Dispute Resolution Services

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 Landlords for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

The Landlords' application was originally heard on December 5, 2011 and a Decision and Monetary Order in the amount of $6,567.64 was granted to the Landlords on December 6, 2011. The Tenant applied for a Review of that Decision on the grounds that she was unable to attend the original hearing due to circumstances beyond her control and her application was granted on January 3, 2012. Consequently, the Landlords' application was reconvened for hearing to determine if the Decision and Order dated December 6, 2011 should be confirmed, varied or set aside. Accordingly, the Parties were advised by me at the beginning of the 1st day of the reconvened hearing that this proceeding would be treated as a new hearing which meant that they would have to present all evidence and submissions upon which they were relying and could not rely on findings made by me in the previous decision.

At the beginning of the 1st day of the reconvened hearing, the Tenant and her Advocate confirmed that they had received the Landlords' application and evidence package. The Landlords also confirmed that they had received evidence submitted by the Tenant. At the beginning of the 2nd day of the reconvened hearing, the Tenant and her Advocate claimed that a proposed witness could not attend the hearing and instead they relied on a written statement from that witness which I find was also served on the Landlords.

Issue(s) to be Decided

1. Are the Landlords entitled to cleaning and repair expenses and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income?
3. Are the Landlords entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on July 5, 2005. The Landlords claim that the Tenant moved out on May 28, 2011 however, the Tenant claimed that she moved out of the rental unit on May 24, 2011. Rent was $726.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $325.00 and a pet damage deposit of $100.00 on August 1, 2005.

The Landlords completed a move in condition inspection report with the Tenant on July 30, 2005. The Landlords said the rental unit was only a year old at the beginning of the tenancy and was in good condition with the exception of carpeting that had some stains. The Landlords said the Tenant told them she was moving at the end of May 2011 and therefore they expected that she would be available on May 31, 2011 to do a move out inspection. Instead the Landlords said the Tenant left a telephone message on May 28, 2011 advising them that she had already moved out and she did not leave a telephone number where she could be contacted. Consequently, the Landlords said they did an inspection on May 31, 2011 without the Tenant and found some condition issues so they sent the Tenant a Final Notice to Schedule a Condition Inspection (by courier) on June 3, 2011 and again on June 9, 2011 to a forwarding address provided by the Tenant (in a telephone message) however she did not respond.

The Tenant said she was not aware that she was required to participate in a move out inspection because the Landlords never approached her about doing one. The Tenant said she spoke with the Landlord, B.C., on or about May 17, 2011 to advise her about a friend who might be a prospective tenant and B.C. said nothing about doing an inspection at that time. The Tenant said a week later when she vacated with a moving van, she could see the Landlord, D.C., watching her from his residence nearby and therefore she argued that the Landlords were aware that she was leaving but took no steps to arrange a move out inspection. The Tenant said she arranged to have a cleaner clean the rental unit on May 27, 2011 and left a telephone message for the Landlord, B.C. the following day that the keys were in the rental unit and gave her a forwarding address. The Tenant said she did not receive a Notice from the Landlords to participate in a move out inspection because they were delivered to the wrong unit number at her mailing address (which was her daughter's residence).

The Parties agree that it was a term of the tenancy agreement that there would be no smoking in the rental unit. The Landlords said when they attending the rental unit on one occasion in early 2010, they saw the Tenant smoking and saw a garbage can tipped over with "hundreds" of cigarette butts strewn on the ground. One of the Landlords, D.C., also claimed that he saw the Tenant on one occasion when entertaining guests walk in and out of the rental unit with a lit cigarette. Consequently, the Landlords confronted the Tenant about smoking in the rental unit and she initially denied it until they threatened to take a swab of the walls and have it tested at the Tenant's expense. On April 17, 2010, the Tenant gave the Landlords a letter in which she admitted to smoking in the rental unit but claimed that she had done so only a few times. The Landlords claim that the Tenant smoked in the rental unit throughout the tenancy however the Tenant claimed that she did so only for a period of about 3 weeks during which her mother was very ill.

The Parties also agree that Landlords did periodic inspections of the rental unit throughout the tenancy. The Tenant said although the Landlords' inspections were very thorough, they never brought any concerns to her attention until mid-April of 2010. The Landlords said they believe the Tenant may have been concealing the smell of cigarette smoke with candles and air fresheners during previous inspections.

