



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damage to the rental unit and for compensation for loss; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that the female Tenant was served with the Notice of Hearing documents and copies of the Landlord's documentary evidence. Based on the Tenant's affirmed testimony, I am satisfied that both Tenants were sufficiently served.

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

The parties entered into a written tenancy agreement, but no copy was provided in evidence. The Landlord testified that the tenancy began on March 1, 2010. The Tenant testified that it began on April 1, 2010. The parties agreed that the tenancy ended on March 31, 2011.

A security deposit in the amount of \$900.00 was paid at the beginning of the Tenancy. The Landlord returned \$300.00 of the deposit and is holding the remaining \$600.00 pending outcome of today's Hearing.

There was no condition inspection of the rental unit performed by the parties at the beginning of the tenancy. The parties agreed that there was a condition inspection

performed at the end of the tenancy, however no copy of the report was provided in evidence.

The Landlord seeks compensation for strata fines in the amount of \$600.00 (\$200.00 a week for three weeks) for the Tenants' failure to remove lumber and debris from the rental property. The Landlord has not paid the fine and is attempting to negotiate a settlement with the strata corporation.

The Tenant disputes this portion of the Landlord's claim. He submitted that the lumber was stored on the rental property for the purposes of building a shed for storage, with the Landlord's knowledge and consent. The Tenant stated that they were told by the Landlord to tidy the area, not to remove the lumber. The Tenant testified that a friend of the Landlord's inspected the area after they tidied it and agreed that it was OK. The Tenant further submits that the Tenants were not warned that there would be fines until after they were already levied.

The Landlord seeks to recover the cost of shampooing the carpets at the end of the tenancy. The Landlord provided a copy of a receipt in the amount of \$212.80. She stated that the Tenants had "hoovered" the carpets, but did not steam clean them. The Landlord stated that the Tenants had two dogs and that there was dog hair imbedded in the carpets and pet stains. She stated that the stains were not visible at the inspection because a piece of carpeting was covering one area in front of a door and the other area was underneath a table.

The Tenant disputes this portion of the Landlord's claim. He submitted that there was no mention of the carpets needing cleaning on the move out condition report, or any clause in the tenancy agreement with respect to steam cleaning the carpets at the end of the tenancy. The Tenant testified that they shampooed the carpets at the end of the tenancy but did not steam clean them.

The Landlord seeks to recover the cost of replacing a damaged door at the rental unit. She testified that a panel was damaged during the tenancy and that the Tenants had made an unsatisfactory attempt to repair it. The Landlord has purchased a replacement

door and provided a copy of the receipt in the amount of \$227.36. She stated that she could return the door for a full refund if the Tenants acted on their promise to have a professional carpenter repair the original door and paint it the same colour.

The Tenant agreed that the Tenants were responsible for the damage to the door, and that they had told the Landlord they would fix it. The Tenant stated that it would have been done by now, but they had not been provided access.

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.

In this case, to prove a loss and have the Tenants pay for the loss requires the Landlord 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 Tenants 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 Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties had agreed that the Tenants would arrange for a professional carpenter to repair the damage to the door. With respect to this portion of the Landlord's application, I order that the Tenants hire and pay for a professional carpenter to repair the door and to paint the panel in the same colour, before August 25, 2011. The Landlord's application for a monetary award for replacing the door is dismissed **with leave to reapply** if the Tenants do not attend to the satisfactory repair before August 25, 2011.

I find that the Landlord has failed to establish her claim for recovery of the strata fine of \$600.00. The Landlord has not provided sufficient evidence that she demanded removal of the lumber within a certain time frame, or that there would be fines levied in the event it was not removed. Furthermore, the Landlord testified that she has not paid the fine and is still attempting negotiations with the strata corporation with respect to paying the fine. Therefore, she has not satisfied part 1 or part 2 of the test for damages and this portion of her application is dismissed **without leave to reapply**.

Residential Tenancy Policy Guideline #1 sets our responsibilities of tenants regarding cleaning of the rental unit at the end of a tenancy. With respect to carpets, the guideline states:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. 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 tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The Tenant submitted that there was no mention of the need for shampooing or steam cleaning the carpets on the condition inspection report. The Landlord did not dispute this, but stated that the condition of the carpet was not apparent at the move out inspection because of placement of a carpet over some pet stains. She stated that she attempted to remove the pet stains, but that they did not come out and during her attempt it became apparent that there was a considerable amount of dog hair left in the

carpet. She stated that she had to steam clean the carpet in order to remove the hair and the stains.

Residential Tenancy Regulation 21 provides that a condition inspection report is evidence of the condition of the rental unit on the date of inspection, unless there is a preponderance of evidence to the contrary. Based on the testimony of both parties, the provisions of Guideline #1, and on the balance of probabilities, I find that the Landlord has established her claim for the cost of steam cleaning the carpets and this portion of her application is granted in the amount of **\$212.80**.

The Landlord has been partially successful in her application and is entitled to recover a portion of the cost of the filing fee, in the amount of **\$25.00**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply a portion of the residue of the security deposit in satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit. The balance of the security deposit must be returned to the Tenants forthwith.

I hereby provide the Tenants with a Monetary Order against the Landlord, calculated as follows:

Residue of security deposit held by Landlord	\$600.00
TOTAL AMOUNT DUE TO THE TENANTS	\$362.20

Conclusion

The Landlord's application for a monetary award for replacing the door is dismissed **with leave to reapply** if the Tenants do not attend to the satisfactory repair before August 25, 2011.

The Landlord's application for recovery of strata fines in the amount of \$600.00 is **dismissed without leave to reapply.**

The Landlord has established a monetary award in the amount of \$237.80, representing recovery of the cost of steam cleaning the carpets and ½ of the filing fee. I hereby provide the Tenants a Monetary Order in the amount of **\$362.20** for service upon the Landlord, representing return of the balance of the security deposit after setting off the Landlord's monetary award. This Order 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: July 27, 2011.

Residential Tenancy Branch