



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 16, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. On June 30, 2010, a move-out condition inspection was completed at which time the tenants provided a phone number to the staff member who completed the inspection. On July 1, 2010, the landlord called and obtained the forwarding address that was used for service. A Canada Post tracking number was provided as evidence of service; the mail was returned to the landlord by Canada Post as unclaimed.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

There was no claim before me in relation to compensation for damage or loss under the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$1,240.34?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The original tenancy commenced in 2008, deposit in the sum of \$800.00 was paid on September 1, 2008. This 800 sq foot, 2 bedroom, 2 bathroom unit was brand new at the start of the tenancy.

The landlord is claiming:

- \$443.95 to replace cook-top;
- \$596.40 cleaning and carpet cleaning; and
- \$200.00 to repair deck surface.

On June 30, 2010, a move-out condition inspection was completed with the tenant at which time it was noted that the deck paint was peeling, that there was some question in relation to the condition of the ceramic stove-top and notations that the unit was extremely messy and that cleaning and carpet cleaning were required.

The signed the inspection report, acknowledging the comments made.

The cleaner provided a detailed breakdown of the work completed in the unit to bring it up to standard. The carpets had a number of red stains and a special product was used to remove the stains. The landlord stated that the carpets required an unusual amount of time to clean; which was more cost-effective than replacing the carpets.

The landlord provided photographs of the stove cook-top which showed rings on each element that appeared to be caused by mineral deposits. These areas could not be cleaned and the landlord believes were caused by the use of heavy pots that were continually used on the stove. The tenants had been provided with ceramic cleaner and were told how to maintain the top. After the tenants moved out the landlord obtained an estimate for replacement of the stove-top. The stove-top continues to be functional, but replacement is required due to aesthetics.

The outdoor deck was damaged and at move-out it appeared that the paint was lifting. Photographs taken prior to submission of the application indicated that the damage was caused by the Bar B Q placed on the deck by the tenants. Either the leg of the Bar B Q caused the damage or the tenants failed to use a proper container for grease that dripped from the unit. The landlord did not submit verification of this expenditure but did spend just over \$100.00 on the repair.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 32 of the Act provides, in part:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In the absence of evidence to the contrary and in the absence of the tenant at this hearing, I find that the tenants did not leave the unit reasonably clean and that the cleaning and carpet cleaning costs submitted are realistic and a reflection of the state of the unit indicated on the condition inspection report. The invoice provided a detailed breakdown of the cleaning required; which I found convincing. Therefore, based on the verification provided as evidence, I find that the landlord is entitled to cleaning costs in the sum of \$596.40.

In relation to the cook top; the stove continues to be functional. However, the stove top is just 2 years old. The tenant was told how to maintain the stove top and should have noticed that it was becoming damaged. There is no evidence before me that the tenant notified that the landlord of the damage that was occurring to the stove top in order to find a solution; the tenant continued to use the stove, which resulted in permanent damage to the ceramic top. The condition inspection report did include a reference to the stove top and possible damage.

Therefore, I find that the landlord is entitled to compensation in the sum of \$443.95, based upon the estimate for replacement of the stove-top, provided as evidence.

As no verification of the cost for balcony repair was provided I find that the landlord is entitled to a nominal sum of \$15.00. I base this decision on the photographic evidence taken shortly after the tenancy ended, which showed the damage caused,

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$804.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1055.35, which is comprised of cleaning costs and damage and \$50.00 in

compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$804.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$301.35. In the event that the tenant does not comply with this Order, it may be served on the tenant, 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 01, 2010.

Dispute Resolution Officer