The Landlords got an estimate from a restoration company in May 2010 to sanitize and repaint the rental unit for a cost of approximately $6,500.00. The Tenant said that she spoke with the person from the restoration company who attended the rental unit and he advised her that he was there to prepare an estimate for painting only. The Tenant said she advised this person that she believed the Landlords were also concerned about her smoking inside but this person allegedly claimed that he did not see any evidence of smoking such as yellowed walls. Instead the Tenant claimed that the restoration company agent found discoloration behind the propane stove which he said was normal due to the rising heat. The Tenant argued that the Landlords never advised her that they were going to be doing any special cleaning or that any special measures needed to be taken and argued that they she only received a copy of the restoration company's estimate prior in the Landlords' evidence package.

The Landlords claim that at the end of the tenancy the walls, ceilings and window coverings in the rental unit were all yellowed from cigarette smoke residue which the Tenant denied. The Landlords said they did not have the restoration company do any work but instead cleaned and repainted the rental unit themselves. The Landlords said it took them many hours to wash and prime all of the walls and to sand the ceilings to remove cigarette smoke residue before they could be re-painted. The Landlords also claimed that because the ceilings were vaulted, it took additional time to set up scaffolding. The Tenant argued that any discoloration on the ceiling was located only in the area above the propane stove. The Tenant also argued that the rental unit had not been painted in the 6 years that she had resided there and for that reason alone it would have had to be repainted at the end of the tenancy. The Tenant further argued that it was the Landlords' responsibility to either clean inaccessible areas (such as the vaulted ceilings) or to provide her with special equipment so she could clean them.

The Landlords said that the carpets in the living room, bedroom and on the stairs had additional stains at the end of the tenancy and they could not be removed despite numerous attempts by themselves and a professional carpet cleaner to do so. The Landlords provided a quote for approximately $2,200.00 to replace the carpeting with some of a similar quality. The Tenant claimed that the carpets were so badly stained at the beginning of the tenancy that approximately one month after she moved in, she purchased a large carpet and laid it over the soiled one in the living room for the duration of the tenancy. Consequently, the Tenant argued that the carpets were in the same condition at the end of the tenancy as they were at the beginning of the tenancy.
The Landlords said 6 of the metal blinds in the rental unit were also damaged at the end of the tenancy and they sought compensation of $807.97 (which included installation) to replace them. The Landlords admitted that they made repairs to some of the blinds that

had damaged slats but argued that they still had to be replaced because they were not completely repaired and that others were discoloured from cigarette smoke residue. The Tenant admitted that she damaged a small, kitchen blind but argued that any damage to any of the other blinds was minor and that there was no evidence that any of the blinds were discoloured.

Landlords also said that it was a term of the tenancy agreement that the Tenant would clean the propane fireplace every year however she did not do so and it required cleaning at the end of the tenancy at a cost to them of $88.48. The Landlords claimed that the Tenant was only supposed to use the propane fireplace as a secondary source of heat but instead she used it as her primary source of heat. As a result, the Landlords argued that they would not have incurred maintenance expenses had the Tenant not used it all of the time. The Tenant argued that it was the Landlords' responsibility to maintain the propane fireplace.

The Landlords said that as a result of the time it took them to complete all of the repairs, they could not re-rent the rental unit and lost rental income for June 2011. The Tenant claimed that when she approached the Landlord, B.C., in mid-May 2011 about the possibility of a friend renting the rental unit, B.C advised her that she did not intend to rent out the rental unit for a few months because she was not up to it. B.C. admitted that she was having some trouble with her legs but claimed that the real reason she was not planning on renting out the rental unit was because she believed it was going to take some time for her to clean it up.

Analysis

Sections 32(3) and (4) of the Act says that a Tenant must repair damage to the rental unit that is caused by the act or neglect of the Tenant or a person permitted on the residential property by the Tenant but is not responsible for reasonable wear and tear. Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

I find that it was a term of the Parties' tenancy agreement that there was to be no smoking in the rental unit but that the Tenant did smoke in the rental unit during the tenancy. The Landlords argued that based on the yellowed discolouration of the walls and ceilings they found at the end of the tenancy, they believe the Tenant had been smoking inside the rental unit for a long period of time. In support of their position, the Landlords provided photographs they said they took of the rental unit prior to the tenancy as well as photographs that they said they took on May 31, 2011. The Landlords' witness gave evidence that his residence is located approximately 80 feet from the Tenant's back door and that he never saw her smoking in her vehicle as she alleged. The Landlords' witness (who is another family member) also claimed that he

viewed the rental unit after the Tenant vacated and observed yellowed walls, cobwebs in the vaulted ceiling, bent metal blinds and the smell of stale cigarette smoke.

