



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNSD, MNDC
Tenants: MNSD

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit. The tenants have applied for return of all or part of the pet damage deposit or security deposit.

The landlord and one of the named tenants attended the conference call hearing and the landlord and the tenants provided evidence in advance of the hearing. The parties gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on December 1, 2010, however the parties do not agree on the date the tenancy ended. The landlord testified that the tenancy ended on or about March 15, 2011 and the tenant testified that it was on February 19, 2011.

Rent in the amount of \$800.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$400.00. The landlord did not cause a move-in or a move-out condition inspection to take place.

The landlord testified that the unit was rented newly painted, with clean carpets and in "mint" condition. When the tenants moved out, the floor wasn't shampooed and remained stained, grease was left on the fridge and stove, the sliding door was water stained, and the tenant had damaged the kitchen counter by cutting on it leaving knife marks and a chip. It was also damaged enough that the landlord had to remove the chip to open the drawer and the counter fell on one side as a result. The landlord stated that the damages were shown to the tenants.

The landlord provided a receipt in the amount of \$100.00 for cleaning dated February 20, 2011 and one for \$168.00 for carpet cleaning, although the carpet cleaning receipt is not dated. The landlord also provided an estimate of \$560.00 to replace the counter dated March 10, 2011. The claims amount to \$828.00.

The landlord's application states that the tenants left the rental unit dirty, damaged the counter top and broke a light fixture and a chair, and the landlord's monetary claim amounts to \$868.00. No evidence was lead with respect to a broken light fixture or a broken chair.

The landlord further testified that the tenants provided the landlord with a letter that stated: "We broke the counter top. We gave you \$170.00, \$107.00 for the counter, \$13.00 for GST and \$50.00 for labor. We want to see receipts. We want \$230.00 of the deposit + \$50.00 for the filing fee within 15 days along with receipts." The landlord testified that the cleaning and carpet cleaning receipts were provided to the tenants along with the counter top replacement estimate and the landlord told the tenants that if they fixed the counter, the landlord would only keep \$268.00 of the \$400.00 security deposit. The tenants did not fix it, and the landlord is still willing. The landlord testified that a letter was sent to the tenants after they moved which has a different amount. The counter top didn't match, so it cost more. Further, shampooing didn't clean the carpets and the landlord had to get a professional carpet cleaner to have the stains removed.

The landlord also testified that the tenants provided a forwarding address in writing on February 25, 2011.

The tenant testified that they moved from the rental unit on February 19, 2011. The tenant admits that they broke the counter and agreed to pay the landlord \$107.00. The tenants want back \$230.00.

The tenant also testified the carpets had been cleaned when they moved by vacuuming, but did not shampoo or steam clean them. The tenants also feel that the landlord is charging too much for cleaning, and that 4 hours to clean a 1 bedroom rental unit is excessive.

The tenant also provided for the hearing a copy of a note that the landlord had given to the tenants stating that \$363.50 would be taken from the \$400.00 security deposit for:

- \$107.00 counter top
- \$13.00 Tax
- \$50.00 labor to install counter top
- \$33.50 shampoo machine and chemical
- \$20.00 labour 1 hour
- \$100.00 4 hour for cleaning the house @ \$25.00 per hour
- \$15.00 light fixture
- \$25.00 repair chair

Analysis

The *Residential Tenancy Act* states that a landlord is required to complete a move-in condition inspection report with the tenant before the tenant moves into the rental unit. The *Act* also states that a landlord must complete a move-out condition inspection report with a tenant at the end of a tenancy. If the landlord fails to do either of the reports, the landlord's right to claim against the security deposit for damages is extinguished. Therefore, I must find that the landlord has no right to claim against the security deposit in this case.

The *Act* also states that a landlord must return the security deposit in full to the tenants within 15 days of the date the tenancy ends or the date the tenants provide a forwarding address in writing, or the landlord must apply for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must pay the tenant double the amount of the security deposit. In this case, the landlord testified that the tenants provided a forwarding address in writing on February 25, 2011. The landlord also testified that the tenancy ended on March 15, 2011, however has provided a receipt for cleaning dated February 20, 2011, and the landlord filed an application for dispute resolution on March 23, 2011. Therefore, I find that the tenants' evidence is more reliable, and I find that the tenancy ended on February 19, 2011. The landlord did not return the security deposit and did not file for dispute resolution until March 23, 2011 which is beyond the 15 day period. Therefore, I find that the tenants are entitled to double recovery of the security deposit, or \$800.00.

The *Act* does not bar the landlord from applying for dispute resolution claiming damages. Further, the *Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and the tenants are required to repair any damages caused by the actions or neglect of the tenants or the tenants' guests. With respect to the damage claim by the landlord, I must also consider whether or not the landlord has satisfied the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What efforts the landlord made to mitigate such damage or loss.

Since the landlord lead no evidence of a broken chair or broken light fixture, the landlord cannot be successful for those claims.

With respect to the landlord's claim for carpet cleaning, I refer to Residential Tenancy Policy Guideline #1 which sets out the responsibility for residential premises for landlords and tenants. It states that at the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy. This tenancy lasted less than 3 months. The landlord testified that the unit was rented with clean carpets and in "mint" condition but failed to provide evidence of that with a move-in condition inspection report. The landlord has also failed to prove that the tenants left the unit in a state of cleanliness that was beyond normal wear and tear. Tenants are not required under the *Act* to leave a rental unit in pristine condition and therefore, I find that the landlord has failed to establish that the tenants are responsible for cleaning costs or carpet cleaning costs.

With respect to the counter top, I accept the landlord's evidence that the tenants had caused the damage; that evidence is not disputed by the tenant. The tenant, however, disputes the amount. The landlord testified that the piece did not match, and therefore, he could not use the counter top from the first estimate he received. I accept the evidence of the landlord and find that the tenants are responsible for the damages, and the landlord has established the cost associated with its replacement.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of these applications.

In summary, I find that the landlord owes the tenants \$800.00 and the tenants owe the landlord \$560.00. Pursuant to Section 72 of the Residential Tenancy Act, I find that the amounts should be set off from one another, and I hereby grant a monetary order in favour of the tenants for the difference of \$240.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$240.00 pursuant to Section 67 of the *Residential Tenancy Act*. 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: July 25, 2011.

Residential Tenancy Branch