



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the Residential Tenancy Act, (the “Act”), by the Landlord for a monetary order for compensation for damage or loss and recovery of the filing fee and an order to keep the security deposit.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for compensation for damage or loss and recovery of the filing fee and an order to keep the security deposit?

Background and Evidence

The parties agree that they had a tenancy agreement which commenced May 01, 1998 and ended on October 31, 2011 when the Tenant moved out. The parties agree that the rent, due on the first of each month, was \$1,368.05 per month at the time the tenancy ended. The parties agree that the Tenant paid a \$460.00 security deposit on April 01, 1998. The Landlord provided a copy of the tenancy agreement into evidence.

The Landlord stated that when the tenancy started the move-in inspection with the Tenant was verbal, as it was not a requirement of the Act to do a documented move-in inspection report in 1998. The Landlord stated that he made many requests to schedule a move-out inspection with the Tenant, and finally a move-out inspection was scheduled with the Tenant for October 28, 2011 and she agreed to call the Landlord on that date when she was ready for the inspection. The Landlord stated that the Tenant did not call the Landlord as agreed. The Landlord stated that he tried to contact the Tenant by phone to reschedule another date, but her voicemail stated that she could not be reached as she was moving to Kelowna. The Landlord stated that he went to the rental unit and he discovered that the Tenant had abandoned the rental unit and left the

key inside with no contact information provided, so he could not do a move-out inspection with the Tenant at the end of the tenancy.

The Tenant stated that she was not available to do a move-out inspection on October 28th, 2011 but that before she departed on October 28, 2011 she left a voicemail for the Landlord providing her phone numbers, her forwarding address, and her son's phone number. The Tenant's son JM testified at the hearing that he was in Kelowna with the Tenant on October 29 and 30, 2011. The Tenant stated that her son JM was helping her move to Kelowna and she could have asked her son to attend a move-out inspection on her behalf when he returned from helping her move. JM stated that he called the Landlord's wife on November 07, 2011 and sent an email with the Tenant's new address requesting the security deposit.

The parties agree that the Tenant provided her written forwarding address to the Landlord on November 07, 2011. The Landlord did not return the Tenant's security deposit. The Landlord filed an Application for dispute resolution on November 21, 2011, within 15 days fifteen days of receiving the Tenant's forwarding address.

The Landlord stated that the Tenant was a smoker and the rental unit required extensive cleaning as the Tenant had lived there for thirteen years and failed to clean the rental unit, the drapes and the carpets when she moved out. The Landlord provided photographs of the condition of the rental unit at move-out into evidence. The Landlord stated that they had to pay to have the rental unit cleaned which cost \$228.40 and to have the carpet and drapes cleaned which cost \$467.04. The Landlord stated that the drapes were pleated, with 126 pleats, and that they were charged \$2.00 per pleat for the drape cleaning. The Landlord stated that they cleaned the carpets and drapes and did not replace them. The Landlord provided copies of the cleaning receipts into evidence.

The Tenant agrees that she is a smoker, but stated that she mostly smoked outside on the balcony. The Tenant stated that the rental unit was clean when she moved in, but that the carpet was old. The Tenant stated that the drapes were new when she moved in and that she washed them during their tenancy to keep them clean and that she washed them before moving out and hung them while wet to dry. The Tenant stated that the rental unit been repaired due to a leak from a suite above in the months before she moved out, and that although the work was completed that it smelled like mould in the kitchen cupboard, and the bathroom linoleum had a soft spot. The Tenant acknowledged that she did not have the carpets professionally cleaned when she moved out as they were old and she assumed the Landlord would be replacing them. The Tenant stated that she did not clean the rental unit and that the Landlord tried to

settle the issue with her after her son provided her address to him on November 07, 2011, but they could not agree on an amount. The Tenant requests that the Landlord be required to return her security deposit plus interest as she did not give him authorization to keep any of it. The Tenant has not made an application for dispute resolution.