The Tenant claimed in her letter dated April 17, 2010 that she smoked only a few times and at the hearing she claimed it was over a 3 week period in 2010. At all other times, the Tenant claimed that she smoked outside or in her car. The Tenant also claimed that when the weather was bad, she would wrap the cigarette butts in a paper towel and throw them in her indoor garbage. The Tenant relied on a witness statement of a friend as evidence that she did not smoke in the rental unit while she was present. The Tenant and her Advocate argued that the Landlords' photographs do not show discoloration of the walls and that any discoloration on the ceiling was due to the angle of exposure to light when the photo was taken or alternatively the result of rising heat from the propane stove. The Tenant's Advocate also argued that the estimate from the restoration company made no mention that cigarette smoke residue was present. The Tenant claimed that she left the rental unit reasonably clean at the end of the tenancy except for the vaulted ceiling that she could not reach without special equipment. The Tenant provided a witness statement from the cleaner who cleaned the rental unit at the end of the tenancy which lists the things that she did.

I cannot give the Tenant's evidence much weight for the following reasons. The deponents of the witness statements provided by the Tenant did not attend the hearing to give evidence with the result that neither their credibility nor the reliability of their statements could be tested. Similarly the Tenant's evidence about what a restoration company employee allegedly told her is hearsay. The Tenant's oral evidence was also unreliable as it changed frequently. For example, the Tenant first claimed that the tenancy started on July 5th and later claimed it was August 5th. The Tenant then claimed she did not participate in a move in inspection then claimed that she did. The Tenant also claimed that the Landlords never approached her about smoking but then admitted they did. I also find that the Tenant was dishonest with the Landlords about whether she smoked in the rental unit and only confessed when the Landlords threatened to do a residue test. The Tenant later claimed in a letter that she had smoked inside only a few times, however at the hearing she admitted that she had done so over a period of 3 weeks. The Tenant also gave evidence that did not stand to reason. For example, she claimed that although she smoked outside or in her vehicle (so that the smell of smoke would not be inside), she also claimed that it was her practice during inclement weather to wrap cigarette butts in paper towels and bring them inside to dispose of them (and thereby bring the smell of the cigarette inside) rather than to use her vehicle ash tray.

However, notwithstanding the difficulties with the Tenant's evidence, it is the Landlords who have the burden of proof and who must show on a balance of probabilities that the walls, ceilings and window coverings in the rental unit were damaged by residue from the Tenant smoking inside. I do not give any weight to the Landlords' move out condition inspection report. Section 35 of the Act and s. 17 of the Regulations put the onus on a Landlord to schedule a move out inspection with a Tenant ***before*** the tenancy ends. I find that the Landlords took no steps to schedule a move out inspection

prior to May 28, 2011 although the Tenant had given advance notice, had spoken to one of the Landlords on May 17, 20011 and at least one of the Landlords witnessed the Tenant moving her belongings into a moving truck on May 24, 2011.

Consequently, the only reliable, corroborating evidence of the condition of the rental unit at the end of the tenancy is the Landlords' photographs. While the close up photographs of the alcove ceiling above the propane fireplace shows some yellowing, the Landlords provided no photographs of any other areas of the ceiling they claimed were yellowed. Consequently, I find that the only area of the ceiling that was discoloured was above the propane fireplace and I cannot conclude that this discoloration was the result of cigarette smoke as opposed to heat from the fireplace. Furthermore, while some of the photographs of the walls taken at the end of the tenancy (eg. #31, #32 and #33) show what appears to be a yellowish tinge, I also note that photographs of some walls taken prior to the tenancy appear to have the same yellowish tinge (ie. #4, #9 and #12). Consequently, I cannot conclude that the yellowish tinge on the walls is from cigarette smoke residue as opposed to the exposure of light. I also find it significant that although the Landlords did detailed, periodic inspections throughout the tenancy, they never alleged that there was cigarette residue on the ceilings, walls or window coverings until after the tenancy ended.

The only evidence of dark, yellow discolouration on a wall is in a lower corner of the loft area by the baseboards. Furthermore, the estimate provided by the restoration company states at the top of the page "*Cigarette smoke….Quote as per scope provided.*" There are no particulars provided in the document itself to conclude that cigarette smoke residue was found. At best, the document suggests that the Landlords requested the quote on the basis that they believed there was cigarette smoke residue. In summary, I find that the Landlords have provided insufficient evidence to conclude that the walls, ceilings or window coverings were damaged during the tenancy by cigarette smoke.

RTB Policy Guideline #1 states that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of paint is 4 years. By the end of the tenancy, I find that the paint inside the rental unit was probably 7 years old. In the absence of sufficient evidence that painting was required due to an act or neglect of the Tenant, I find that the Landlords were responsible for painting the interior walls and ceilings at the end of the tenancy. Consequently, the Landlords' claim for cleaning and repainting is dismissed without leave to reapply.

