



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”), for damage to the rental unit, authority to retain the tenant’s security deposit and to recover the cost of the filing fee from the tenant.

The parties appeared and were given an explanation of the hearing process and were given the opportunity to ask questions. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally, and in documentary form prior to the hearing, to make submissions to me and ask questions each of the other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act* and to retain the tenant’s security deposit?

Background and Evidence

This one year, fixed term tenancy began on December 1, 2008, with another landlord, who thereafter during the course of the tenancy sold the rental unit to the listed landlord.

The tenancy continued thereafter on a month to month basis, until it ended on July 12, 2011, when the tenant vacated the rental unit per agreement of the parties. The ending monthly rent was \$1,125.30 and the tenant paid a security deposit of \$550.00 on November 20, 2008.

The parties referred to the rental unit as a smaller, studio size suite.

The landlord's claim is as follows:

Removal and replacement of flooring	\$5,079.74
Paint and equipment for walls, doors, trim	\$191.06
Paint	\$17.51
Repair of fridge diffuser and repair of garbage disposal unit	\$299.84
Suite cleaning	\$147.84
Photo developing	\$48.72
Registered mail expenses	\$12.91
Lost rent for Aug. 1-14, 2011	\$612.50
Filing fee	\$100.00
TOTAL	\$7,167.27

The landlord submitted a significant amount of evidence, including a copy of the tenancy agreement, receipts for costs incurred as claimed for, email communication between the landlord and tenant, condition inspection reports, letters from a floor installer and her real estate agent. Although I will not refer to all pieces of evidence, I have reviewed and considered all evidence submitted by the landlord.

In support of her claim, the landlord submitted that the tenant damaged the living room hardwood floor to such an extent that it could not be repaired and that complete replacement was the only way to correct the damage. The landlord further submitted that the tenant agreed to repair the damage, as noted in the move out condition inspection report, and therefore she obligated herself to paying for its replacement.

The tenant responded by saying there were only 15 floor boards which were damaged and she agreed to consider replacing; however, the tenant stated that the floors were of a poor quality and the damage was due to manufacturer's defects, not her activities. Despite this the tenant submitted that she acquired estimates to fix the damage and made attempts with the landlord to have the repairs completed. The tenant submitted two estimates from flooring companies for repair of the damaged board, one in the amount of \$450.00 and the other in the amount of \$346.00.

I note that one estimate stated that the "blemish on floor is from manufacturers defect. Material used was probably 2nd grade."

Next, the landlord testified that the scratches and abrasions left by the tenant on the refrigerator door could not be repaired or buffed out, and that the only solution was a

door replacement. The landlord submitted that the tenant agreed to repair that door, via the condition inspection report.

The tenant responded by saying that the issue with the refrigerator was surface scratches and abrasions, as mentioned on the condition inspection report, and that she never agreed to replacement of the door, stating that the scratches were normal wear and tear. The tenant pointed out that the door was not replaced until October 18, 2011.

As to the painting, the landlord submitted that walls were left in such a condition that the rental unit required re-painting.

The tenant responded by submitting that she had mentioned to the landlord throughout the tenancy that the paint seemed to be of a poor quality and as a favour, offered to have it repainted. Despite this, the tenant never heard from the landlord on this subject.

I note that the move-out condition inspection report stated all walls were "Good," with the exception of the Entry.

In support of the garbage disposal unit and refrigerator costs, the landlord submitted that the repair technician believed that the items could have been repaired if reported on time.

Upon query, the landlord stated that the problem with the refrigerator was it wasn't cooling properly, which the landlord did not find out about until a new tenant had moved in. Upon further query did not know if the tenant had experienced the same problem.

The landlord further submitted that the tenant had a problem with the garbage disposal unit during the tenancy and was told to press the re-set button. The landlord never heard from the tenant if this worked.

In response, the tenant stated that she talked to the repair technician, who told the tenant that he did not know why the tenant would receive a bill for appliance repair, as these items were normal appliance maintenance and not damage. The tenant stated that she gave the landlord the warranty paperwork early in the landlord's ownership of the rental unit.

The tenant stated that the repair technician would be happy to provide testimony to this effect.

I note that I telephoned the repair technician in an attempt to have him provide testimony; however, when I reached him, he was driving and unavailable for testimony.

As to the cleaning, the landlord stated that after the flooring work, the rental unit required cleaning before a new tenant could move in, which she had done on August 12, 2011.

In response the tenant stated that she had the rental unit professionally cleaned the day prior to the final inspection and submitted an invoice from a cleaning service, which noted 8.5 hours of cleaning and sanitizing the rental unit.

As to the lost rent for August 1-14, the landlord stated that the flooring was ordered and did not come in on time to allow the replacement of the floor prior to August 1, when a new tenancy was to begin.

The tenant stated that she should not be held responsible for delayed construction work.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

As to the landlord's claim for floor replacement, while I accept that there was damage to an area in the living room floor that appeared to be beyond normal wear and tear, I find that the landlord's evidence and testimony to an entitlement for full replacement costs are contradictory.

