Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to loss or damage suffered due to a breach of the *Act*, regulations or tenancy agreement by the tenant and a request to retain the tenant's security deposit in partial satisfaction of this claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Did the tenant cause damage to the rental unit entitling the landlord to monetary relief?

Background and Evidence

This tenancy began on September 9, 2006 for the monthly rent of $1,375.00 plus an additional $35.00 a month for parking. The tenant paid a security deposit of $685.00 on August 3, 2006. The parties did not complete a written move in condition inspection report as required by the *Act*. The parties gave conflicting evidence as to whether an appointment to conduct a move out condition inspection was scheduled. The tenancy ended on July 31, 2010.

On July 12, 2010 the landlord wrote the tenant regarding damage to the carpets in the rental unit. The landlord states that there were burns in the living room, dining area and bedroom. Apparently the landlord requested that the tenant pay the sum of $1,400.00 towards replacing the damaged carpet. There was the possibility that if the tenant gave up possession of the rental unit by July 18, 2010, the landlord would seek half this cost, or the sum of $700.00.

In her response letter dated July 19, 2010 the tenant identifies that in the original move in condition inspection report the carpets were notes as being in fair condition with some stains. The tenant also questioned the age of the carpets and pointed out the reduced value of the carpets over time consistent with the Residential Tenancy Branch policy guidelines. The tenant did not deny the damage to the carpet but characterized the burns as being small in size. The tenant denies any burn in the bedroom or causing the alleged damage to the carpet in the bedroom. The tenant was willing to sign over her security deposit to the landlord in compensation for the burn marks on the carpet. The tenant also provided her forwarding address in writing through this correspondence. Ultimately, the parties did not reach a mutual agreement.

Both the landlord and the tenant also provided copies of an e-mail exchange between July 12 and 30, 2010. During this exchange it was noted that the tenant had possession of the rental unit until July 31, 2010. On July 29, 2010 the landlord wrote an e-mail to the tenant after receiving the tenant's keys to the rental unit. The landlord wrote, "*Because you have returned all the keys, I am assuming that you will not be doing the outgoing inspection (as previously arranged) at 1:00 p.m. on Saturday 31 July.*" The tenant responded to this e-mail on July 30, 2010 denying that there was an appointment to complete the inspection but indicating that she would be willing to attend one.

The landlord submits that the parties agreed to conduct the inspection on July 31, 2010 at 1:00 p.m. and submits that the appointment was notated in the landlord's day schedule. The tenant submits that the parties discussed the end date of the tenancy as being July 31, 2010 in the context of the negotiations about the damage to the carpets and the possibility of ending the tenancy early. When the negotiations failed the tenant confirmed with the landlord that the end of the tenancy was July 31, 2010 at 1:00 p.m. but there was no discussion about completing the move out condition inspection.

Despite the tenant's offer to meet on a different date to conduct the inspection, the landlord wrote in an e-mail on July 30, 2010 that the inspection would carry forward on the scheduled time and that "...it is not possible to do a final inspection after 1:00 p.m. on Saturday 31st July." The landlord was of the position that the appointment had been made in advance, as documented in the tenancy package given to the tenant at the start of the tenancy and the landlord's obligation to arrange two appointments was met.

According to the landlord the tenant failed to return the rental unit in a clean and undamaged condition as required by the *Act*. The landlord submits that the tenant did not make a reasonable attempt to clean the unit and the amounts charged by the landlord to clean the unit represent the absolute minimum charge based on the pre-estimates contained in a document provided to all tenants at the start of the tenancy.

The tenant disputes the landlord's claim that the rental unit was not cleaned to a reasonable standard, except for behind the fridge, the oven and inside some of the cabinets. The tenant stated that she had the rental unit professionally cleaned on July 29, 2010. The tenant submits that in the shower there is some soap scum which she should not be responsible for cleaning and in the cabinet under the sink there is water damage due to the landlord's failure to properly repair. The tenant submits that the costs claimed by the landlord for cleaning are excessive.

The landlord submits that the tenant caused significant damage to the carpets in the rental unit and should be required to pay for the replacement cost of the carpet. Although the landlord could not verify the exact age of the carpets, he confirmed that it was likely installed in 2002. The landlord submits that the carpets could not be patched as suggested by the tenant as the damage was in a high traffic area and it would be very evident patch which would reduce the appeal of the rental unit. The landlord submits that the carpet was replaced on August 6, 2010 for the total cost of $2,128.10 comprised of $1,900.09 for the carpet and $228.01 for installation.

The tenant submits that the carpets could have been patched and that the landlord failed to mitigate his loss by not considering this option. In addition, the tenant stated that there was matching carpet in a closet which could have been used. In addition, the tenant argued that the carpets had very little value as they are at least eight years old. Finally, the tenant argued that the damage to the carpet, except for the burns, was part of normal wear and tear.

Finally the landlord seeks costs against the tenant for the replacement of the kitchen countertop. The landlord suggested that after the countertop was cleaned, stains were discovered which could not be removed. The landlord did not provide any photographs of the stains and acknowledged that the move in condition inspection report noted that there were stains on the countertop prior to this tenancy. Again, the landlord suspects that the countertop was install in 2002.

The tenant rejects the landlord's claim that she is responsible for the replacement cost of the countertop. The tenant points out that the landlord has no evidence that the tenant caused any damage and that there was no mention of damage to the countertop in the move out condition inspection report. There was no indication of damage until the landlord filed this application for Dispute Resolution.

Both parties provided photographic evidence in support of their positions. I note that the photographs taken by the landlord are close ups of several areas, such as the fridge,

stove and cabinets while the tenants photographs are more board views of the apartment. In addition the landlord provided copies of receipts for the work completed on the rental unit.