The Landlords also sought to recover $2,200.00 for new carpeting. The Landlords admitted that there were some small stains on the living room and one of the bedroom's carpets at the beginning of the tenancy. The Landlords claimed, however that there was additional, significant staining on the carpeting in the living room, in a bedroom and on stairs at the end of the tenancy which is shown in their photographs. The Tenant claimed that the carpets already had this damage at the beginning of the tenancy and

that it was due to an oversight during the move in inspection that she failed to note all of the stains on the condition inspection report. However, s. 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Regulations is evidence of the condition of the rental unit at that time unless one of the Parties has a preponderance of evidence to the contrary. I find that the Tenant's evidence that she covered the living room carpet with another rug approximately a month after the tenancy started does not amount to a "preponderance" of evidence necessary to displace the move in condition inspection report. Consequently, I find that the Landlords are entitled to compensation for the damaged carpets.

However, I find that the Landlords are not entitled to recover the cost of a new carpet to replace a carpet that was 7 years old (and would have had some wear and tear) at the end of the tenancy. Instead, I find that the Landlords are entitled to the recover the depreciated cost of the damaged carpeting. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of a carpet is 10 years. Consequently, I award the Landlords 30% of the cost of the damaged carpeting (of $2,068.66 which excludes the cost of installation) or **$620.60**.

The Landlords further sought to recover $807.97 to replace blinds in the rental unit. The Landlords said the blinds were in good condition at the beginning of the tenancy but that at the end of the tenancy many of the slats were bent and discoloured from cigarette smoke residue. The Landlords said they were able to replace some damaged slats but claimed that the blinds were still not fully repaired. The Tenant admitted that she damaged one blind in the kitchen, denied that there was any cigarette smoke residue on others and argued that any other damage was minor.

Based on the Landlords' photographs, many of the slats in the kitchen blinds are badly bent and therefore the whole unit will likely have to be replaced. The Landlords provided photographs of other blinds in the kitchen/eating area and front room that have minimal damage but which they claim the drawstrings have yellowed from smoke. The Landlords admitted that they repaired some blinds but claimed they still needed to be replaced due to the very soiled or discoloured cords. However, I find that these blinds do not need to be replaced because they are likely functional and can be cleaned. The Landlords provided no photographs of the blinds in the 2 bedrooms that were also alleged to have been damaged. Based on the evidence of the Landlords, I find that they are entitled to be compensated for damaged blind in the kitchen ($63.63) and for expenses to clean the blinds in the living room.

However, as indicated above, the Landlords are not entitled to be compensated for the cost of new blinds to replace blinds that were 7 years old at the end of the tenancy (and would have had some wear and tear). RTB Policy Guideline #37 at Table 1 says that the useful lifetime of venetian blinds is 10 years. Consequently, I award the Landlords 30% of the cost of the one damaged blinds ($60.60 + 1/3 installation or $54.05 = $114.65) for a total of **$34.40**. I also award the Landlords cleaning expenses for the living room blind of **$30.00** as they were not cleaned at the end of the tenancy.

Although the Landlords argued that it was a term of the tenancy agreement that the Tenant was responsible for cleaning the propane fireplace annually, I find that this is not the case. I find that the amount claimed by the Landlords for cleaning and servicing the fireplace is a matter that falls under the Landlords' responsibility to repair and maintain under s. 32(1) of the Act and therefore this part of their application is dismissed without leave to reapply.

The Landlords also sought to recover a loss of rental income for the month of June 2011 as they claimed that due to the need to do extensive cleaning and repaint the entire rental unit, they were unable to rent it for that month. However, as I have found that the Landlords have not proven that they lost rental income due to an act or neglect of the Tenant, I find that this part of the Landlords' claim must be dismissed without leave to reapply.

The Landlords also sought to recover expenses for photographs and serving documents on the Tenant however the Act does not make any provision for the recovery of costs associated with preparing and attending dispute resolution hearings other than the recovery of the filing fee. Consequently, the Landlords' application to recover those expenses is dismissed without leave to reapply.

As the Landlords have made out a monetary claim for less than 10% of the amount they sought on their application, I find that this is not an appropriate case to order that the Tenant bear the cost of the $100.00 filing fee they paid for this proceeding. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and pet damage deposit (plus accrued interest) in partial payment of the damage award. The Landlords will receive a Monetary Order for the balance owing as follows:

	Damaged Carpeting:	$620.60
	Damaged Blinds:	$64.40
	Subtotal:	$685.00
Less:	Security Deposit:	($325.00)
	Pet Deposit:	($100.00)
	Accrued Interest:	($15.04)
	Balance Owing:	$244.96

Conclusion

The Decision and Order dated December 6, 2011 are set aside. A Monetary Order in the amount of **$244.96** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: March 05, 2012.

Residential Tenancy Branch