



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 16, 2010 to a forwarding address provided by him at the end of the tenancy. The Landlord said the hearing package was not returned to her. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on October 12, 2008 and ended on February 12, 2009 when the Tenant moved out. Rent was \$900.00 per month payable in advance on the 12th day of each month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Landlord admitted that she did not complete a move in condition inspection report with the Tenant at the beginning of the tenancy. The Landlord said she did a move out inspection with the Tenant at the end of the tenancy and prepared a report but the Tenant would not sign it. The Landlord did not provide a copy of the move out condition inspection report as evidence at the hearing.

The Landlord said that the Tenant's cat(s) caused the following damages to the rental unit:

- Tears in a bedroom carpet that will have to be patched;

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- Scratches in the drywall of two kitchen walls that will have to be filled, sanded and re-painted;
- Scratches in 7 wooden doorframes that have to be replaced plus repairs to the adjacent walls which are also scratched ;

The Landlord also said that the laminate flooring in one of the rooms was buckled due to having absorbed spilled water. The Landlord further said that there were large holes (approximately 1.5 inches in diameter) in three of the walls.

The Landlord said she had a contractor view the rental unit after the tenancy ended and he gave her a written estimate that it would cost a maximum of \$840.00 and a minimum of \$790.00 (not including HST) to make these repairs. The Landlord also said the carpets in the rental unit were not reasonably clean at the end of the tenancy and as a result, she incurred expenses of \$80.00 to rent a carpet cleaner to clean the carpets.

Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his or his guests' act(s) or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #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."

In the absence of any evidence from the Tenant to the contrary, I find that he is responsible for the damages to the rental unit and that the damages are not the result of reasonable wear and tear but rather are the result of the Tenant's act or neglect. Consequently, I find that the Landlord is entitled to recover \$820.00 plus \$98.40 HST to repair these damages.

RTB Policy Guideline #1 at p. 2 says that a Tenant is responsible for cleaning carpets at the end of a tenancy of a year or longer unless the Tenant has had pets or smoked inside the rental unit or the carpets are not reasonably clean. In the absence of any evidence from the Tenant to the contrary, I find that the carpets were not reasonably clean at the end of the tenancy and as a result, he must compensate the Landlord \$80.00 for doing so. As the Landlord has been successful in this matter, I also find that she is entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. Consequently, I find that the Landlord has made out a monetary claim for \$1,048.40.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report and provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection

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report, the Landlord's right to make a 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 \$451.49 from the Tenant's security deposit and accrued interest in partial payment of the monetary claim. The Landlord will receive a monetary order for the balance owing of \$596.91.

Conclusion

A monetary order in the amount of **\$596.91** 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: August 17, 2010.

Dispute Resolution Officer