



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages to the rental unit and compensation for damage or loss; to retain a portion of the security deposit in satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

On July 17, 2010, the Landlord's agent mailed the Notice of Hearing documents, via registered mail, to the Tenant at the forwarding address she provided. The Tenant acknowledged receipt of the Notice of Hearing documents in this manner.

On December 12, 2010, the Tenant mailed copies of her evidence, via registered mail, to the Landlord at its address for service. The Landlord's agent acknowledged receipt of the Tenant's evidence package.

On December 29, 2010, the Landlord's agent hand delivered copies of the Landlord's evidence to the Tenant's forwarding address. The Tenant testified that she was not there, and that the Landlord's agent knew she was not there because she had advised him she would be away after December 12, 2010.

The Landlord filed its application on July 16, 2010. Evidence is to be provided to the Residential Tenancy Branch and to the other party as soon as possible, but in any event at least 5 clear business days before the date of the Hearing. When calculating the 5 days, the following days are excluded:

- the day the other party or the Residential Tenancy Branch receives the package;
- the day of the Hearing;
- any weekend days or statutory holidays in between.

If the time between the filing of the Application (or being served with the Application) and the Hearing date does not allow the five day requirement to be met, then the evidence must be served at least 2 days before the Hearing.

The documents enclosed in the Landlord's evidence package were available to the Landlord at the time it filed its Application. In any event, the Landlord's agent did not serve the Tenant with copies of the Landlord's evidence package within the time frames

set out above and therefore its evidence package was late and will not be considered in this Decision.

When reaching my Decision, I considered the Tenant's evidence package and the affirmed testimony of both parties.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

Facts on which the parties agree:

The rental unit is one of two suites in a duplex. The Tenant shared the responsibility of yard maintenance with the upstairs tenant.

The tenancy ended on June 30, 2010, at the end of the term of the lease. The Tenant paid a security deposit in the amount of \$437.50 at the beginning of the tenancy. The Landlord returned a portion of the security deposit in the amount of \$201.55 at the end of the tenancy.

The Tenant agreed that the Landlord could retain \$63.00 of the security deposit for the cost of shampooing the carpets.

The Landlord's agent gave the following relevant testimony:

- The Tenant removed a carpet in one of the bedrooms and placed it in the basement. The carpet was affixed to the floor by a metal threshold.
- The Landlord's agent advised the Tenant that she would have to re-install the carpet at the end of the tenancy.
- The Tenant did not re-install the carpet and the Landlord's agent seeks \$25.00 for the cost of his labour in re-installing the carpet. The Landlord's agent had estimates for the cost of re-installing the carpet and the estimates ranged from \$75.00 to \$100.00.
- The carpet was 8 years old.
- The Tenant did not do her share of yard maintenance. The upstairs tenant did the majority of the yard work, and the Landlord's maintenance people mowed the lawn on several occasions during the 6 month tenancy.
- At the end of the tenancy, there had been no yard work done for many weeks and the grass and weeds were 1 foot high.
- The Landlord seeks compensation in the amount of \$56.00, which is half of the cost of mowing the large lawn (4 hours @ 28.00 per hour = \$112.00).

- At the beginning of the tenancy the stove was in good working condition. Several months into the tenancy, the Landlord's agent received a complaint from the Tenant that both elements of the oven weren't working.
- The Landlord sent an appliance service repairman to the rental unit, who discovered that the timer was stuck. The repairman unstuck the timer and checked the elements, which were working fine. The repair bill was \$41.95, and the Landlord's agent seeks to recover that cost from the Tenant, because he submits that the necessity of the call was due to the Tenant's neglect.

The Tenant gave the following relevant testimony:

- The carpet the Tenant removed was not secured in any way and just lay on top of the linoleum beneath. She simply rolled up the carpet.
- The Tenant was rushed for time the day she moved, and was about to replace the carpet when the Landlord's agent arrived. He helped her to lay the carpet back down. The carpet was filthy, and was cleaned at the same time as the other carpet in the rental unit.
- The Tenant agreed that yard maintenance was to be shared between her and the upstairs tenant. About the third week in February, the Landlord's agent started leaving messages on her answering machine that the lawn required mowing. One day she returned home from work to find a message on her machine, but the Landlord's agent was already in the yard mowing the lawn. The maintenance people came to cut the lawn 5 or 6 times over the term of the tenancy, but did not give the Tenant or the upstairs tenant notice that they would be coming to mow the lawn.
- The Tenant cut the lawn twice over the 6 month term of the tenancy. The upstairs tenant cut the lawn at least once, and may have cut it more often.
- At the end of June, the Tenant got another message from the Landlord's agent that she would have to cut the lawn before she moved out. The Tenant did not cut the lawn because she was in the middle of packing and was too busy.
- The Tenant does not agree that the grass and weeds were 1 foot high.
- The bottom element of the stove worked all along. The Tenant discovered the top element did not work when she tried to use the broiler. She replaced the fuses, but the top element still didn't work. The Tenant did not touch the timer or the automatic settings on the stove.

Analysis

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:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the Landlord has the burden of proving its claim.

Regarding the Landlord's claim for reinstalling the carpet

The Landlord failed to provide sufficient evidence that:

1. The carpet was affixed to the floor; and
2. The Landlord had re-installed the carpet as described.

Therefore, this portion of the Landlord's claim is dismissed.

Regarding the Landlord's claim for mowing the lawn at the end of the tenancy

The Tenant acknowledged that she and the upstairs tenant were responsible for general yard maintenance. The Tenant testified that she was advised at the end of June, 2010, that the lawn would have to be mowed before she moved out of the rental unit, but that she did not attend to mowing the lawn. I find the Landlord's claim in the amount of \$56.00 for half of the cost of mowing the lawn to be reasonable and this portion of his claim is allowed.

Regarding the Landlord's claim for the cost of the appliance repairman

The Residential Tenancy Policy Guidelines stipulate that "the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the **deliberate** actions or neglect of the tenant." [emphasis added]

I do not find that the Tenant deliberately caused the timer to be stuck. The Landlord chose to hire a professional appliance repairman to investigate the cause of malfunctioning oven. The Tenant is not responsible for paying the repairman's bill and this portion of the Landlord's claim is dismissed.



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Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct his monetary award from the residue of the security deposit in satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been partially successful in its application and is entitled to recover a prorated portion of the cost of the \$50.00 filing fee from the Tenant, calculated as follows:

$$\begin{array}{r} \$50.00 \times \frac{\$56.00}{\$122.95} = \$22.77 \end{array}$$

The residue of the security deposit must be returned to the Tenant forthwith:

Security deposit still held by Landlord	\$172.95
Less Landlord's monetary award (\$56.00 + \$22.77)	<u>-\$78.77</u>
Residue of security deposit:	\$94.18

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$94.18 against the Landlord representing return of the residue of the security deposit. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 07, 2011.
