



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 matter dealt with an application by the Landlord for compensation for unpaid utilities, for a loss of rental income, 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 utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 15, 2009. On January 9, 2011, the Parties executed a fixed term tenancy agreement for the period, February 1, 2011 to August 31, 2012, at a rental rate of \$2,450.00 per month payable in advance on the 1st day of each month. On July 4, 2011, the Parties executed an agreement to end the tenancy on August 31, 2011 because the Landlord received an offer to purchase the rental property (which later did not complete). The tenancy ended on August 31, 2011 when the Tenant moved out. The Tenant paid a security deposit of \$1,325.00 at the beginning of the tenancy.

The Landlord said the Tenant has unpaid utilities in the amount of \$71.96. The Tenant did not dispute this amount but claimed that the Landlord did not provide her with a copy of the billing invoice until she received his evidence package approximately one week ago. The Tenant also did not dispute the Landlord's claim of \$44.79 to replace a garage door opener and for \$290.00 for carpet cleaning.

The Parties did not complete a move in condition inspection report. Instead at the beginning of the tenancy, the Tenant and an agent for the Landlord initialled a written list with a preamble that states, "items noted when house was rented out to current tenant December 15, 2009." The Parties completed a move out condition inspection report on September 2, 2011.

The Landlord claimed that he had new tenants ready to move into the rental unit on August 31, 2011 at 1:00 p.m., however, the Tenant did not vacate the rental unit until 9:00 p.m. and left the rental unit with damages and in need of cleaning. Consequently, the Landlord said it took approximately 2 weeks to clean up the rental property and make repairs before the new tenants could move in and as a result, he lost rental income for the period, September 1 – 14, 2011. The Tenant claimed that she vacated the rental unit at 5:00 p.m. with the consent of the Landlord.

The Landlord said the Tenant left some personal belongings behind in the rental unit and did not leave the rental unit reasonably clean and as a result, he incurred expenses of \$380.80 to have the rental unit professionally cleaned. The Landlord said the cleaners initially came on August 31, 2011 but had to return on September 2, 2011 and were cleaning during the move out inspection. The Tenant denied that the rental unit was not reasonably clean at the end of the tenancy. The Tenant said the Landlord had the rental property listed for sale and had in the previous 7 weeks the same cleaners attend on a weekly basis to ensure that the rental unit was presentable for open house showings. Consequently, the Tenant argued, there would have been little if anything left to clean (other than the floors) by the end of the 7 week period when she vacated.

The Landlord said that at the beginning of the tenancy, the carpet in the rental unit was 2 years old and in good condition but at the end of the tenancy, there was damage to the family room carpet that could not be repaired. The Landlord said he initially thought that the damage could be removed by carpet cleaning but later discovered that the carpet fibres had been burned and melted. Consequently, the Landlord sought to recover the cost to replace this carpet. The Landlord also said that the laminate flooring in a guest room appeared to have water damage and he sought to recover the cost to replace it. The Landlord further claimed that the Tenant stained a bathroom vanity counter top and he sought to recover compensation for the cost to replace it.

The Tenant admitted that the family room carpet was in good condition at the beginning of the tenancy and that she was responsible for the damaged section which she said was burned by a blow dryer. The Tenant argued that the amount sought by the Landlord to replace the carpet in the family room (which she claimed is 120 square feet in area) was unreasonable given that she recently found the same carpet on sale for \$1.29 per square foot and underlay at \$0.49 a square foot. The Tenant denied that there was any damage to the laminate in a guest room. The Tenant said she had no knowledge of the stain to the bathroom countertop and believed it may have existed at the beginning of the tenancy.

Analysis

As there is no dispute about the Landlord's claim for unpaid utilities of **\$71.96**, for a garage opener of **\$44.79** and **\$290.00** for carpet cleaning, I find that he is entitled to recover those amounts.

I find that there is insufficient evidence to support the Landlord's claim for a loss of rental income for 2 weeks. Section 37(1) of the Act says that "unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the date the tenancy ends." I find that it is irrelevant whether the Tenant vacated the rental unit on August 31, 2011 at 5:00 p.m. as she claimed or at 9:00 p.m. as the Landlord claimed. The Act requires that the Tenant vacate at 1:00 p.m. and I find that the Landlord did not consent to the Tenant moving out later because he had new tenants waiting to move in that day.

