



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND, FF

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; for a monetary Order for damage to the rental unit; and to recover the fee for filing this Application for Dispute Resolution.

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 relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2008 and ended on October 31, 2009.

The Landlord is seeking compensation, in the amount of \$2,520.00, for repairing a damaged air conditioner hose. The Landlord stated that two air conditioner hoses were damaged during this tenancy; that the Landlord made numerous efforts to locate replacement hoses in Canada; that the Landlord eventually travelled to Korea to find replacement hoses; that she purchased the replacement hoses in Korea, at a cost of \$30.00; that the Tenant has offered to pay for the cost of the hoses; and that the Tenant installed the hoses on the air conditioning unit. She is seeking compensation for the time spent locating the replacement parts and for the cost of travelling to Korea to obtain the parts. The Landlord submitted photographs of the damaged hoses.

The female Tenant stated that they were attempting to move the air conditioning unit shortly after moving into the rental unit and that the hoses simply fell apart. She does not know whether the hoses were broken prior to their moving the air conditioning unit;

she stated that the hoses were “brittle” and dry; she stated that they had previously offered to pay \$40.00 for the cost of replacing the hoses; and that the Tenants are still willing to pay the \$30.00 the Landlord paid to replace the hoses.

The Landlord is claiming compensation, in the amount of \$300.00, to repair a carpet that was stained during the tenancy. The Landlord submitted 2 photocopied photographs of the carpet in the rental unit, which are of relatively poor quality. The first picture shows one small stain that the parties agree was in the carpet in the dining room. The second picture shows staining on the carpet that the parties agree was near the entrance to the kitchen.

The female Tenant agrees that there were stains on the carpet in these areas however she stated that the carpets were stained at the beginning of the tenancy. The female Tenant noted that the Condition Inspection Report, that was completed on July 01, 2008, declared that there was “a lot of ST” on the carpet in the dining room.

The Landlord acknowledged that the Condition Inspection Report that was completed on July 01, 2008 declared that there were stains on the dining room carpet at the beginning of the tenancy, however she contends the carpet was more stained at the end of the tenancy than it was at the beginning of the tenancy.

The Landlord submitted a Condition Inspection Report that the Landlord allegedly completed at the end of the tenancy, on which the Landlord declared that there were two big marks on the carpet and there were a lot of stains in the living area. The parties agree that the Tenants did not agree to the information contained on this report.

The Landlord is claiming compensation, in the amount of \$1,575.00, to repair walls and paint the rental unit, as she believes the walls were damaged during the tenancy. The Landlord submitted photocopied photographs of the walls in the rental unit, which are of relatively poor quality. The pictures show that there are a few small holes in the walls, typical of holes caused by nails, and two large scratches on the walls.

The female Tenant agrees that the walls had nail holes and scratches however she stated that the walls were in similar condition at the end of the tenancy as they were at the beginning of the tenancy. The female Tenant noted that the Condition Inspection Report, that was completed on July 01, 2008, declared that there were marks on some walls and paint was missing from some walls. She stated that the walls were not dirty at the end of the tenancy.

The Landlord acknowledged that the Condition Inspection Report that was completed on July 01, 2008 declared that there were marks on some walls and paint was missing from some walls, however she contends that the walls were more damaged at the end of the tenancy than at the beginning of the tenancy.

The Landlord submitted a Condition Inspection Report that the Landlord allegedly completed at the end of the tenancy, on which the Landlord declared that the walls were

dirty and marked at the end of the tenancy. The parties agree that the Tenants did not agree to the information contained on this report.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the Landlord bears the burden of proving that damage has occurred during this tenancy.

As the Tenant agreed to pay the Landlord \$30.00 for the cost of replacing two air conditioning hoses, I find that the Landlord is entitled to this payment. This decision is based on the female Tenant's offer to pay this amount and not on a finding that the Tenants are obligated to compensate the Landlord for replacing the hoses.

I find that the Landlord has submitted insufficient evidence to show that the Tenants are obligated to replace the air conditioning hoses. Section 37(2) of the *Act* stipulates that a tenant must leave a rental unit undamaged except for reasonable wear and tear.

