



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage and loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties agreed that all evidence received by the Residential Tenancy Branch was served to each party.

During the hearing the parties viewed a CD of video footage that had been submitted as evidence by the tenant. The landlord confirmed he was able to view the video.

Initially the tenant's advocate identified himself as a translator and witness; I determined that G.R. was acting as agent for the tenant. The tenant did not provide any testimony, although he was affirmed at the start of the hearing.

The landlord supplied 105 pictures as evidence, none of these were numbered. The photographs were viewed during the hearing, but identification of individual photos was difficult as a result of the landlord's failure to properly identify each.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages and damage or loss under the Act in the sum of \$2,929.93?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties confirmed that the tenancy commenced on June 7, 2009, rent was \$1,400.00 due on the first day of each month. A copy of the tenancy agreement was supplied as evidence. The tenancy ended on January 31, 2010; as the result of the tenant giving notice.

The rental was a unit in the upper floor, B, of a home that had a common entry area; the lower unit, A, was occupied by a relative of the tenant.

The landlord has made the following claim

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| | Receipt date | |
|---|-------------------|-----------------|
| New locks - back door | January 31, 2010 | 156.79 |
| New locks for master bedroom | January 31, 2010 | 121.34 |
| Landlord labour to replace 4 door locks | | 87.50 |
| Pull chain for fan light, switch and pull chain, fan light glass cover master bedroom | February 22, 2010 | 40.50 |
| Dry wall repair material | February 15, 2010 | 24.48 |
| Landlord labour for dry wall repair | | 227.50 |
| Landlord labour for replacing pull chain light, fan switch, reverse switch, fan light cover | | 24.75 |
| Replace kitchen window screen | March 1, 2010 | 33.60 |
| Landlord labour for screen | | 35.00 |
| Cleaning service | February 24, 2010 | 175.00 |
| Paint materials | February 19, 201 | 58.75 |
| Landlord labour painting | | 87.50 |
| Carpet cleaning | February 26, 2010 | 266.45 |
| Range hood filter | March 13, 2010 | 22.39 |
| Missing cable lock | March 13, 2010 | 22.39 |
| Ceiling fan replacement-family room | March 3, 2010 | 100.79 |
| Landlord labour replace ceiling fan | | 35.00 |
| TOTAL | | 2,919.73 |

A move-in condition inspection report was completed at the start of the tenancy; each party submitted copies of the inspection reports. The landlord testified that he thought he had not provided the tenant with a final written opportunity to complete an inspection; although the landlord stated he had told tenant he would complete an inspection.

The tenant provided a copy of what appeared to be an original copy of the move-in condition inspection report. The tenant pointed out that his report differed from the copy of the report submitted as evidence by the landlord. The date on the tenant's copy differed from the landlord's; the family room notation was added after the fact; and the

number of keys given at the start was altered. The landlord's copy of the inspection report indicated that notice of inspection was given to the tenant on move out day, but the tenant did not attend. The landlord's copy of the report also included writing that was made at what appeared to be 3 different occasions, some in black pen, some in blue and some in red.

The tenant testified that he actually vacated the unit on January 26, 2011; a copy of the tenant's credit card statement was provided which showed he rented a trailer on January 26, 2010. The tenant also provided a copy of his BC Hydro bill for the rental unit that indicated he had the service terminated effective January 25, 2010.

On January 31, 2010, the tenant called the landlord in an attempt to arrange a meeting at the rental unit; the landlord did not answer the call. The tenant then returned to the unit to give the landlord the keys. The tenant arrived at the unit and found the front door chained closed.

The video submitted by the tenant provided footage of the lower rental unit and the upper unit; the exterior of the unit, the exterior showing the address; the chained door and film of the stairs leading to the upper unit the tenant rented. Throughout the footage the tenant showed a newspaper, dated January 31, 2010.

The film showed a rental unit that was in a reasonable state – the kitchen appeared clean, the walls appeared to be in good condition and no deficiencies were obvious. The tenant also recorded the landlord's door front and address, while sets of keys were dropped through the mail slot, with the newspaper visible, confirming the date.

The tenant stated that his sister-in-law lived in the lower unit and that they vacated at the same time; this was why he had also filmed the lower unit. The tenant stated he had legal possession of the unit until January 31, 2010; as rent had been paid, so he entered via the lower unit and recorded the footage. The tenant thought he might have some problems with the landlord, so wanted to ensure he had a record of the state of the unit when he vacated.

