



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the hearing and called a witness. The tenant also attended. The parties each gave affirmed testimony and were given the opportunity to cross examine each other and the witness on their testimony.

All testimony and evidence provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on March 1, 2005 and ended on June 30, 2010. Rent at the beginning of the tenancy was \$350.00, and at the end of the tenancy, rent in the amount of \$364.00 per month was payable in advance on the 1st day of each month

and there are no rental arrears. On March 1, 2005, the landlord collected a security deposit from the tenant in the amount of \$175.00.

The landlord testified that the unit was completely re-done in January, 2007 due to a flood in the building. This manager took over in May, 2008. Further, the building was sold in June, 2008 and a new landlord used a different form for the move-out condition inspection than the one that was used at the outset of the tenancy for the move-in condition inspection.

The landlord's agent testified that the tenant took drapes and the drape hooks from the living room, kitchen and bedroom when he moved from the unit. He further testified that the tenant did not clean the unit before departing, and as a result, the unit was required to be vacant for a month to clean and prepare for a new tenant. The landlord had to clean the carpets, then conduct a deep cleaning in the carpets, repair the floor in the bathroom and conduct a complete cleaning of the suite, including using odour destroyer for the carpets after they had been cleaned. He stated that a new renter was set up for July 1, 2010 from Cranbrook, who would have commenced a tenancy on July 1, 2010 for \$600.00 per month, but when he arrived on July 3, 2010 the unit was not fit to rent. The unit was re-rented on August 1, 2010 for \$650.00 per month, and the landlord is claiming one month of loss of revenue at \$650.00, although the application states a claim of \$210.00 for loss of revenue.

The landlord is also claiming the following:

- Wall plate for the cablevision cable for \$3.50
- Wall plate for the Air conditioner for \$2.50
- 5 sets of drape hooks @ \$1.79 each, or \$10.00
- Drapes for \$25.00 for the balcony; \$15.00 for the living room; \$15.00 for the kitchen; and \$20.00 for the bedroom
- A battery for the smoke detector for \$2.25
- 2 light bulbs for \$1.00
- Floor materials for repairing the kitchen and bathroom floors for \$15.00
- Chemicals for cleaning the counters for \$12.00
- Replacing the screen in the living room window for \$14.50
- Cleaner for the vinyl floors for \$9.60

- Miscellaneous cleaning supplies for \$12.60
- Carpet cleaning solution for \$24.61
- Paint tape and burner covers for \$4.48
- Scrubbers and rubber gloves for \$9.80
- Touch up paint for \$2.52
- Oven and toilet cleaner for \$7.64
- \$75.00 to deep clean the carpets
- 3 hours of time cleaning the carpets on July 31, 2010 for \$30.00
- \$40.00 for paint for the kitchen, bedroom and living room
- 22 ¼ hours of cleaning at \$10.00 per hour, or \$222.50
- 11 ¾ hours of labor for repairs at \$20.00 per hour, or \$235.00
- \$57.30 for odour destroyer
- \$225.00 for repairing 90 cigarette burns in the carpets

The agent provided a list entitled "Labour" which sets out tasks completed by himself and the number of hours spent on each task on specific dates, totalling 11 ¾ hours. Those hours include ¾ of an hour for filling and repairing walls, 1 ½ hours for repairing the kitchen and bathroom floors, and the balance is for showing the unit to another renter and painting. Also provided were photographs of the rental unit which the landlord's agent testified were taken during and after the tenant moved out.

The landlord's witness testified that the tenant moved out on June 30, 2010, and that she had it rented to a new tenant, but when he looked at the suite on July 3, 2010, the tenant walked away. The unit was cleaned before and after, and was re-rented on August 1, 2010 for \$650.00.

The tenant testified that 1 ½ walls and half the ceiling in the living room are all that were repainted after the flood. On November 4, 2007 another flood happened, but no repairs were needed. The carpet did need to be replaced. He stated the carpets are the original carpets from when the apartment building was built. He further testified that there is no underlay so the carpet wears quickly.

The tenant also testified that there never was a cable connection plate on the wall during his tenancy. He also supplied his own drapes and took them with him when he moved. The tenant did not take the battery out of the smoke detector; the heat detector is all that he depended on and it is hard-wired in the unit and does not require a battery.

The tenant testified that the only damage he did in the unit was screw holes from shelving that he had installed, and the unit required painting anyway.

Analysis

I have reviewed the tenancy agreement, the move-in condition inspection report and the move-out condition inspection report, and I find that the landlord has failed to establish that window coverings existed at the outset of the tenancy. They do not appear to be included in the rent, and are not mentioned at all on the move-in condition inspection report. Therefore, the landlord's claim for drapery hooks and drapes must be dismissed. Further, there is no mention of whether or not batteries existed in the smoke detector, and I accept the evidence of the tenant that it was not in use and that he relied on the heat detector which is hard-wired and does not hold batteries.

