



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit?

Is the landlord entitled to keep all or part of the tenant's security and pet deposits?

Background and Evidence

Both parties agree that this fixed term tenancy started on August 01, 2011 and ended before the end of the fixed term on November 01, 2011. Rent for this unit was \$1,000.00 per month and was due on the first day of each month. The tenant paid a security

deposit of \$500.00 and a pet deposit of \$500.00 on July 25, 2011. A move in and a move out condition inspection was conducted with the tenant and landlord at the beginning and end of the tenancy. The tenant gave the landlord his forwarding address in writing on November 6th or 7th, 2011.

The landlord testifies that the tenant failed to leave the rental unit in a reasonable standard of cleanliness. The landlord testifies the tenant had not cleaned the kitchen or bathroom to a satisfactory standard and there was a great deal of dog hair left on the carpets and around the baseboards. The landlord testifies that a cleaner was paid to clean the unit to prepare it for new tenants. This work took just over five hours at \$25.00 per hour and the landlord seeks to recover the sum of \$125.00 for this work and has provided the receipt for this amount.

The landlord testifies that during the move out inspection they found a large stain on the carpet in the den. The landlord states the tenant had made an attempt to clean this but the stain remained. The landlord testifies that he had a professional carpet cleaner look at the stain and the landlord and his partner attempted to clean the stain. The landlord testifies as the stain could not be removed the carpet in this area had to be replaced. The landlord seeks to recover the sum of \$168.00 for the old carpet to be removed and disposed of and for the installation of the new carpet. The landlord also seeks to recover the cost of the new carpet of \$409.15. The landlord testifies that the landlord would have preferred to try to preserve the carpet as the new carpet could not be matched with the other carpets in the unit. The landlord testifies that the carpet was 3 years old. The landlord has provided the receipts for this work and for the new carpet and a copy of the condition inspection reports.

The landlord seeks to keep the tenants security and pet deposits to cover the landlord's expenses and the balance will be returned to the tenant. The landlord also seeks to recover the \$50.00 filing fee from the tenant for this application.

The tenant testifies that he did sweep and vacuum the unit at the end of his tenancy and feels the unit was left in a reasonable standard of cleanliness as required under the *Residential Tenancy Act (Act)*.

The tenant testifies that the stain occurred the night before the tenant moved from the unit when the tenant's son split a glass of chocolate milk on the carpet and did not clean it up correctly. The tenant states he did attempt to clean the stain himself with water but could not remove it however the tenant states he is sure the stain could have been removed by a professional carpet cleaner and the landlord would not then be required to replace the carpet. The tenant states as this stain occurred the night before he moved he did not have the opportunity to get a professional carpet cleaner into the unit to do the work but would have paid for this service had the landlord not replaced the carpet.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the cleaning required in the unit, the landlord argues that the tenant failed to clean the unit to a reasonable standard and the tenant argues that he did leave the unit in a reasonable manner as required under the *Act*. As the parties' evidence contradicts the other the landlord has the burden of proof to show that the tenant failed to leave the unit in a reasonable standard as required under s. 32 of the *Act*. The landlord would therefore be required to provide corroborating evidence to meet that burden of proof.

In this matter the landlord has provided a copy of the move in and move out inspection reports that detail that the oven, fridge and freezer were left dirty and details pet fur in the living room and utility room. Consequently, I am satisfied that some cleaning was required to the unit by the landlord at the end of the tenancy to ensure the unit was clean for the incoming tenants. Therefore it is my decision the landlord is entitled to

recover the cost for this cleaning to the sum of **\$125.00** from the tenant pursuant to s. 67 of the *Act*.

With regard to the landlords claim for replacement carpet in the den; the tenant agrees that a stain was caused by his son spilling chocolate milk on the carpet. The tenant argues however that the landlord could have removed this with professional carpet cleaning and did not have to go to the expense of having the carpet replaced. The landlord argues that the stain could not be removed and the carpet was replaced on the advice of his carpet cleaner. The burden of proof again falls to the landlord in this matter to provide corroborating evidence to satisfy his claim that the stain could not be removed and the carpet had to be replaced.

I have considered the arguments and the documentary evidence and I am not satisfied that the landlord complied with s. 7(2) of the *Act* by attempting to mitigate his loss by trying first to have the carpet cleaned by a professional carpet cleaner. The landlord testifies that he and his partner spent hours scrubbing the carpet themselves. There is a strong possibility that a professional carpet cleaner using professional cleaning solutions could have removed this stain from the carpet and therefore the carpet would not have been required to be replaced. The landlord has provided no evidence to show that a professional carpet cleaner attempted to clean the carpet before the decision was made to replace the carpet. I also find from the information supplied by the landlord that the carpet had a worn area at the start of the tenancy and I find the carpet would have experienced some other depreciation during its life span of three years. I do find however, that a tenant is also responsible to ensure the carpets are left clean at the end of a tenancy particularly if the tenant has a pet and staining has occurred to the carpets. Consequently, I limit the landlords claim for the new carpet to the sum of **\$200.00**.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover his **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*

The landlord is entitled to retain the sum of **\$375.00** from the tenant's security deposit and pet deposit of \$1,000.00 pursuant to s. 38(4) (b) of the *Act*. The balance of the deposits of **\$625.00** must be returned to the tenant.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$375.00, and pursuant to Section 67 of the *Residential Tenancy Act*, I grant the tenant a Monetary Order for the balance due of the deposits to the sum of **\$625.00**. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 01, 2012.

Residential Tenancy Branch