For instance, the landlord submitted an invoice for materials and labour for the flooring, dated July 16, 2011, which listed the amount of \$5,079.74, for which she is claiming, yet she sent the tenant an email on July 20, 2011, informing her that the quote for the total cost for the hardwood floor removal and replacement which she indicated she selected was \$1,620.72.

Additionally, the landlord submitted emailed statements from her property manager and a floor installer that the flooring in the hallway, kitchen and living room were beyond repair and needed to be replaced. I note that the property manager stated that his inspection was the same day as the final inspection. Further, I have not been provided proof as to the identity of the floor installer or for which company he works, and I am not convinced that an unidentified email is sufficient proof.

Despite this, the move out condition inspection report as completed by the landlord with the tenant stated that the floors in the entry and kitchen were "Good," yet the landlord claimed that directly after the final inspection after the tenant left, she realized the entire floor in the kitchen, hall and living room were damaged as well. As to the hallway, the condition inspection report listed this item as "NA."

Upon query to the landlord, she submitted that the rental unit was too dark during the final inspection which did not allow her to properly view the full extent of the damage, yet a review of the photographs provided by the landlord, which according to the landlord were taken directly after the final inspection, showed full sunlight coming into the rental unit. Further I have not been provided evidence that the electricity had been turned off for the final inspection.

I therefore find that due to the contradictory nature of the landlord's testimony and evidence, I am unable to conclude upon a balance of probabilities that the landlord has met step 3 of her burden of proof to recover the floor replacement.

The tenant provided evidence from two flooring companies that the damaged boards could be removed and replaced, at a cost of \$450.00 and \$346.00, respectively.

As I have accepted that there was damage to the living room floor at the end of the tenancy, I find that the tenant should be responsible for the cost stated in her lowest estimate for repair of the damaged area, that of \$346.00. I therefore find that the landlord has established a **monetary claim** in the amount of **\$346.00**.

As to the landlord's claim for a refrigerator door replacement, the appearance of the refrigerator door is esthetic in nature, but was still fully functional. I therefore find that the landlord did not suffer a loss as the result of any violation of the Act by the tenant as I find that the scratches or abrasions on the door did not require that the door be replaced and I was unconvinced by the landlord's evidence that the scratches were anything other than normal wear and tear. I therefore find that the landlord has provided insufficient evidence of damage or loss by the tenant and I **dismiss** her claim for door replacement of **\$657.15**.

As to the landlord's claim for painting, I cannot conclude that the tenant damaged the paint in the rental unit which required the landlord to have the rental unit re-painted. In reaching this conclusion, I am persuaded by the move out condition inspection report, which lists walls in the kitchen, dining room, and main bathroom as "Good." Further, there were no notations on the condition inspection report as to the state of the living room walls and there was no discussion on the report of the tenant agreeing to be responsible for painting. I therefore **dismiss** the landlord's claim for painting and paint for **\$208.57**.

As to the landlord's claim for the repair of the refrigerator diffuser and the garbage disposal unit, the landlord provided insufficient evidence that the tenant caused these appliances to cease functioning properly. I therefore find the landlord has provided no basis upon which to hold the tenant responsible for the repair of appliances which have ceased functioning properly and I therefore **dismiss** her claim for **\$299.84**.

As to the landlord's claim for cleaning of the suite, I find the tenant submitted evidence that the rental unit was properly and professionally cleaned at the end of the tenancy. I further find that the landlord is attempting to hold the tenant responsible for cleaning the rental unit a month after the end of the tenancy and at the conclusion of work she had done in the rental unit. I find the tenant met her responsibility under the Act to leave the rental unit clean and I therefore **dismiss** the landlord's claim for suite cleaning in the amount of **\$147.84**.

As to the landlord's claim for lost rent, I find the landlord has submitted insufficient evidence that the tenant can be held responsible for repair delays well after the tenancy ended. I therefore find the landlord has not met step 2 of her burden of proof and I **dismiss** her claim for lost rent of **\$612.50**.

As to the landlord's claim for registered mail and photo developing, landlords and tenants are entitled to recover costs for damages or losses that are directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the Act. Costs

incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is allowed under section 72 of the Act. I find that I do not have authority to award any other costs related to dispute resolution proceeding and I therefore **dismiss** the landlord's claim to recover costs related to preparing the evidence for this hearing or serving the Notice of the hearing.

I find the landlord was partially successful with her application, and I **award** her recovery of a partial filing fee, in the amount of **\$50.00**.

Conclusion

I find that the landlord has established a monetary claim in the amount of **\$396.00**, comprised of damage to the floor in the amount of \$356.00 and a partial filing fee of \$50.00.

I allow the landlord to retain \$396.00 from the tenant's security deposit and interest of \$550.95 in satisfaction of the claim and I **direct** that the landlord return to the tenant the balance of the security deposit in the amount of \$154.95.

I **grant** the tenant a monetary order pursuant to section 67 of the Act for the amount of **\$154.95**.

I am enclosing a monetary order for **\$154.95** with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 03, 2011.

Residential Tenancy Branch