

DECISION

Dispute Codes:

Landlord's application filed June 6, 2011: MND; MNSD; FF

Tenant's application filed June 10, 2011: MNSD; O; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for damages to the rental unit; to apply the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that he probably sent the Notice of Hearing documents to the Tenant by mail. The Tenant acknowledged receiving the Landlord's Notice of Hearing documents, by mail, on June 28, 2011. The Landlord testified that he did not provide the Tenant with copies of his documentary evidence.

The Tenant testified that she provided the Landlord with her Notice of Hearing documents and copies of her documentary evidence, by handing the documents to the building manager at the rental property, on June 13, 2011. The Landlord's agent did not dispute this.

I am satisfied that the Landlord was served with the Tenant's documentary evidence in accordance with the provisions of Section 89(1)(b) of the Act. The Landlord did not serve the Tenant with copies of its documentary evidence, and therefore I have not referred to those documents when reaching my decision. I invited the Landlord's agent to provide me with affirmed testimony with respect to the Landlord's application.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?
2. Is the Tenant entitled to return of her security deposit?

Background and Evidence

The parties agreed on the following facts:

- This was a one year term tenancy which ended on June 1, 2010.
- Monthly rent was \$1,900.00, due on the first day of each month, and included hot water but not electricity.
- The Tenant paid a security deposit in the amount of \$950.00 at the beginning of the tenancy.

The Landlord's agent provided the following testimony:

The parties performed a move out inspection at the end of the tenancy, but the Tenant did not agree to the damages listed on the report. The Landlord's agent stated that the rental unit was relatively new at the beginning of the tenancy. He testified that the Tenant scratched the ceramic stove top and stated that it appeared as if it had been cleaned with steel wool. The stove was only 18 months old, but the stovetop had to be replaced. The Landlord's agent testified that it was a high end stove and it cost \$478.58 for the parts and \$168.00 to install the new stove top.

The Landlord's agent testified that the Tenant had attempted to repair a wall by applying drywall filler and then painting over it. The Landlord's agent stated that the Tenant tried to fix the wall, but actually made it worse and that painting over the filler without properly sanding it down caused the Landlord to have to completely redo the wall. The Landlord's agent stated that the bathroom smelled strongly of cigarette smoke. He stated it was a non-smoking suite and that the bathroom walls and ceiling had to be treated with smoke-killer and repainted. The Landlord's agent testified that it cost \$504.00 for the drywall repair and paint.

The Landlord's agent testified that the tenant left double sided tape on the refrigerator. He stated that after repairing the wall, the drywall dust had to be cleaned up. The Landlord's agent seeks a monetary award in the amount of \$100.00 for his labour in removing the sticky tape and cleaning up the drywall dust.

The Landlord's agent testified that the Tenant did not shampoo the carpets at the end of the tenancy and seeks to recover that cost, in the amount of \$75.00

The Tenant provided the following testimony:

The Tenant stated that there were a few minor scratches on the stove top, but that it was normal wear and tear. The Tenant testified that the stove top was fully functional and that the scratches were cosmetic only. She testified that she did not use steel wool on the ceramic stove top and did not intentionally damage it. The Tenant provided a photograph of the ceramic stove top in evidence.

The Tenant testified that she tried to repair the walls after removing decorative stickers. She stated that originally, the Landlord's agent had told her that it would cost \$200.00 for paint touchups, which she thought was reasonable. The Tenant denied smoking in the bathroom but stated that she burned incense on a daily basis. The Tenant declared that she is a child care giver and that she does not smoke.

The Tenant testified that there was a small amount of residue left on the fridge after she removed a child safety latch, but that she had removed approximately 95% of the glue. The Tenant agreed that she did not shampoo the carpet and stated that she felt \$75.00 was a reasonable amount.

Analysis

The Landlord is claiming for damage or loss under the Act and therefore the Landlord has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy 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 Tenant in violation of the Act,
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 Landlord stated that the Tenant damaged the stove top to the extent that it needed replacement. The Tenant denied this allegation and provided a photograph in evidence. The Landlord's documentary evidence was excluded because he did not serve the Tenant with copies. Therefore, I find that the Landlord has failed to satisfy the element 1, 2 and 3 of the four part test above and dismiss this portion of the Landlord's claim.

The Landlord did not provide proof of the cost of repairing and painting the walls and ceilings. The Tenant agreed that she caused some cosmetic damage to the wall, but stated that she felt \$200.00 was a reasonable. She also agreed that she had not shampooed the carpets and agreed that \$75.00 was a reasonable price. Therefore, I allow this portion of the Landlord's claim in the total amount of **\$275.00**.

Based on the testimony of both parties, and on the balance of probabilities, I find that there was some cleaning to do after repair of the drywall and that there was some sticky residue on the fridge. Therefore, I provide the Landlord with a nominal amount for the cost of cleaning the rental unit in the amount of **\$50.00**.

The Landlord has established a total claim in the amount of \$325.00. Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may deduct **\$325.00** from the security deposit.

The remainder of the security deposit in the amount of **\$625.00** must be returned to the Tenant forthwith. No interest has accrued on the security deposit.

Both parties have been partially successful in their applications and I find that they should each bear the cost of their filing fees.

Conclusion

I find that the Landlord has established a monetary award in the amount of \$325.00 against the Tenant. The Landlord may deduct \$325.00 from the security deposit.

I hereby provide the Tenant with a Monetary Order in the amount of **\$650.00**, representing return of the residue of the security deposit, for service upon the Landlord. This Order may be filed in the Provincial Court 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 19, 2011.

Residential Tenancy Branch