



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and a monetary Order for damage to the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2008 and that it ended on April 01, 2010.

The Landlord is seeking compensation, in the amount of \$2,775.75, for replacing the flooring in the rental unit. The Landlord stated that there were hardwood floors in the rental unit at the beginning of the tenancy, which were five years old and had some scratches. He stated that at the end of the tenancy there was an area at the top of the stairs and in front of the patio doors that had been damaged by pet urine, which discoloured the floors. He stated that the discoloration was so severe that the floors could not be repaired so he replaced it with carpet and laminate flooring, which was less expensive. The Landlord submitted copies of receipts to establish that he paid \$2,749.75 to replace the flooring and \$26.00 to dispose of the old flooring.

The male Tenant acknowledged that the flooring at the top of the stairs and in front of the patio doors was damaged during their tenancy. He stated that their dog had urinated on those areas and that it contributed to damaged to the floor. He stated that

he also suspects the rental unit was leaking, which contributed to the damage by the patio doors, although he did not observe water leaking in that area. The female Tenant stated that the Tenants had damaged the floors and that they had previously authorized the Landlord to retain their security deposit in compensation for the damage.

The Landlord stated that the rental unit was examined by an insurance adjuster who did not believe that the flooring was damaged as a result of a leak. He stated that the residential complex has not experienced problems with leaking on this side of the complex.

The Landlord stated that the Tenants verbally agreed that they would not smoke inside the rental unit during this tenancy. The male Tenant stated that he never signed anything regarding smoking in the rental unit; that he "may have" agreed to not smoke inside the rental unit; and that they did smoke inside the rental unit.

The Landlord and the Tenant agree that the rental unit was painted approximately two years prior to the end of the tenancy; that the rental unit smelled of smoke; and that the walls/ceilings had discoloured during the tenancy. The male Tenant contends that discoloration on the walls was due, in part, to the air quality in this area of Vancouver.

The Landlord is seeking compensation for painting the rental unit which he contends was necessary because the Tenants smoked in the rental unit. The Landlord is seeking compensation, in the amount of \$1,127.50, for the 112.75 hours he spent washing and painting the walls and ceiling. He is also seeking compensation, in the amount of \$128.85, for painting supplies. He submitted receipts to establish that he paid \$128.85 for supplies.

The Tenants contend that the Landlord is not entitled to compensation for painting the rental unit, as it is something that is done routinely by Landlords at the end of a tenancy.

The Landlord is seeking compensation, in the amount of \$99.98, for the cost of replacing a set of curtains that the Tenants had washed and dried, which had caused them to shrink. The Landlord submitted a receipt to show that he paid this amount to replace the curtains. The male Tenant stated that they washed and dried the curtains but they did not hang them again so they do not know if they shrank.

The Landlord is seeking compensation, in the amount of \$56.97, for the cost of replacing a set of curtains that the Landlord alleges were discoloured as a result of the Tenant's smoking in the rental unit. The Landlord contends that the curtains were made of a non-washable material and that they needed to be replaced. The Landlord submitted a receipt to show that he paid this amount to replace the curtains. The male Tenant contends that the discoloration was due, in part, to the air quality in this area of Vancouver.

The Landlord is seeking compensation, in the amount of \$84.99, for the cost of replacing track lighting in the rental unit. He stated that the plastic pieces on the lighting

had yellowed from the cigarette smoke. The Tenant contends that the discolouration was due, in part, to the air quality in this area of Vancouver.

The Landlord is seeking compensation, in the amount of \$34.90, for replacing 3 cabinet light bulbs and 2 under cabinet light bulbs, which burned out during this tenancy. The Landlord submitted a receipt to show that he incurred this expense. The male Tenant agreed that some cabinet and under cabinet light bulbs had burned out during this tenancy and were not replaced.

The Landlord is seeking compensation, in the amount of \$28.34, for replacing a light in the microwave, which burned out during this tenancy. The Landlord submitted a receipt to show that he incurred this expense. The male Tenant agreed that the light in the microwave, which illuminates the stove top, burned out during this tenancy and was not replaced.