In my view, the Landlord has submitted insufficient evidence to show that the air conditioning hoses were damaged by the action or neglect of the Tenants. In reaching this conclusion I was heavily influenced by the testimony of the female Tenant, who I found to be a credible witness, who said the hoses were brittle and dry when they were moved. In reaching this conclusion I was equally influenced by the photographs of the air conditioning unit that were submitted in evidence. In my view the damage to the hose is consistent with damage that would occur to hoses when they have been used for a period of time and it is not consistent with the damage that occurs with abuse or neglect. On this basis, I find that the damage to the hose constitutes reasonable wear and tear. As the Tenants are not obligated to repair damage that results from reasonable wear and tear, I dismiss the Landlord's claim for compensation for damage to the air conditioning hoses.

The undisputed evidence is that the carpet in the dining area was stained and that the Condition Inspection Report that was completed at the beginning of the tenancy declared there were a "lot of" stains in this area. The Condition Inspection Report that was completed by the Landlord at the end of the tenancy declares that there were also a lot of stains in the dining area. Based on these two entries, I find that the carpet was in relatively the same condition at the end of the tenancy as it was at the beginning of the tenancy. I find that this evidence does not corroborate the Landlord's testimony that the carpets were in worse condition at the end of the tenancy.

In reaching this determination, I did not find the photographs of the carpet to be particularly helpful. I find that the photographs were not clear and do not, in my opinion,

support the declaration that there was “a lot” of staining on the dining room carpets, albeit there appears to be some staining.

As the Landlord has submitted no evidence to establish that the condition of the carpets has changed significantly during this tenancy, I find that the Landlord has failed to establish that the Tenants damaged the carpet. As the Landlord has failed to establish that the Tenants damaged the carpet, I dismiss the Landlord’s claim for compensation for a damaged carpet.

After hearing the contradictory evidence of both parties regarding the cleanliness of the walls at the end of the tenancy, I find that the Landlord has submitted insufficient evidence to establish that the walls were dirty at the end of the tenancy. In reaching this conclusion, I find that the Landlord submitted no independent evidence to corroborate her statement that the walls were dirty or to refute the Tenant’s statement that they were not dirty. In reaching this conclusion I placed no weight on the Condition Inspection Report that was allegedly completed at the end of the tenancy, as the Tenants have not agreed to the contents of that report. In reaching this conclusion I placed some weight on the photographs of the walls of the rental unit, which do not show that the walls are dirty, although I am cognizant of the poor quality of the photographs and recognize that they may not accurately reflect the cleanliness of the walls.

After hearing the contradictory evidence of both parties regarding the condition of the walls at the end of the tenancy, I find that the Landlord has submitted insufficient evidence to establish that the walls were damaged during this tenancy.

The undisputed evidence is that the walls were somewhat damaged at the beginning of the tenancy and that this was noted in the Condition Inspection Report that was completed at the beginning of the tenancy. The Condition Inspection Report that was allegedly completed by the Landlord at the end of the tenancy indicates that the walls were more damaged at the end of the tenancy than at the beginning of the tenancy. I placed no weight on the Condition Inspection Report that was allegedly completed at the end of the tenancy, as the Tenants have not agreed to the contents of that report. In reaching this conclusion I placed some weight on the photographs of the walls of the rental unit, which do not show that the walls are damaged to an extent that I believe exceeds normal wear and tear, although I am again cognizant of the poor quality of the photographs.

As the Landlord has failed to establish that the walls in the rental unit required painting as a result of the actions or neglect of the Tenants, I dismiss the Landlord’s claim for compensation for painting the rental unit.

Conclusion

I find that the Landlord’s application has been without merit and I dismiss the Landlord’s application to recover the fee for filing this Application for Dispute Resolution.

I find that the Landlord has established a monetary claim, in the amount of \$30.00, which is comprised of the money that the Tenants agreed to pay the Landlord. Based on this agreement I grant the Landlord a monetary Order for the amount \$30.00. 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.

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: November 10, 2010.

Dispute Resolution Officer