



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for unpaid rent, 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 rent arrears 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 fixed term tenancy started on September 1, 2009, expired on July 31, 2010 and was renewed for a further one year term ending on July 31, 2011. The Tenant moved out on April 30, 2011. Rent was \$2,000.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 at the beginning of the tenancy.

The Landlord said that in the Spring of 2011 she advised the Tenant that she wanted to move into the rental property and the Tenant was fine with that. The Landlord said she had a good relationship with the Tenant and she was willing to wait until the fixed term tenancy ended on July 31, 2011. The Landlord said she also advised the Tenant that he could move into the lower suite of the rental property after that time if he wanted to. The Landlord said the Tenant advised her that he had found another residence for May 1, 2011, he agreed to end the tenancy early and they signed a Mutual Agreement to End the Tenancy on April 20, 2011. The Landlord said that the Tenant refused to pay rent for April, 2011 as it was his view that he was entitled to withhold his last month's rent as compensation for ending the tenancy early.

The Tenant said he believed that once the Landlord advised him that she wanted the rental property back that he had no choice but to move out. The Tenant said he was unaware that the Landlord could not end a fixed term tenancy early so that she could reside there. The Tenant agreed that the Landlord did not give him a written Notice to End the Tenancy.

The Parties completed a move in condition inspection report on September 25, 2009 and a move out condition inspection report on May 2, 2011. The Landlord said she contacted the Tenant and his spouse a couple of times prior to the end of the tenancy and was told by the Tenant's spouse that she thought the Tenant had arranged for carpet cleaning. The Landlord said she sent the Tenant some names of carpet cleaners however he misunderstood and believed that she was going to arrange to have the carpets cleaned. The Landlord said she only discovered on April 29, 2011 that the carpets had not been cleaned. Consequently, the Landlord said she had to find someone on short notice to clean the carpets at a cost of \$476.00. The Landlord admitted that this cost was higher than she expected, however she argued that 75% of the rental unit (which is 3,000 square feet in area) was carpeted including 5 bedrooms, 2 living rooms, hallways and 2 sets of stairs.

The Tenant argued that the carpets were reasonably clean at the end of the tenancy however he admitted that they appeared cleaner or "almost new" once they had been professionally cleaned than they appeared at the beginning of the tenancy. The Tenant further argued that the cost of the carpet cleaning was excessive and he claimed that \$99.00 to \$160.00 would have been reasonable based on verbal quotes he received.

The Landlord also claimed that the Tenant damaged a carpet in the living room of the lower suite and that as a result it had to be replaced. In particular, the Landlord said the carpet had two large spots of dark nail polish on it at the end of the tenancy that could not be removed. The Landlord admitted that the carpet was installed new in 1998 and was worn at the beginning of the tenancy.

The Landlord said that the rental unit was freshly painted at the beginning of the tenancy with the exception of one room in the lower suite which did not require painting. The Landlord admitted that the walls of this room had some small holes that needed to be filled and painted over but she claimed that it was otherwise in good condition. The Landlord said the Tenant wanted to repaint this room which she agreed he could do, however he failed to cut in the paint properly on the edges with the result that 2 different colours of paint were showing. The Landlord estimated that it would cost \$450.00 for supplies and labour to repaint this room.

The Tenant said that there were some marks on the walls in addition to the small holes which he said led him to believe that a previous tenant may have had a cat (which the Landlord denied). As a result, the Tenant said he wanted the room in the lower suite to be freshly painted and offered to do it. The Tenant admitted that he did not properly cut in the paint on the edges but argued that he offered to return to the rental unit to correct this (which the Landlord denied). In any event, the Tenant argued that the whole room did not have to be repainted but that only the areas that had not been cut in properly needed to be touched up.

The Landlord said the Tenant did not leave the rental unit reasonably clean at the end of the tenancy with the result that she and her spouse each spent 16 hours doing additional cleaning. In particular, the Landlord said the Tenant did not clean the floors, walls, blinds, cupboards and stoves and ovens. Consequently, the Landlord sought to be compensated \$500.00 for her and her spouse's labour.

The Tenant argued that the rental unit was reasonably clean at the end of the tenancy but that the Landlord wanted to bring it up to a higher standard. The Tenant said he cleaned the rental unit thoroughly at the end of the tenancy but admitted that the oven in the lower suite may not have been cleaned.

The Landlord also claimed that the Tenant removed stovetop element rings and pans from the rental unit and that she incurred expenses of \$36.55 to replace them. The Landlord also sought to recover the cost of photographs of the rental unit in the amount of \$11.42.

Analysis

Section 49(3) and (7) of the Act says that if a Landlord wants to end a tenancy early in order to reside in a rental unit, a Landlord must give a Tenant a 2 Month Notice to End Tenancy on a form approved by the Residential Tenancy Branch. A Tenant has a right under s. 49(8) of the Act to dispute such a Notice in cases, for example where they have a fixed term tenancy. Section 49(2)(c) of the Act says that a Landlord may not end a fixed term tenancy prior to the end of the fixed term. If a tenancy ends as a result of a Tenant receiving an enforceable 2 Month Notice to End Tenancy, a Tenant is entitled to compensation equal to one month's free rent and to that end may withhold their last month's rent. In summary, in order to be entitled to receive one month's compensation under this section of the Act, a Tenant must be served with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

I find that the Tenant was not given a 2 Month Notice to End Tenancy for Landlord's Use of Property. I also find no evidence that the Landlord demanded that the Tenant end the fixed term tenancy early. Instead, I find that the Tenant knew that the tenancy would end at the end of the fixed term and began looking for another residence with he and his spouse acquired for May 1, 2011. Consequently, without even having regard to the Parties' written Mutual Agreement to End the Tenancy dated April 20, 2011, I conclude that this tenancy ended early by the agreement of the Parties. As a further consequence, I find that the Tenant was not entitled to withhold his rent for April 2011 as compensation and that the Landlord is entitled to recover the unpaid rent for that month in the amount of **\$2,000.00**.

