



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 matter dealt with an application by the Landlord for unpaid utilities, for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 29, 2008. On April 7, 2010, the Parties entered into a month-to-month tenancy agreement commencing May 1, 2010 at a rental rate of \$1,900.00 per month which included water. The tenancy ended on August 31, 2010 when the Tenant moved out. The Tenant paid a security deposit of \$1,050.00 on September 15, 2008.

The Landlord claims that the Tenant used excessive water during the last year of the tenancy and he sought to recover compensation for the amount that exceeded "normal usage." The Landlord argued that the excess water usage was the result of the Tenants' children leaving the outside hose on for extended periods of time. The Tenant's agent argued that water was included in the rent but admitted that at the request of the Landlord, the Tenant paid him \$500.00 in June 2009 and \$1,000.00 in June 2010 for excessive water usage. The Tenant argued that given that the water usage for the property doubled without reason in 2010, a more likely reason was that there was a leak in the underground water system. The Landlord denied this and said the City of Abbotsford investigated the rental property at his request and found no leaks.

The Landlord said he did not do a move in inspection report at the beginning of the tenancy because the agent for the Tenant who arranged the tenancy on her behalf did

not want to sign the Condition Inspection Report. The Landlord completed a move out condition inspection report with the Tenant on August 31, 2010.

The Landlord said that the Tenant had the sole use of the yard and was responsible for maintaining it. The Landlord claimed that at the end of the tenancy, there were 2 large holes caused by the Tenants' children leaving the water running outside for extended periods. The Landlord also claimed that the yard had excessive weeds and was overgrown at the end of the tenancy. The Tenant claimed that the yard was in poor shape at the beginning of the tenancy with lots of weeds, patches of dead grass and one hole. The Tenant admitted that another small hole was caused by her children leaving the water running. The Tenant also claimed that she mowed the lawn at the end of the tenancy.

The Landlord claimed that there were stickers, finger prints and grease on windows, mirrors and sliding glass doors at the end of the tenancy and he sought \$300.00 for cleaning expenses. The Tenant admitted that there were stickers on the windows of one bedroom and argued that it was not her responsibility to clean them or alternatively that the amount claimed by the Landlord was excessive.

The Landlord said that at the beginning of the tenancy, the carpet in the living room and dining room was new. The Landlord claimed that at the end of the tenancy, there were a number of discoloured spots where the Tenant had tried to remove stains. Consequently, the Landlord said the carpets had to be removed and replaced with laminate flooring. The Tenant admitted that she caused discoloured spots in the carpets when she tried to remove stains but argued that it was unreasonable for the Landlord to replace the carpet when it could have been repaired for significantly less.

Analysis

I find that it was a term of the Parties' tenancy agreement that water was included in the Tenant's rent. Consequently, I find that there are no grounds for the Landlord's claim to recover expenses for "excessive water usage." Although the Landlord argued that the Tenant should have been responsible for usage above normal levels, the Landlord could have added a term to this effect in the Parties' tenancy agreement signed on April 7, 2010 but he failed to do so and cannot now seek to re-write that agreement.

Section 23 of the Act requires a Landlord to complete a Condition Inspection Report at the beginning of the tenancy whether the Tenant refuses to participate or not. I find that there is no evidence that the Landlord took the steps required of him under s. 23 of the Act to arrange a move in inspection with the Tenant and also failed to complete a Condition Inspection Report at the beginning of the tenancy. Consequently, I find that the Landlord breached s. 23 of the Act.

The Landlord claimed that the Tenant did not maintain the yard and was responsible for 2 large holes in it. The Tenant claimed that she was responsible for only one, small hole, that the condition of the yard at the end of the tenancy was substantially the same as it was at the beginning of the tenancy and that she mowed the lawn at the end of the tenancy. The move out condition inspection report states at p. 3 that "back yard soil washed away by running hose" and "overgrown lawn." The Landlord provided a copy of a receipt that states "repair lawn and cut September 1, 2010." Given the contradictory evidence of the Parties, and in the absence of any additional evidence to resolve the contradiction, I find that there is insufficient evidence to conclude that there were 2 large holes in the yard that were caused by the Tenant. I find that there is sufficient evidence to conclude that the Tenant was responsible for one hole and for not adequately mowing the lawn or tending to overgrown areas at the end of the tenancy and therefore I award the Landlord $\frac{1}{2}$ of what he has claimed for this expense or **\$125.00**.

The move out condition inspection report also shows that many of the windows throughout the rental unit needed cleaning and that mirrors and blinds also needed cleaning. The Tenant did not dispute that this was the case but rather argued that she was not responsible for cleaning those items or alternatively that the amount claimed by the Landlord was excessive. However, I find that the Tenant was responsible for leaving these items reasonably clean at the end of the tenancy (see RTB Policy Guideline #1) and she provided no evidence (such as another cleaning quote) to support her argument that the amount claimed by the Landlord was excessive. Consequently, I find that the Landlord is entitled to recover **\$300.00** for this cleaning expense.

The Tenant also did not dispute that she was responsible for discoloured spots on the carpet in the living room and dining room. The Tenant argued that the Landlord acted unreasonably in replacing the carpet rather than repairing it. The Landlord provided no evidence as to the extent of the discolouration in the carpet or any other evidence that would support his position that the carpet had to be replaced and could not be repaired as a result of the stains. Section 7(2) of the Act says that a Party who suffers damage or loss must take reasonable steps to minimize (or mitigate) their losses. In the absence of any evidence that the carpets could not be salvaged (or otherwise had no value) I conclude that the Landlord did not mitigate his damages and as a result, I find that he is only entitled to compensation for the reduced value of the carpets due to the discoloured spots which I assess at **\$300.00**.

As the Landlord has been successful on only a portion of his claim, I find that he may only recover one-half of the filing fee for this proceeding or **\$25.00** and therefore, the Landlord has made out a total monetary claim for \$750.00.

Section 24(2) of the Act says that if a Landlord does not complete a move in Condition inspection Report, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. I find however, that sections 38(4), 62 and

72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, ***I order the Landlord to keep \$750.00 from the Tenants' security deposit to compensate him for the monetary award. I order the Landlord to return the balance of the Tenant's security deposit with accrued interest to her as follows:***

Security Deposit:	\$1,050.00
Accrued interest:	<u>\$4.65</u>
Subtotal:	\$1,054.65
Less: Monetary award:	<u>(\$750.00)</u>
Amount Owing:	\$304.65

Conclusion

A Monetary Order in the amount of **\$304.65** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 22, 2011.

Residential Tenancy Branch