The Landlord and the female Tenant agree that the \$1,600.00 was automatically withdrawn from the Landlord's account as a payment for rent from April and that the Landlord returned \$1,300.00 of this payment to the Tenants. The Landlord stated that he retained \$300.00 of the rent payment as he believed it was due to him for damages to the rental unit.

The Landlord and the female Tenant agree that the Landlord returned the Tenant's security deposit plus interest. The male Tenant stated that only \$300.00 of the security deposit was returned.

Analysis

On the basis of the undisputed evidence provided at the hearing, I find that the floors in the rental unit were damaged by pet urine. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the floors at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

In the absence of evidence to the contrary, I find that the floors were damaged to the extent that they needed to be replaced. In reaching this conclusion I was heavily influenced by the fact that the Tenants did not dispute the Landlord's testimony that the floors were so discoloured that they could not be repaired. I therefore find that the Landlord is entitled to \$2,749.75 for the cost of replacing the flooring with flooring that is of lesser quality than the flooring that was in the rental unit at the beginning of the tenancy and to \$26.00 for the cost of disposing of the old flooring.

I find that the Tenants verbally agreed that they would not smoke in the rental unit. I found the Landlord's evidence compelling in regards to this agreement and I find that his testimony was corroborated by the male Tenant's statement that he "may have" agreed to not smoke inside. I find that a rental unit typically needs to be repainted when people have smoked in it, regardless of the air quality in the area. I therefore find that

the Landlord is entitled to compensation for the time he spent cleaning and painting the rental unit and for materials needed for painting the rental unit.

In these circumstances the Landlord is seeking \$1,127.50 for his labour and \$128.85 for supplies. The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years, which I find to be reasonable. The evidence shows that the majority of the rental unit was painted at the beginning of the tenancy and was, therefore approximately two years old. I therefore find that the paint in the rental unit had depreciated by fifty percent by the end of the tenancy, and that the Landlord is entitled to fifty percent of the cost of repainting the unit, which in these circumstances is \$628.17.

I find that the Tenants shrunk the curtains when they washed and dried them. In reaching this conclusion I was heavily influenced by the Landlord's testimony that they had shrunk, as his evidence was consistent and credible throughout the hearing, and by the Tenant's inability to refute the Landlord's testimony. I find that the Tenants failed to comply with section 37(2) of the *Act* when they shrank the curtains and failed to replace them. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*, which in these circumstances was \$99.98.

I find that a set of curtains in the rental unit were discoloured during this tenancy and that they could not be cleaned. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to replace or clean the curtains, and that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*, which in these circumstances was \$56.97. In reaching this conclusion, I find that it is much more likely that the curtains were discoloured by the Tenant's smoking in the rental unit than the air quality in Vancouver, as it is commonly recognized that cigarette smoke damages curtains and the Tenant submitted no evidence that corroborates his claim that the air quality in this area of Vancouver would cause curtains to discolour.

I find that some track lighting in the rental unit was discoloured during this tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to clean or replace the track lighting, and that the Landlord is entitled to compensation for damages that flow from the Tenants' failure to comply with the *Act*.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the track lighting. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that it cost \$84.99 to replace the lighting. On this basis, I award nominal damages in the amount of \$1.00 for replacing the lighting.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to replace cabinet lighting and a microwave light that had burned out during this tenancy, and that the Landlord is entitled to compensation for damages that flow from the Tenants' failure to comply with the *Act*, which in these circumstances was \$63.24.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,625.11, in compensation for damages to the rental unit. I find that this monetary claim must be reduced by the \$300.00 that the Landlord acknowledged that he retained from the rent payment that was inadvertently paid to him for rent for April of 2010.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,325.11. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the Landlord did not acknowledge retaining any portion of the Tenant's security deposit and this hearing does not relate to an application to retain or return the security deposit, I am not making a finding on the disposition of the security deposit.

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: September 10, 2010.

Dispute Resolution Officer