



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application requires a detailed calculation of the amount claimed. The landlord's application indicated a claim for damage in relation to carpet cleaning, repairs for damage in bedroom a door frame and "etc." The landlord was asked to clarify the claim made; he indicated that carpet cleaning, oven cleaning and wall repair costs exceed the amount claimed against the deposit; these items were considered during the hearing as the basis of the amount claimed.

Issue(s) to be Decided

Is the landlord entitled to retain the deposit to cover the costs of carpet cleaning and repair to the unit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on June 4, 2022, a deposit in the sum of \$375.00 was paid; the tenant vacated the unit on June 1, 2011. Move-in condition inspection reports were not completed in 2002; there was a move-out condition inspection report completed on

May 31, 2011, both parties were present. The inspection report included the tenant's forwarding address; the landlord applied claiming against the deposit on June 3, 2011.

A copy of the tenancy agreement and condition inspection report were supplied as evidence.

The tenant did not sign the report on May 31, 2011, as she was not sure if that would have indicated her agreement. The tenant stated they did discuss the oven and the carpets, but that once the landlord provided her with a copy of the report; as part of his application made within 15 days of May 31, 2011, she noticed the report included items they had not discussed during the inspection.

The landlord supplied a copy of a carpet cleaning receipt issued on June 6, 2011 in the sum of \$301.60. The parties agreed that the tenant had had the carpets cleaned on January 22, 2011. The landlord stated the carpets were left dirty and of good quality and should have been cleaned. The landlord supplied photographs of the carpet which showed wear and soiling. The landlord stated these were new carpets at the start of the tenancy.

The tenant's carpet cleaning invoice indicated that all areas of the carpet were soiled and worn down and that after cleaning they looked much better.

The landlord submitted photographs that showed 2 holes bedroom walls and the oven, which had not been cleaned. The balance of the landlord's claim was in relation to the damage to the walls. A June 11, 2011, invoice in the sum of \$1,160.00, issued by the landlord's agent for work completed to the unit, included repair costs to the walls.

The tenant stated they did not damage the bedroom walls and that they did not discuss these items at the end of the tenancy.

The tenant provided photographs taken of the oven during the inspection; the photos showed 3 views of the interior of the oven, including side walls. The landlord provided a photograph of the top of the oven, which showed some need for cleaning.

The landlord agreed he altered the inspection report to include items that had been missed during the May 31, 2011, inspection.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord

The inspection report should reflect the condition of the rental unit at the end of the tenancy. As required by the Regulation, the tenant was served a copy of the report within 15 days, but the report included items that had not been recorded during the inspection. Therefore, I find the report is of little value, as any damage included on the report should be recorded during the inspection.

The landlord did supply photographic evidence that there was damage to the unit. There were 2 holes in bedroom walls; one appeared caused by either being shoved or punched and the second appeared to have been purposely cut in the wall.

The tenant denied any knowledge of this damage and stated she did not cause the damage. However, I find, on the balance of probabilities, that these holes would not have been present throughout a tenancy that lasted 9 years, without the tenant having requested the landlord make repairs. I found the landlord's testimony, combined with the photographs, more convincing.

In the absence of a detailed invoice that calculated costs for each repair made, I find that the landlord is entitled to nominal costs for the wall repair in the sum of \$100.00.

Residential Tenancy Branch policy suggests that carpets have a useful lifespan of 10 years; the carpets are now almost 10 years old. The cleaning bill submitted by the tenant included notes that the carpet was showing signs of wear. Section 37 of the *Act* requires a tenant to leave a unit reasonably clean.

After considering the photographs, the cleaning of the carpets just 4 months prior to vacating and the notes included on the tenant's invoice, I find that the carpets were not able to be restored to a state that did not appear worn and well-used. Therefore, I find that the tenant left the carpets reasonably clean and dismiss the claim for carpet cleaning costs. Further, the tenancy agreement submitted as evidence did not include a term that required carpet cleaning at the end of the tenancy.

I find, on the balance of probabilities, that the tenant did clean the oven. The photographs submitted by the tenant showed the interior to be reasonably clean; the side and bottom of the oven did not show any visible signs of being unclean. The photograph submitted by the landlord was of the roof of the oven and while there were some marks, I find the oven was reasonably clean and that compensation is not due to the landlord.

I find that the landlord's application has some merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$150.00 in satisfaction of the claim made.

Residential Tenancy Branch policy suggests when a landlord claims against the deposit any balance remaining should be Ordered returned to the tenant; I find this a reasonable stance. Therefore, I find that the tenant is entitled to return of the balance of the deposit; \$225.00 plus interest in the sum of \$13.29.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$150.00, which is comprised of \$100.00 in damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$150.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the deposit plus interest in the sum of \$239.29. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: September 08, 2011.

Residential Tenancy Branch