



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This month-to-month tenancy started on August 5, 2009 and ended on July 31, 2011. The tenants paid monthly rent of \$1875.00, 2/3 of the utilities and paid a security deposit of \$950.00.

Both parties have disputed that service requirements were met in regards to evidence served and both parties because of this requested that the other parties evidence not be accepted and referred to for this hearing. The landlord denied the request to adjourn the hearing for service of the tenant's evidence.

The landlords stated that the tenants did not pay the final utility bill and owe the landlord \$248.00.00 for unpaid utilities. The tenant did agree with the landlord's claim that there was \$248.00 in unpaid utilities.

The landlord testified that when the tenants vacated the rental unit they discovered damage throughout the rental unit and that the unit required extensive cleaning. The landlord stated that the fridge had leaked causing extensive damage to the hardwood floor and that he would have had the fridge repaired if the tenants had told him about the leak during their tenancy.

The landlord stated that the tenants had not used the shower curtain properly causing water damage to the ceiling in the rental unit below and that the carpet in the 'art room' was stained and the walls dirty. The landlord also stated that the tenants had not

thoroughly cleaned the rental unit and that behind the fridge and stove it was very dirty, 2 kitchen cabinet doors were damaged and the kitchen floor and stove and curtains were all dirty and greasy from the tenants frying food.

The landlord stated there was extensive damage to the door frame to the back yard caused by water ingress, that the tenants never informed them of this problem and that the door frame now needs to be replaced.

The landlords is claiming \$168.00 for cleaning costs as well as \$1,316.00 as estimated cleaning costs for more cleaning to be done and stated that he did not have additional receipts as he had completed the cleaning himself. The landlord testified that he moved into the unit in August but that he had not finished all the cleaning yet nor had all of the repairs been completed. The landlord has occupied the rental unit as of mid August 2011.

The tenant stated that he had pointed out the fridge leak to the landlord months ago but that the landlord never took any steps to address the leak. The tenant denied causing water damage from showering and insisted that the water damage was due to failed caulking in the shower. The landlord countered this testimony by stating that the water had leaked down the wall into the lower unit and not through the caulking in the shower.

The tenant stated that they spent 3 hours cleaning and that the rental unit was clean when they vacated. The tenant stated that they had the carpet professionally cleaned, that they have submitted a receipt reflecting this and if there had been red spots on the carpet they would have cleaned them. The tenant stated that the landlord's \$1316.00 estimate for cleaning costs was excessively high and that he believed that this cost should be more like \$180.00.

The tenant stated that they rarely used the back door that the landlord now claims is damaged due to their negligence and that you can only see the damage to the door frame when the door is open. The tenant stated that as the landlord worked in the back yard for some time he should have noticed this damage himself and addressed it accordingly.

The tenant stated that the items in the house were past their useful life as the house was built in 2002. The tenant insisted that if the landlord had let them back into the unit that they could have addressed any issues the landlord now raises and that he did not believe that the landlord's claim was truthful. The tenant then went on to state that this application was all a strategy by the landlord to get more money. The landlord responded by stating that the house had sat empty for 2 years and had previously been occupied by an older couple with no young children and that the rental unit had been in very good condition when the tenant's took possession.

The landlord stated that he tried to arrange a move-out inspection with the tenants but that the tenants would not make themselves available. The tenant directly refuted this

claim insisting that it was the landlord who became unreasonable and refused to complete the move-out inspection.

Both parties were very argumentative during the hearing and continually refuted each other's testimony and accused each other of being untruthful.

Analysis

In regards to the late evidence that the parties served upon each other, this evidence has not been used in determining the landlord's claim. RTB Rules of Procedure 3.5 and 4.1 speaks to evidence served by the parties:

- a) *Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.*

RTB Rules of Procedure Definitions Days, speaks to:

Days in the calculation of time expressed as "at least" a number of days, the first and last days must be excluded. If the date the document, notice or evidence must be served or given falls on a weekend or holiday, and it must be

- Served on a business, or
- Filed in an office,

then it must be served or filed on the previous business day. If the document or notice must be provided to the Residential Tenancy Branch, weekends and holidays are not included in the calculation of days.

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a limited amount of compensation for cleaning costs and damage to the rental unit.

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property the tenant has access to and that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant. Tenants are required to maintain the standards set out in the Act however tenants are not required to make repairs for reasonable wear and tear.

Consideration must also be given to the fact that the landlord has occupied the rental unit as of mid August and whether or not cleaning of the suite is still required and what repairs will ultimately be completed.

I accept the landlord's testimony that he would have addressed the fridge leak had the tenant pointed the leak out to him. However as the floor is at least 9 years old and the life expectancy for flooring is no more than 10 years, the landlord is entitled to compensation in the limited amount of **\$125.00**.

I find that the damage to the back door is a maintenance issue and as the tenants did not typically use this door that they may not have observed the water damage. Therefore this portion of the landlord's claim is dismissed without leave to reapply.

I accept the landlord's testimony that the damage to the kitchen cabinets is beyond normal wear and tear and the Policy Guidelines reflect the life expectancy of cabinets to be 25 years, therefore the landlord is entitled to **\$100.00** compensation.

I accept the landlord's testimony that the carpet in the art room remained stained even though it was professionally cleaned by the tenants and the Policy Guidelines reflect the life expectancy of carpets to be 10 years, therefore the landlord is entitled to compensation in the limited amount of **\$100.00**.

I accept the landlord's testimony that the unit needed cleaning however I find the estimate of \$1316.00 inflated and unlikely. Therefore the landlord is entitled to compensation in the limited amount of **\$300.00** for cleaning as well as the out of pocket cleaning expense of **\$168.00**.

I accept the landlord's testimony that utilities in the amount of **\$248.00** remain unpaid.

Calculation of Monetary Award

Flooring repair	\$125.00
Damaged carpet	\$100.00
Cleaning estimated	\$300.00
Cleaning paid	\$168.00
Utilities	\$248.00
Filing Fees for the cost of this application	\$50.00
Less Security Deposit and interest	- \$ 950.00
Total Monetary Award	\$ 141.00

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$1091.00 in cleaning costs and damages. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$950.00 security deposit

in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$141.00**.

If the amount is not paid by the tenant(s), 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: November 2, 2011.

Residential Tenancy Branch