



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

At the outset of the hearing the Landlord requested that I dismiss this hearing granted by a review consideration and revert to the previous decision on the grounds that he was not properly served notice of today's hearing. He advised that two days prior to this hearing he received a telephone message from the Tenant instructing him to call into the hearing today and he did not receive any evidence or documents from the Tenant.

The Tenant confirmed that he left the phone message for the Landlord and did not serve the hearing documents as he misplaced the Landlord's address and was not able to obtain it from the *Residential Tenancy Branch*.

After consideration of the Landlord's request, I explained that while I could dismiss today's hearing due to lack of service it is policy that when service has not been conducted in accordance with the Act, then the process is dismissed with leave to reapply, so this process could simply be delayed. That being said, I gave the Landlord the opportunity to consider proceeding with this hearing so as not to delay this process any further.

The Landlord confirmed that he and his two witnesses were prepared to present their evidence and he had faxed additional evidence to the *Residential Tenancy Branch* as soon as he found out this hearing was scheduled. He has not had an opportunity to serve the Tenant with the additional evidence and requested that in these circumstances that the additional evidence could be considered.

After a brief discussion, both parties wished to proceed with the hearing, taking into consideration the Landlord's additional evidence which he will speak to in his testimony. It was noted that the Landlord's additional evidence will be attached at the end of this decision.

Introduction

This hearing is a new hearing, granted after a review consideration, to deal with an Application for Dispute Resolution by the Landlord for damage to the unit, site, or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Decision and Order issued October 17, 2011 were suspended pending the outcome of this hearing.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that the Tenant occupied the rental unit since November 2009 and that they entered into a subsequent fixed term tenancy agreement which began on October 1, 2010 and expired on March 31, 2011 at which time the Tenant was required to vacate the rental unit. Rent was payable on the first of each month which was later changed to the 15th of each month in the amount of \$1,550.00 and the Tenant paid \$750.00 on November 15, 2009 as the security deposit. The rental unit was brand new with the Tenant being the first occupant so no move in inspection report was completed. The parties did however do a walk through at the beginning to determine if there were any deficiencies to report to the builders. The parties did a walk through at the end of the tenancy on March 28, 2011, however no condition inspection report form was completed.

The rental unit consists of a detached strata townhouse approximately 2300 square feet with a small front yard and back yard. The Landlord referenced his additional evidence which included documentary evidence proving the rental unit was brand new in November 2009 and that the Tenant was the first person to occupy this unit.

The Landlord affirmed that his brother in-law attended the move out walk through with him and the Tenant at approximately 5:00 p.m. on March 28, 2011. They began pointing out the damages to the Tenant such as the holes in the drywall and scratches to the hardwood floor and felt that given the Tenant's responses he was not about to sign anything to confirm the presence of the damages. During this walk through they found the Tenant had built a dog house in the back yard, without their permission, which caused the grass to die underneath. They assisted the Tenant in loading up the dog house that day. The Landlord noted that the previous decision from October 17, 2011 incorrectly stated that this doghouse was left behind by the Tenant.

The Landlord referred to his photos provided in evidence which were taken between March 28, 2011 and March 31, 2011 which prove the condition that the rental was left in at the end of the tenancy. The Landlord stated the unit was left with over two truckloads of debris that had to be removed, several marks, dents, and holes in the drywall with some major holes left in the wall near the fireplace from a television mounting bracket, a large scratch on the laminate flooring, damage to the cabinet, a cigarette burn in one of the bedroom carpets, and extensive damage to the carpet on the lower part of the stairs that could not be repaired. The Landlord also provided receipts which supports the amount of work that was required and supports his claims for damages of \$1,466.00 for the following:

- \$907.20 for carpet cleaning and handyman services including drywall repair, labour to install stair carpeting, door repair, removal of debris or garbage, and general cleaning of the rental unit; and
- \$239.00 for lawn and yard maintenance, clean up, and additional debris removal, the Landlord's labour of 8 hours x \$20.00 per hour for debris removal and clean up; and
- \$239.90 for new carpet; and
- \$60.00 for cabinetry repairs; and
- \$20.00 to replace a tree which had died near the front entrance; and

In addition to repair costs the Landlord confirmed he is seeking to apply the security deposit of \$ 750.00 towards the unpaid rent for March 16 – 31, 2011 of \$775.00 as per the Tenant's request plus \$700.00 for the remaining balance due for strata fines that were levied against the Tenant, as supported by his documentary evidence.

The Tenant affirmed that he did not submit documentary evidence in support of his position. He confirmed that he requested the Landlord retain his security deposit to be put towards the balance owed for March 2011 rent and he does not dispute this.