The landlord confirmed that he had altered the condition inspection report somewhat and stated that the tenant's copy which indicated a move-in of 2009 did differ from his copy that indicated a move-in date of 2010. The landlord agreed that perhaps the date on his copy should have read 2009.

In relation to the video footage provided by the tenant, initially the landlord testified that 90% of that film was of the lower unit that was not rented by the tenant. After viewing the film during the hearing the landlord stated that the film showed the unit at the start of the tenancy. When asked how that could be, as the tenant clearly had a newspaper with the current date recorded as evidence, the landlord stated that the tenant only filmed areas that did not show damage caused.

The photographs submitted by the landlord showed areas where appliances had been pulled from the walls, close-ups of marks on a wall, a dirty window screen, window sills table top, bathroom grouting and fan, a door knob, the interior of a toilet, carpets, the interior of the fridge, a fan, a laundry tub, lint in the dryer screen and drywall repair work.

The landlord provided testimony in relation to each of the items claimed. The receipts provided as verification of costs incurred were dated from between January 31, 2010, when new locks were purchased, and March 3, 2010, when a ceiling fan was purchased. The landlord claimed the loss of March rent revenue as he had to spend an excessive amount of time preparing the unit for new occupants.

The tenant supplied a copy of a decision issued on February 18, 2010 (file 748572.) That decision indicated the tenant had given notice ending the tenancy effective January 2010; and that the landlord had testified he did not know the tenant had vacated, until January 31, 2010. The parties had signed an agreement allowing the deposit to be applied to the unpaid portion of January, 2010, rent. The landlord was given a monetary order for past rent owed, loss of February, 2010, rent revenue, late fees and the filing fee. The tenant applied for review consideration, submitting he had not attended the hearing as he had not been served notice of the hearing; the review was denied.

Analysis

I have considered the landlord's testimony in relation to each of the items he claims was damaged. I have not detailed those submissions, as I have focused first on the testimony that the condition inspection report was altered and on the film footage supplied by the tenant.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony, the evidence submissions made by the landlord and the video footage. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord.

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 in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord.

I found the tenant's video evidence convincing and consistent with his testimony, that an inspection was not scheduled at the end of the tenancy and that the unit was left in a reasonably clean, undamaged state.

The tenant provided evidence that he had vacated the unit just prior to the end of the tenancy and that he returned on the final day of the tenancy in an attempt to establish the state of the unit. He could not reach the landlord; the landlord provided no evidence of any effort made to schedule an inspection, as required by the Act and was vague in relation to efforts made to arrange an inspection.

The video footage was convincing; I find that it was made on the final day of the tenancy, as indicated by the date of the newspaper shown in the film, and that the film supported the tenant's testimony that the unit was left reasonably clean and undamaged. The footage showed all areas of the rental unit, with the exception of the inside of the fridge; and I find that it provided a fair and full record of the state of the unit.

I found the landlord's testimony in response to the film footage inconsistent and unreliable. The landlord gave 3 different possible scenarios to discredit the footage: first, he said it showed mainly the lower unit; then he stated it was filmed at the start of the tenancy and then the landlord claimed the film did not focus on the damages. The landlord was difficult to accept; the film showed all areas of the tenant's unit; it was obviously filmed on January 31, 2010, and the video showed all areas of the unit, with the exception of the interior of the fridge, none of which appeared to be damaged or dirty.

The landlord's photographs and invoices supplied as evidence were devalued as a result of the landlord's altering of the condition inspection report and his denial that the film could have been recorded at the end of the tenancy. My lack of confidence in the veracity of the landlord's testimony as a result of the altered inspection report and the inconsistent response to the video resulted in my rejection of the claim and all supporting documents submitted by the landlord. I have no confidence as to where the photographs were taken, when they were taken and that the costs claimed were applied to this tenancy

If the landlord was initially correct in his submission that the film was made at the start of the tenancy; then I accept that the landlord was implying that the unit was in a state ready for move-in, just prior to the tenant taking possession. Therefore, as I have found the film was taken at the end of the tenancy I accept the landlord's initial submission

that the unit appeared as it would have at the start of the tenancy. Therefore, the unit was ready for the next occupants and the landlord's claim for damages has not, on the balance of probabilities, been proven.

Therefore, I find that the landlord's claim is dismissed.

Conclusion

The landlord's claim is dismissed.

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: March 09, 2012.

Residential Tenancy Branch