The Landlord is requesting \$695.44 for cleaning costs, reimbursement of the filing fee paid for this Application, and an order to keep the security deposit plus interest.

Analysis

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

I find that the parties were not required to do a move-in condition inspection when the tenancy started in 1998, as this was not made a requirement of the Act until 2004. However, as the tenancy ended October 2011, I find that the parties were required by the Act to do a move-out condition inspection.

With regards to the condition inspection when this tenancy concluded, section 15, 16, and 17 of the Residential Tenancy Regulation state the following:

Tenant may appoint an agent

15 (1) The tenant may appoint an agent to act on his or her behalf to attend a condition inspection and sign a condition inspection report described in section 23 or 35 of the Act.

(2) The tenant must advise the landlord, in advance of the condition inspection, that an agent will be acting for the tenant in respect of the condition inspection and condition inspection report.

(3) The landlord must not accept an appointment or act as the tenant's agent for the purposes of subsection (1).

Scheduling of the inspection

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I accept the Landlord's testimony that he had scheduled a condition inspection with the Tenant for October 28, 2011 the day she was moving out of the rental unit and that she left the key inside the rental unit when she moved. The Tenant did not dispute the Landlord's testimony on this matter at the hearing. The Tenant's testimony did not indicate that she proposed any alternative time to the Landlord for a final move out inspection. The Tenant only stated that she left the Landlord a voice message with her new address and contact details by phone on October 28, 2011. The Landlord disputes receiving any voice message from the Tenant on October 28, 2011 and stated that he did not receive the Tenant's contact details until he received an email from her son JM on November 07, 2011. I find that the Tenant failed to propose an alternative time for the final move-out inspection to the Landlord and abandoned the rental unit on October 28, 2011 leaving her key in it. As a result, I find that the Tenant extinguished her right to the security deposit pursuant to section 36 of the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 (2) of the Act states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Policy Guideline 1 states the following:

At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.

The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case

there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy.

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

As part of the evidence submissions the Landlord provided photographs showing the condition of the rental unit and receipts for the actual cost of the cleaning of the rental unit, including carpets and drapes. The Tenant does not dispute that she failed to clean the carpets and rental unit and that she is a smoker. The Tenant feels that washing the curtains should have been sufficient and professional cleaning was not necessary. There is no evidence that the Tenant obtained the Landlord's consent to allow her to just wash the pleated curtains rather than have them professionally cleaned at the end of the tenancy. As a result, I find that the Tenant's cleaning of the curtains in the rental unit was not sufficient and the Landlord is entitled to the costs he incurred to have the

curtains professionally cleaned and the amount claimed is reasonable. I also find that the Landlord is also entitled to the costs he incurred for carpet cleaning and rental unit cleaning costs and that these amounts are reasonable. I grant the Landlord a monetary order for \$695.44.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I grant the Landlord monetary order for \$745.44, which represents curtain cleaning, carpet cleaning, and cleaning of the rental unit (\$695.44), and the filing fee (\$50.00).

The Landlord filed his Application for dispute resolution within 15 days of the Tenant providing a written forwarding address. The Tenant did not file an application for return of her security deposit and I have found that she extinguished her right to the security deposit. The parties confirmed that the Landlord holds a \$460.00 security deposit plus interest \$57.49, accrued since April 01, 1998, for a total of \$517.49. As I have found that the Tenant owes the Landlord compensation for damages and losses, and the filing fee, I order that the Landlord retain the deposit totalling \$517.49 in partial satisfaction of the claim. I grant the Landlord a monetary order pursuant to section 67 for the balance of the amount owing to the Landlord is **\$227.95**.

Conclusion

I grant the Landlord's claim for compensation for damage and loss, and the filing fee.

I find that the Landlord is entitled to \$745.44, as I have ordered that the Landlord retain the deposit plus interest totaling \$517.49, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$227.95**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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