The Tenant acknowledged that there were over \$900.00 in strata fines levied against him and that he felt he was being picked on by the strata council because the president of the council lived next door to him. He further argued that they were picking on him because of a dispute they had with his Landlord when the Landlord fell behind in paying his strata fees. The Tenant confirmed that this evidence was only hearsay and that he did not have any evidence to support this claim. He confirmed he paid \$200.00 of the fines and stated he feels that he should not be held responsible for these fines because the Landlord refused to let him attend the strata meeting to defend himself against these fines. He is of the opinion that had he been allowed to attend these meetings he would have been successful in having them reversed.

In response to the maintenance items being claimed he does not believe the Landlord's brother is a contractor to be able to do this work as his company is a carpet cleaning company not a handyman services company. Furthermore he argued that he should not have to pay for the claims as follows:

- \$907.20 for carpet cleaning and handyman services – there was no need for new carpet; he did not leave more than ½ a truck load of debris behind which he was told by the landlord not to worry about when he was packing up; he admits that there was a small hole in the drywall in the garage and there were holes left from his pictures and his television mount but all of these are normal wear and tear; and he hired someone to come and clean the house so why would he have to pay the Landlord to clean. He could not provide the name of the person he hired to clean however he recalls paying her \$15.00 per hour to clean.
- \$239.00 for lawn and yard maintenance, cleanup, and additional debris removal – The Tenant stated that the yard was looked after by the strata council so why should he be held responsible for cleaning it up and repairing it. He questioned why a dead tree would be his responsibility if the strata looked after the yard work. He admits there was a bare spot under the dog house but he was told by the Landlord not to worry about it.
- \$239.90 for carpet – he does not believe there was any need to replace the carpet on the stairs and he confirmed there was one small cigarette burn in the bedroom carpet.
- \$60.00 for cabinetry repairs – the Tenant accepts that there was damage to the cabinet and floor and argued that this is also normal wear and tear; and
- \$20.00 – the Tenant stated that if a tree dies then that should be the responsibility of the strata council. He argued that both the front and back yards are considered common space for all the residents to use so he should not be responsible for any repairs or maintenance to the yard.

The Tenant agreed that there would have been some clean up required of the outside including some dog feces that were left behind. He also confirmed that he did not have prior permission from the Landlord or the strata council to build the dog house and that the Landlord did assist him in loading it up on the day he moved. He feels the Landlord is being "nit picky" and that all of the damages are, in his opinion, normal wear and tear.

In closing the Landlord stated that the damages were definitely not normal wear and tear. He hired his brother in law to perform the work because he is skilled in a lot of different work and he knew that he could be able to reduce his costs by having one person do the work instead of hiring numerous different trades. The carpet in the bedroom was repaired and not replaced only the stairway carpet was replaced and he chose to use wood putty to repair the scratch in the floor instead of replacing the laminate.

The Landlord denies that the Tenant was restricted from requesting to have the fines reversed or to defend himself. The Tenant had gone through the process previously and was denied however when the Landlord applied he was successful in getting some of the fines reversed. The facts remain the fines were issued against the Tenant and he only paid \$200.00 of them. There were over twelve letters of complaint against his Tenant and he continued to try and work reasonably with him. He was able to get the strata to hold back some because they knew the tenancy was coming to an end the Tenant would be moving.

The Landlord confirmed the strata cut the lawn however the residents are responsible to water and maintain the grass by picking up the dog feces and the Tenant was aware of this as he signed the tenancy agreement addendum, a copy of which is in his evidence.

In closing the Tenant argued that the pictures show the same items and areas but just from different angles to make it look like there is more damage and debris left behind than there really is. He confirmed he paid some of the strata fines and does not feel he is responsible for any of the outstanding fines because he did not get a chance to defend himself.

The Landlord requested that the hearing time be extended so that Witness (1) be able to testify today as this person is a contractor who worked on the house and who is not related to the Landlord through marriage.

Witness (1) was added to hearing and confirmed that he is a flooring installer and has worked in the business for over twenty years. He was hired as a subcontractor through the Landlord's brother in-law and attended the rental unit sometime near the end of

March 2011 to provide a quote on required repairs. He confirms that he witnessed the unit in a state that required a fair bit of drywall repairs. He was hired to repair the cigarette burn in the bedroom carpet and to replace the carpet on the lower part of the stairs that could not be restored. He saw the stair carpet prior to it being cleaned and after the Landlord's brother in-law cleaned it and it could not be brought back to a usable state.

The Tenant was given the opportunity to ask Witness (1) questions to which he asked Witness (1) to explain in detail the drywall damage that he saw.

Witness (1) stated that there was "a fair bit of drywall damage" throughout the house which consisted of nicks, dents, nail holes on various walls, a large amount of holes in the wall near the fireplace where it appeared a television had been mounted, and several dents in the wall down the side of the stairs. The dents in the wall by the stairs had to be repaired before he could do his work to replace the carpet.