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that

occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.”

RTB Policy Guideline #1 at p. 2 says that a Tenant will generally be responsible for cleaning carpets after a tenancy of a year or more. The Tenant argued that he was not responsible for carpet cleaning because each term of his 2 tenancy agreements had been for successive periods of less than one year. The Tenant admitted that he had resided in the rental unit for a continuous period of 19 months and that he was aware that under the terms of the tenancy agreement, he was required to have the carpets professionally cleaned at the end of the tenancy. Consequently, I find that the Tenant was responsible for cleaning the carpets at the end of the tenancy. The Tenant also argued that the amount claimed by the Landlord was excessive and claimed that they could have been done for considerably less. However, the Tenant’s estimates were based on telephone quotes which are hearsay and unreliable. In the absence of any reliable evidence (such as written estimates) that the carpets throughout the rental unit could have been cleaned for substantially less, I find that the Landlord is entitled to recover her carpet cleaning expenses of **\$476.00**.

The Landlord sought to recover the replacement cost of a carpet in the lower suite of the rental property that she said was damaged by the Tenant. The Landlord admitted that this carpet would have been 13 years of age at the end of the tenancy and was worn. RTB Policy Guideline #37 at p. 16 (Table 1) says that the useful life of a carpet is 10 years. As a result, I conclude that there was already damage to the carpet as a result of years of wear and tear and that the carpet would have had no depreciable value in any event given that it had exceeded its useful lifetime. Consequently, I find that the Landlord is not entitled to recover compensation for replacing this carpet and that part of her claim is dismissed without leave to reapply.

RTB Policy Guideline #1 at p. 2 says that any changes to a rental unit not explicitly consented to by the Landlord must be returned to the original condition. If a tenant does not return the rental unit to its original condition before vacating, the Landlord may do so and claim the costs against the tenant. The Parties agree that the Landlord gave the Tenant her consent to paint one of the rooms in the lower suite and that the Tenant did so but failed to properly cut in the paint on the edges as it had previous been done. The Landlord also claimed that other sections of the walls had had a different color showing though and that the entire room must be repainted however the Tenant argued that only touch ups were necessary. The Landlord’s photographs show that while the edges of the rooms clearly need to be painted, there are other sections of the walls where the underlying paint shows though. Consequently, I conclude that the whole room will likely need one more coat of paint, however I find that \$450.00 for one room is excessive and instead I award the Landlord **\$270.00** (which represents supplies of \$70.00 and 4 hours of labour at \$50.00 per hour).

The Landlord also sought expenses of \$500.00 for time she and her spouse spent cleaning the rental unit. The Tenant argued that the rental unit was reasonably clean at the end of the tenancy. The Landlord claimed that the Tenant had not wiped out dirt

and debris from cupboards, light fixtures, window covers, some floors, baseboards and 2 stoves which is indicated on the move out condition inspection report and also apparent in the Landlord's photographs. The Landlord argued that this amount was reasonable given that it was within a price range set out in written quotes from professional cleaners to clean *the entire* rental unit. I find that these quotes have limited usefulness as the entire rental unit did not need to be cleaned but rather only those deficiencies noted on the condition inspection report. For the same reason, I find that a total of 32 man-hours is excessive and should not reasonably have been required to address those cleaning deficiencies. Instead I find that a maximum of 16 hours should have been sufficient to bring the cleanliness of the rental unit up to a reasonable standard. Consequently, I award the Landlord **\$240.00** (or 12 hours x \$20.00/hour) for her time.

In the absence of any contradictory evidence from the Tenant, I find that the Landlord is entitled to recover expenses of **\$36.55** to replace stovetop element rings and pots that were missing at the end of the tenancy. I also find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the **\$50.00** filing fee for this proceeding. However, I find that there is no authority under the Act to award the Landlord her costs for providing photographic evidence and that part of her claim is dismissed without leave to reapply. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$1,000.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

| | |
|-------------------------|-----------------|
| April 2011 Rent: | \$2,000.00 |
| Carpet Cleaning: | \$476.00 |
| Painting: | \$270.00 |
| General Cleaning: | \$240.00 |
| Stove Rings/Pots: | \$36.55 |
| Filing Fee: | <u>\$50.00</u> |
| Subtotal: | \$3,072.55 |
| Less: Security Deposit: | (\$1,000.00) |
| Accrued Interest: | <u>(\$0.00)</u> |
| Balance Owing: | \$2,072.55 |

Conclusion

The Tenant stated in his written submissions that he wished to pursue a claim at the hearing for compensation for a breach of contract and quiet enjoyment and the return of his security deposit. However the Tenant did not file an application for dispute resolution and as a result, I am unable to consider these claims during this proceeding.

A Monetary Order in the amount of **\$2,072.55** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: August 24, 2011.

Residential Tenancy Branch