

Decision

Dispute Codes:

MND, MNSD

Introduction

This is the Landlord's application for a Monetary Order for damages; and to retain the security deposit in partial satisfaction of her monetary claim.

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

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for damages, and if so, in what amount?

Background and Evidence

This tenancy started on March 1, 2006 and ended on November 25, 2009. The Tenants paid a security deposit in the amount of \$400.00 and a pet deposit in the amount of \$400.00 on February 8, 2006.

A move-in Condition Inspection Report was completed by both parties on March 5, 2006. The Landlord's agent completed a move-out Condition Inspection Report with the male Tenant present on November 24, 2009. The Tenant's declined to sign the Report. A copy of the Condition Inspection Report was provided in evidence.

The Landlord gave the following testimony:

When the Tenants moved into the rental unit, it had just been renovated, and had new carpet; paint, kitchen counter top and light fixtures. The tiles had been replaced 6 months before the Tenants moved in.

The Tenants did not shampoo the carpets or clean the rental unit to an acceptable standard before moving out. The walls were dirty and damaged; the windows were dirty; a light covering was broken; there were burned out light bulbs; there were oil stains on the driveway from the Tenants' vehicle; a downspout was crushed; the washing machine was stained; the dryer was dented; and the kitchen countertop was damaged. The Tenants left a patio table and umbrella and an old stove, which had to be taken to the dump. In addition, the Tenants had installed three rock gardens without the Landlord's knowledge or consent. The Landlord will have to remove the rock gardens and re-seed the lawn.

The Tenants gave the following testimony:

The Tenants dispute the Landlord's claim that they did not clean the rental unit prior to moving out. They borrowed a friend's carpet shampooer to clean the carpets. The kitchen countertop was already damaged when they moved into the rental unit. The patio table and umbrella were there when they moved in, and the downspout was already damaged when they moved in. The oil stain was not caused by the Tenant's truck, and must have been caused by other people's vehicles. The stain on the washing machine is the Tenants' responsibility, but the dryer was dented when they moved in.

The Landlord gave the Tenants her permission to put in a rock garden. The Tenants maintained the garden well and took great pride in their accomplishments. On hearing that the rock gardens had to be removed, one of the Tenants' neighbours offered to purchase the rocks from the Landlord.

The male Tenant was discouraged when the Landlord's agent told him he would have to remove the rock gardens and would not be getting their pet and security deposits back, so he refused to sign the Condition Inspection Report. The Landlord's agent was there to do the inspection before the Tenants had finished cleaning, and therefore it was not an accurate picture of the state of cleanliness of the house when they moved out. The Tenants did additional cleaning after the Report was completed by the Landlord's agent.

They agreed that they did not wash the outside of the windows, or wipe down the inside of the fridge and freezer.

The Tenants' Witness gave the following testimony:

The Tenant's Witness was the Tenants' neighbour. She was at the rental unit the day before the Tenants moved out. There was a stain in the carpet at the top of the stairs, but otherwise the house was immaculate. The Tenants spent four days cleaning the house, and she believed most of the minor damage was from ordinary wear and tear.

The Tenants took great pride in their garden, spending hours a day on the yard. The Witness walked by the house recently and noticed a car and baby seat in the driveway. The rock gardens were still there.

Analysis

The Tenants lived in the rental unit for a period of approximately 3 years and 8 months. Carpets should be professionally cleaned if a tenancy is more than a year, especially if the Tenants had pets. The Tenants cleaned the carpets, but did not hire a professional. Therefore, I allow the Landlord's claim with respect to carpet shampooing, in the amount of \$182.33.

The Landlord is an absentee landlord. Her agent, who was not available to give testimony at the Hearing, managed the rental unit in the Landlord's absence. The photographs entered in evidence show the rock gardens have been in place for at least one growing season. Neither the Landlord nor the Landlord's agent gave the Tenants written demand to remove the rock gardens prior to the end of the tenancy. The male Tenant gave testimony that one of his neighbours was interested in purchasing the rocks from the Landlord. There was no evidence that the Landlord attempted to mitigate her loss by accepting the neighbour's offer. Therefore, I dismiss the Landlord's claim for the cost of removing the rock gardens.

I accept the Tenants' testimony that the Landlord's agent prepared the move-out Condition Inspection Report and took photographs before the Tenants had finished cleaning the rental unit. Tenants are responsible for maintaining the cleanliness throughout the rental unit to a reasonable standard, notwithstanding reasonable wear and tear. The Tenants lived in the rental unit for a period of more than 3 ½ years, and cannot be expected to maintain the rental unit in "as new" condition. However, the Tenants did not complete the cleaning of the rental unit, and I allow the Landlord a nominal amount for completing the cleaning, in the amount of \$60.00 (3 hours @ \$20.00 per hour). The Tenants admitted that they did not remove their old stove from the rental property, and I allow the Landlord a nominal amount of \$75.00 for disposal of the stove.

The move-in Condition inspection Report indicates that the downspout was damaged; the blinds in the living room were stained; and damage to the utility closet door was patched before the Tenants moved in.

I accept the Landlord's testimony that there were holes and minor damage to the interior walls. The Residential Tenancy Guidelines provide the useful life of indoor paint to be 5 years. Therefore, I allow the Landlord 1/5th of her estimated cost for painting the interior of the rental unit, in the amount of \$160.00.

The Landlord has established a monetary claim as follows:

Cost to shampoo carpets	\$182.33
Compensation towards painting the interior walls	\$160.00
Compensation for disposal of the stove	\$75.00
Compensation for 3 hours of cleaning	\$60.00
Cost of replacing light bulbs	\$13.41
TOTAL MONETARY AWARD FOR THE LANDLORD	\$490.74

Further to the provisions of Section 72 of the Act, the Landlord may apply a portion of the security and pet deposits towards satisfaction of her monetary claim. The remainder is to be returned to the Tenants forthwith.

Interest has accrued on the security and pet deposits in the amount of \$27.88.
Therefore, I hereby order the Landlord to return the sum of \$337.14 to the Tenants
forthwith (\$827.88 - \$490.74).

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of \$337.14 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.

Dated: April 12, 2010