The hearing time expired after each party was given the opportunity to present their submissions, provide closing remarks and the Tenant was provided an opportunity to ask Witness (1) questions. Accordingly, I concluded the hearing and informed the parties I would be reviewing all of the evidence and would be sending them my written decision.

Analysis

This matter comes before me as a result of a review consideration that was granted on November 10, 2011, which suspended the original decision and order dated October 17, 2011. Having heard the matters I find that the original decision and order are to be set aside as I have found the following:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 (2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear or reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces. An example of normal wear and tear would be gradual deterioration of the paint finish on a wall that would occur from reasonable washing or a minor deterioration of the finish on wood flooring caused by normal walking or cleaning. A scratch or dent caused by something being dragged across a floor or counter would be considered a negligent act and is not considered normal wear and tear.

The *Residential Tenancy Regulation Part 3 # 21* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I favor the evidence of the Landlord who stated he had attempted to be reasonable when dealing with the Tenant and in his actions of keeping the repair costs down by hiring his brother in-law, as supported by his documentary evidence which included copies of photos of the rental unit and receipts showing the actual costs he incurred, over the evidence of the Tenant who relies solely on his verbal testimony that the damage was normal wear and tear and that he hired someone to clean the rental unit. I favored the evidence of the Landlord over the Tenant, in part, because the Landlord's evidence was forthright and credible. The Landlord readily acknowledged that he did not complete condition inspection report forms. In my view the Landlord's willingness to admit fault when he could easily have stated the Tenant refused to sign the form so he completed the condition inspection form in the Tenant's absence lends credibility to all of the Landlord's evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation of the condition of the rental unit at the end of the tenancy to be plausible given the circumstances presented to me during the hearing and as supported by the Witness statement and the documentary evidence.

For the above mentioned reasons, I hereby find the Landlord has met the burden of proof to meet the four part test for damage and loss as listed above.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

The *Residential Tenancy Policy Guideline 1* sets out a landlord and tenant's responsibility for the residential premises and includes that a tenant is responsible to steam clean the carpets at the end of the tenancy if the tenant has had pets.

The evidence included a copy of the tenancy agreement addendum which the Tenant signed agreeing to "Other than cutting the grass (to be done by the Strata), the tenants agree to care for and maintain their lawn, trees and shrubs, including watering them regularly during dry weather conditions".

I accept the evidence before me that the rental unit and all fixtures were brand new in November 2009 and that the Tenant occupied the rental unit for seventeen months. Accordingly I award the Landlord **\$1,432.62** for damages as follows:

- \$907.20 for carpet cleaning and handyman services for labour and supplies to repair walls, carpet, and remove debris as supported by the invoice dated march 31, 2011; and

- \$75.49 for flooring repair products and miscellaneous parts and products used to repair the rental unit as supported by the receipts provided in evidence
- \$27.43 for lawn and yard maintenance as supported by the receipts provided in evidence; and
- \$160.00 for eight hours of labour for the Landlord at \$20.00 per hour
- \$205.90 for carpet – the normal useful life of carpet is ten years (120 months), therefore the award is depreciated accordingly; and
- \$56.60 for cabinetry repairs – the normal useful life of cabinets is 25 years (300 months) therefore the award is depreciated accordingly. and
- Nil - purchase of a replacement tree –there was no documentary evidence provided to prove a tree had been purchased to replace the dead one.

Section 26 of the Act provides that a tenant is required to pay rent when it is due in accordance with the tenancy agreement.

The parties agreed the security deposit of \$750.00 plus interest of \$0.00 was to be put towards the unpaid rent of \$775.00 for March 16 to March 31, 2011, pursuant to section 38(4) of the Act. Accordingly I award the Landlord the balance owing for March 2011, rent in the amount of **\$25.00**.

I accept the evidence before me that the Tenant agreed to abide by the strata rules and by-laws when he signed the tenancy agreement addendum. During the tenancy the strata council issued fines in the amount of \$900.00 due to the Tenant's breach of those rules and/or by-laws and only \$200.00 was paid by the Tenant. I do not accept the Tenant's argument that he would have been successful in having the remaining \$700.00 of fines reversed had he attended the strata meetings to dispute these fines as there is no evidence before me to support such an argument. Accordingly I find the Landlord has met the burden of proof to establish this loss and I approve his claim in the amount of **\$700.00**.

The Landlord has been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The decision and order of October 17, 2011 are HEREBY set aside and of no force or effect.

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$2,207.62** (\$1,432.62 + \$25.00 + \$700.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

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: December 02, 2011.

Residential Tenancy Branch