The tenant submitted in summation that the rental unit was older and not in perfect condition when she began renting it 4 years ago and the tenant believes that the landlord is attempting to seek the cost of renovating the unit from her. The tenant submits that the cost of cleaning the rental unit to a standard acceptable under the *Act* could have been minimized by the landlord. Finally, the tenant submits that the landlord failed to consider the depreciated value of the carpets due to normal wear and tear and has continuously sought replacement cost from her contrary to the *Act*.

The landlord submitted in summation that the tenant did not meet her obligation under the *Act* to return the rental unit in a clean and undamaged condition. The landlord submits he is only seeking to have the rental unit returned to the same condition it was in prior to the tenant occupying the unit. The landlord does not accept that the damage to the carpets was reasonable, and while the landlord acknowledges that the carpet has depreciated the landlord submits that the tenant is responsible for the damage caused.

The landlord is seeking compensation for the following damage caused by the tenant:

Cost to replace kitchen countertop	$702.46
Cost to replace carpets in rental unit	$2,128.10
Recovery of $50.00 filing fee paid for this application	$50.00
TOTAL	**$3,430.56**

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to

repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

Before considering the merits of the landlord's claim, I first turn my mind to the whether the requirements of the move out condition inspection report were met by the parties.

Section 35 of the *Act* and section 17 of the regulations outline the obligations of the landlord concerning arranging a move out condition inspection report. The landlord's obligation is to provide the tenant with two opportunities. Regulation 17 requires the landlord to offer a first opportunity to conduct the inspection. If the tenant is not available at the time offered the tenant may offer an alternative time which the landlord must consider. However, the obligation is on the landlord to propose the second opportunity and this second opportunity must be different time from the first offered appointment. Then the landlord is required to provide notice of this second opportunity by providing notice on the approved form.

Even if I accept that the landlord arranged the first appointment on July 31, 2010 at 1:00 p.m., which I am not satisfied, is the case, I find that the landlord failed to comply with regulation 17 when informed by the tenant that she could not make that appointment. The landlord had an obligation to consider the tenant's offer to schedule an appointment on August 3, 2010 and then the landlord was required to schedule the second appointment by serving notice on the approved form. From the landlord's e-mail of July 30, 2010 it is clear that the landlord did not even consider rescheduling the appointment.

Based on this the landlord did not provide two opportunities as required and pursuant to section 36 of the *Act*, the landlord extinguished his right to claim damages against the tenant's security deposit. However, as I explained during the hearing, despite finding that the landlord extinguished the right to claim damage against the tenant's security deposit, I will offset any monetary claim established by the landlord from the tenant's security deposit pursuant to section 72(2)(b) of the *Act*.

In the absence of a move out condition report which was conducted by both parties, I have considered the photographs provided by both parties. I find that the photographs

demonstrate that the rental unit was left in a reasonable clean stated with the exception of the oven, behind the fridge, inside the cabinets and the tiles in the shower. I find that the landlord wanted the rental unit returned in a state that is greater than a reasonable standard. I found that the landlord's statements that the rental unit was left unclean and extremely dirty are not supported by reviewing both sets of photographs.

I do not accept that it cost $550.00 to clean the shower tiles, behind the fridge, the oven and in the cabinets. I find that the landlord proceeded to clean the entire rental unit instead of cleaning only the areas which required it.

As a result, I accept the tenant's argument that the landlord claim of $550.00 is excessive. I also find that the landlord has used a standardized pre-assessment contained in the tenant package given at the start of the tenancy to establish the cost of $550.00 rather than the actual cost. I also find that the landlord failed to minimize or mitigate that cost to clean the rental unit.

Therefore, I deny the landlord's claim for cleaning costs for the sum of $550.00. I find that the rental unit could have been cleaned to a reasonable standard with 4 additional hours of cleaning at the cost of $25.00 per hour or the total sum of $100.00.

Regarding the landlord's claim for the replacement of the carpet in the rental unit, I find that the landlord is only entitled a portion of the installation cost and a portion of the replacement cost. I find that the landlord has failed to depreciate the value of the carpet in relation to this claim and in his prior negotiations with the tenant despite having been informed of policy guideline #37. There is no dispute that the tenant caused the burns in the living room and dining room area. I accept that the burns are small but I find that they are significant since they are in a high traffic area. I also am not persuaded that the carpet could have been effectively patched as suggested by the tenant. Given the age, character of the carpet and the location of the burns a patch would not have been an effective remedy.

I find the burns have diminished the value of the carpet and have required the landlord to replace the carpets before the end of their useful life of 10 years. I find that the loss experienced by the landlord, based on a diminishment of value over 8 years, is $380.00 and I find that the tenant is responsible for the installation cost of $228.00 for a total of $608.00.

I deny the landlord's claim for the cost to replace the kitchen counter top from the tenant. There is no evidence to suggest that the tenant caused any damage to the counter top.

Finally, I find that the landlord is only entitled to be reimbursed for $25.00 of the $50.00 filing fee. Portions of the landlord's claim were not supported by any evidence and the landlord also failed to account for the depreciated value of the carpets.

I have determined that the landlord has established a total monetary claim for the sum of $733.00. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of $706.85 in partial satisfaction of this claim leaving an outstanding sum of **$26.15** owed to the landlord.

Conclusion

The landlord established a monetary claim related to damage to the carpets and costs to clean the rental unit. After retaining the tenant's security deposit in partial satisfaction of this claim, there is an outstanding balance owed to the landlord for the amount of **$26.15**.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **$26.15**. This Order may be served on the tenants. This Order may be 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: December 17, 2010.

Dispute Resolution Officer