

The Landlord also claimed that a window sill had to be sanded and repainted because it had orange wax and soot marks on it which stained the paint. Consequently the Landlord sought \$25.00 as the cost for labour and supplies for this repair. The Tenant claimed that there was no need to sand the window sill as the wax was removed by her when the Landlord pointed it out. The Tenant also claimed that the black marks were scuff marks rather than soot.

Analysis

Section 32 of the Act says that a Landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. Section 32 also says that a Tenant is responsible for repairing damage to a rental unit caused by her act or neglect but is not responsible for reasonable wear and tear. Section 37 of the Act says (in part) that at the end of a tenancy, a tenant must leave the rental unit **reasonably clean** (emphasis added). RTB Policy Guideline #1 (Responsibility for Residential Premises) provides a more expansive explanation of what repairs or cleaning referred to in s. 32 and s. 37 are the respective duties of the Landlord or the Tenant.

The Tenant did not dispute the Landlord's claim for carpet cleaning in the amount of **\$50.00** and for replacement light bulbs in the amount of **\$5.00** and as a result, I find that the Landlord is entitled to recover those amounts.

Having regard to the Landlord's photographs (which were not disputed by the Tenant), I find that the kitchen floor was reasonably clean and did not require further cleaning. I also find that the Landlord's photographs do not show that the carpets required further vacuuming and note that they had to be cleaned in any event. Having regard also to the Landlord's photographs of the drawers and cupboards, I find that they would have been reasonably clean once the Tenant removed the articles and crumbs in question. Although the Landlord argued that the Tenant did not clean beside or behind the stove, I note that she provided no evidence (or photos) of that even though she claimed that the stove could easily be pulled out. Given that this was a very short tenancy of 2 months, I find that there would have been little if any dirt or debris in this area.

I find that the stove top probably did require further cleaning as well as the blinds which had a tiny red spot on them. Although the Tenant claimed that the spot may have been

Residential Tenancy Branch
Ministry of Housing and Social Development

pre-existing damage, section 20 of the Regulations to the Act states that a condition inspection report completed in accordance with the Regulations is evidence of the condition of the rental unit on the date of inspection unless the tenant has a preponderance of evidence to the contrary. I find that the Tenant has not provided a preponderance of evidence to the contrary and as a result, I conclude that the stain was caused during the tenancy. Given that I have found that only the stove top and blinds needed to be cleaned, I find that the Landlord is entitled to recover compensation for 1 hour of cleaning or **\$15.00**.

I also find that the window sill likely needed repainting to cover orange and black marks, however, I find that there is insufficient evidence to conclude that the window sill needed to be sanded down to make this repair. Consequently, I find that the Landlord is entitled to recover **\$15.00** for this part of her claim.

With respect to the Landlord's claim for mould treatment supplies, she bears the onus and must show on a balance of probabilities that the mould occurred due to some act or neglect of the Tenant. In this case, the Landlord argued that none of her other tenants had problems with mould in the rental property as long as they used their bathroom and kitchen fans to properly ventilate the suites. The Landlord further argued that once the excess moisture was removed from the rental unit, the bathroom and kitchen fans should have been adequate to remove any moisture. The Landlord also relied on the (hearsay) evidence of experts and provided a publication from Natural Resources Canada about the causes of excessive moisture in residences

The Tenant argued that the rental property itself was not properly maintained to prevent excessive moisture from entering the rental unit. In particular, the Tenant claimed that the crawl space under the affected bedrooms was allowing moisture to enter the rental unit because it did not have a vapour barrier and was missing insulation. Neither parties' experts gave written statement or attended the hearing. Although the Landlord objected to the Tenant's evidence, I note that she had been served with that evidence on the first date set for hearing and was given an opportunity to provide responding evidence prior to the re-convened hearing date but did not do so.

I find that the Landlord has not satisfied the evidentiary burden on her regarding the issue of the mould. In particular, I note that the Landlord's document from Natural Resources Canada supports the Tenant's argument that one of the causes of excessive moisture in a residence is due to moist air leaking through walls and floors. The document further states that while exhaust fans will assist in removing the moisture, it is also necessary to have a vapour barrier and adequate insulation installed in the building. Given that the Landlord admitted that vapour barriers and insulation were missing from exterior walls and the crawl space, I find that there is insufficient evidence



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

that the Tenant caused the mould by failing to adequately ventilate the rental unit and as a result, the Landlord's claim for mould treatment expenses is dismissed.

As the Landlord has only been partially successful on her application, I find that she is entitled to recover one-half or **\$25.00** of her filing fee for this proceeding and has made out a total claim of \$110.00. I order the Landlord pursuant to s. 38(4) of the Act to retain that amount from the Tenant's security deposit and to return the balance of the security deposit in the amount of \$290.00 to the Tenant.

Conclusion

A monetary order in the amount of **\$290.00** 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: February 02, 2010.

Dispute Resolution Officer