Claims for damages to a rental unit are meant to be restorative, meaning that the damage award is meant to put the landlord in the same financial position had the damage or loss not occurred. The tenant resided in the unit for 5 years, and the life expectancy of paint inside a home is 4 years. Further, there was some damage done due to 2 floods, and I accept the evidence of the tenant that only 1 ½ walls were painted and half of the ceiling. Therefore, the landlord's claim for painting cannot succeed.

I also note that the move-in condition inspection report does not include the hallway, entrance or balcony, but the move-out condition inspection states that in these areas, the door is scratched, no chain exists, the carpet is scratched, the closet door is scratched, paint has been spilled on the patio, and the balcony screens are off track. Without a full move-in inspection report for those areas, I have no evidence before me

that the unit was in any worse or better condition in those areas when the tenant moved out of the rental unit. Further, there is no mention of electrical outlets on the move-in condition inspection report, but a notation appears on the move-out inspection report which states that the cable outlet cover is missing, and the remainder of the electrical outlets are marked as "Okay" or "good." I also have the evidence of the tenant that there never was an electrical plate on the wall for the cable, and the one on the air conditioner was never removed.

The move-in condition inspection report also shows that burn marks appeared on every floor, and one burn mark is recorded for each of the bathroom, kitchen and bedroom, and "burn marks" appear on the notes for the living room floor. On the move-out condition inspection report, the bathroom is marked as "few marks," the kitchen is marked with "need repair," the living room as "stained and burned" and the bedroom is "burned and stained." I can only conclude from this evidence that the tenant resided in the unit for 5 years with burn holes in the floors. The tenant is obviously not responsible for all of the burn marks because some existed when he moved in. The landlord has failed to establish which burn marks the tenant caused and which ones pre-existed this tenancy. Therefore, the landlord's application for repairing floors cannot succeed.

The landlord's claims for the following items are hereby dismissed:

- Wall plate for the cablevision cable for \$3.50
- Wall plate for the Air conditioner for \$2.50
- 5 sets of drape hooks @ \$1.79 each, or \$10.00
- Drapes for \$25.00 for the balcony; \$15.00 for the living room; \$15.00 for the kitchen; and \$20.00 for the bedroom
- A battery for the smoke detector for \$2.25
- Floor materials for repairing the kitchen and bathroom floors for \$15.00
- Paint tape Touch up paint for \$2.52
- \$40.00 for paint for the kitchen, bedroom and living room
- 11 ¾ hours of labor for repairs at \$20.00 per hour, or \$235.00
- \$225.00 for repairing 90 cigarette burns in the carpets

I accept the evidence of the landlord that the tenant is responsible for the holes in the screens because the windows on the move-in condition inspection are marked as “good” and are marked as “holes” on the move-out inspection report.

I further accept the evidence of the landlord and the tenant that the tenant did not clean the unit prior to departure. *The Residential Tenancy Act* requires that the tenant leave the unit reasonably clean except for reasonable wear and tear. I also find that it has not been established that the carpets required replacing, and the tenant is responsible for cleaning carpets if the tenant resides in the unit for over one year. I find that the landlord has established a claim for the following items:

- 2 light bulbs for \$1.00
- Chemicals for cleaning the counters for \$12.00
- Cleaner for the vinyl floors for \$9.60
- Miscellaneous cleaning supplies for \$12.60
- Oven and toilet cleaner for \$7.64
- 22 ¼ hours of cleaning at \$10.00 per hour, or \$222.50
- \$57.30 for odour destroyer
- Scrubbers and rubber gloves for \$9.80
- Replacing the screen in the living room window for \$14.50
- Carpet cleaning solution for \$24.61
- \$75.00 to deep clean the carpets
- 3 hours of time cleaning the carpets on July 31, 2010 for \$30.00
- burner covers for \$2.26

With respect to the landlord’s application for loss of revenue, I accept that the tenant did not leave the unit in a reasonable state of cleanliness. I also accept the evidence of the landlord’s witness that a tenant was able to move in on July 3, 2010 but walked away due to the condition of the unit. However, I find that the landlord has failed to establish that it was due to the uncleanness of the unit entirely; the landlord clearly had repairs to complete as well that cannot be established were the fault of the tenant, and I accept the landlord’s claim for \$210.00 as lost rent.

Conclusion

I find that the landlord has established a claim for \$688.81 in damages and loss of revenue. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of \$181.18 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$557.63. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 06, 2010.

Dispute Resolution Officer