Section 37(2) of the Act says that at the end of the tenancy, the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. However, I find that there is little evidence that the new tenants could not move in until September 15, 2011 because the Landlord had to do cleaning and repairs on behalf of the Tenant. The Landlord admitted that the rental unit was cleaned on September 2, 2011. I find that there is insufficient evidence to support the Landlord's claim for cleaning expenses. Nothing is stated in the move out condition inspection report about the rental unit being unclean and the Landlord provided no other reliable evidence in support of that allegation. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Tenant said she arranged to have carpet cleaners clean the carpets on September 7, 2011 but was later advised by the cleaning company that the Landlord had rescheduled the cleaning for September 9, 2011. The Landlord admitted that the repairs to the carpet, laminate and bathroom vanity have not yet been completed. Consequently, I find that the only thing that prevented the new tenants from moving in on September 1, 2011 was the carpet cleaning and therefore I conclude that if the Landlord had not rescheduled the cleaning for September 9, 2011, the new tenants could have taken possession on September 8, 2011. As a result, I find that the Landlord is entitled to a loss of rental income for 7 days in the pro-rated amount of **\$571.67**.

I find that there is no evidence of damage to the linoleum in a guest room as alleged by the Landlord. The move out condition inspection report alleges no such damages. Although the Landlord claimed that he discovered this damage after the move out inspection, he provided no other evidence of it even though he provided photographs of other alleged damages. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

I further find that there is insufficient evidence that the Tenant stained a bathroom vanity counter top. Although the Landlord claimed that the list of damages initialled by the Tenant at the beginning of the tenancy was a move in condition inspection report, I find that it is not. In particular, section 20 of the Regulations to the Act sets out the information that **must** be included in a condition inspection report in order for it to be valid. One of the items that must be included is a statement of the state of repair and general condition of each room in the rental unit. I find that the Landlord's list of damages does not comply with the Act and Regulations and as a result, I give it little weight. In the absence of any reliable evidence as to the condition of the bathroom vanity at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the Tenant was responsible for the damage to it and as a result, that part of the Landlord's claim is dismissed without leave to reapply.

The Parties agree that the Tenant was responsible for damaging a section of the carpet in the family room of the rental unit. The Landlord relied on a quote of \$1,200.00 for materials to install 25 square yards or 625 square feet of carpet and underlay. The same quote stated that it would cost a total of \$350.00 to remove the carpeting, laminate and vanity. Although the Tenant claimed that the cost to replace the carpet was unreasonable, she provided only hearsay evidence of what she claimed it should cost to replace the carpet. The Tenant provided no evidence of what it would cost for labour to remove the damaged carpet or to install the new carpet and underlay. In the absence of any reliable evidence to the contrary from the Tenant, I find that the Landlord's evidence is the best evidence. However, I accept the Tenant's evidence that the family room would require only 125 square feet of carpeting and not 625 square feet as set out in the Landlord's estimate.

As a result, if the cost to install 625 square feet of carpet is \$1,200.00 or \$1.92 per square foot, then I find that it would cost \$240.00 for an area 125 square feet. Furthermore, section 37 of the Policy Guidelines says that the useful lifetime of a carpet is 10 years. Consequently, any monetary award granted to the Landlord must also take into account that the damaged carpet was 4 years old at the end of the tenancy. As a result, I award the Landlord the depreciated cost of the new carpet or 60% of the replacement value of \$240.00 or **\$144.00** plus **\$100.00** for the cost to remove the damaged carpet. As the Landlord has been unsuccessful in recovering over \$5,000.00, I find that he is entitled pursuant to s. 72 of the Act to recover from the Tenant one half of the filing fee he paid for this proceeding or **\$50.00**.

Section 23 of the Act requires a landlord to complete a move in condition inspection report at the beginning of a tenancy that complies with the Regulations and to provide a copy of it to the tenant. In failing to complete a move in condition inspection report at the beginning of the tenancy, I find the Landlord contravened s. 23 of the Act. Consequently, s. 24(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages to the rental unit is extinguished.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it

is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep part of the Tenants' security deposit in full satisfaction of the monetary award. The Tenant will receive a Monetary Order for the balance owing as follows:

Loss of rental income:	\$571.67
Unpaid Utilities:	\$71.96
Garage door opener:	\$44.79
Carpet Cleaning:	\$290.00
Carpet replacement:	\$244.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,272.42
Less: Security deposit:	<u>(\$1,325.00)</u>
Balance Owing:	(\$52.58)

Conclusion

A Monetary Order in the amount of **\$52.58** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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 28, 2011.

Residential Tenancy Branch