



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent and utilities; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

At the outset of the hearing the Landlord withdrew her claim for compensation for loss of revenue. She stated that the damages to her rental unit exceeded the amount of her monetary claim and she elected to limit her claim for compensation for damages rather than to increase the amount of her claim to include compensation for damages and lost revenue.

The Landlord stated that she mailed her Application for Dispute Resolution to the Tenant on March 14, 2012; that the package was returned to her by Canada Post; and that she personally delivered the Application to the Tenant on April 06, 2012 at the Tenant's place of employment.

The Tenant stated that the Landlord did not personally serve her the Application for Dispute Resolution on April 06, 2012 and that she did not receive it until May 07, 2012. The Tenant stated that she was prepared to proceed with the hearing on May 14, 2012 and she declined the opportunity to request an adjournment to provide her with additional time to consider the Application for Dispute Resolution.

The Landlord submitted documents to the Residential Tenancy Branch on May 07, 2012. She stated that she personally served copies of these documents, which included her Application for Dispute Resolution, to the Tenant on that date. The Tenant acknowledged receipt of the Landlord's documents and they were accepted as evidence for these proceedings.

The Tenant also acknowledged receiving a CD from the Landlord on May 07, 2012 however she stated that she has been unable to view the CD as she does not have a computer. In the absence of evidence to show that the Tenant has had the opportunity to view the CD submitted in evidence by the Landlord, I decline to accept the CD as evidence, as it would be unfair to consider evidence that has not been viewed by the other party.

The Tenant submitted documents to the Residential Tenancy Branch on May 11, 2012. She stated that she left copies of these documents in the Landlord's mail box on May 11, 2012. The Landlord acknowledged receiving these documents on May 13, 2012 and they were accepted as evidence for these proceedings. The Landlord stated that she was prepared to proceed with the hearing on May 14, 2012 and she declined the opportunity to request an adjournment to provide her with additional time to consider the Tenant's evidence.

The Landlord submitted photographs to the Residential Tenancy Branch on May 09, 2012. She stated that she was not able to serve these photographs on the Tenant and they were not, therefore, accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent and utilities; for compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2011; that the Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00; that on February 17, 2012 the Tenant provided the Landlord with verbal notice of her intent to vacate on March 01, 2012; that on February 29, 2012 the Tenant provided the Landlord with written notice of her intent to vacate on March 01, 2012; that the Tenant vacated the rental unit on March 01, 2012 or February 29, 2012; that the Tenant provided the Landlord with her forwarding address, in writing, on February 29, 2012; and that the Landlord returned \$500.00 of the pet damage deposit to the Tenant on February 18, 2012.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning and the end of this tenancy, a copy of which was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$89.00, for cleaning the carpet. The Landlord and the Tenant agree that the condition inspection report completed at the end of the tenancy notes that the carpet had been steam cleaned and there is nothing on the report that indicates further cleaning is required.

The Landlord stated that the carpet smelled strongly of pet urine and that she did not note it on the condition inspection report because the carpet had just been cleaned so the smell was not noticeable.

The Tenant stated that her pets were crated when she was not at home and they did not urinate on the carpet.

The Landlord submitted a letter from her realtor, in which the realtor noted that when she showed the unit it was untidy and smelled of animal waste and urine. The Tenant stated that the realtor may have noted a smell of urine during showings simply because the dog had been crated and may have urinated in the crate.

The Landlord submitted a receipt for carpet cleaning on which the technician noted there was a "bad dog odor".

The Landlord stated that the odor remained after cleaning the carpet so she had to replace the carpet, for which she is seeking compensation of \$2,290.74. The Landlord stated that there was no visible damage to the carpet at the time of the inspection.

The Landlord is seeking compensation, in the amount of \$134.53, for replacing the stove elements and rings. The Landlord and the Tenant agree that the condition inspection report completed at the end of the tenancy notes that there is a "problem w/all". Both parties agree that this meant the elements and rings were dirty.

The Tenant stated that she scrubbed the stove elements and rings, although she acknowledged that they were not perfectly clean. The Landlord contends that they were so dirty they had to be replaced.

The Landlord is seeking compensation, in the amount of \$112.87, for the Tenant's portion of unpaid utilities. The Tenant agreed that she owes this amount to the Landlord for unpaid utilities.

The Landlord is seeking compensation for late charges arising from the late payment of the aforementioned utility charges. The parties agree that the bill was paid by the Landlord, who then collected the Tenant's portion of the bill from the Tenant.

The Landlord and the Tenant agree that they had an agreement that the Tenant could reduce her rent by \$50.00 per week for every week the Tenant cleaned the Landlord's home. The Tenant stated that she did not clean the Landlord's home for two weeks during the tenancy and she believed she should have paid an additional \$100.00 in rent. The Landlord stated that the Tenant did not clean the Landlord's home for three weeks during the tenancy; that she kept \$100.00 from the pet damage deposit in partial compensation for the money owed; and that the Tenant still owes \$50.00 in rent.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted sufficient evidence to show that the carpet needed additional cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the notation on the carpet cleaning receipt, which indicates there was a “bad dog odor”.

Section 21 of the Residential Tenancy Regulation stipulates that a condition inspection report is evidence of the state of repair of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary. Although the condition inspection report completed at the end of the tenancy indicates the carpet had been cleaned, I find that the notation from the carpet technician, who is an independent, trained professional, is sufficient to cause me to conclude that additional cleaning was required.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to properly clean the carpet at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$89.00 for cleaning the carpet.

I find that the Landlord submitted insufficient evidence to show that the carpet required replacement. In reaching this conclusion I was heavily influenced by the condition inspection report on which the Landlord noted there was “no damage, just maintenance as noted”. In reaching this conclusion I note that the evidence from the carpet technician does not corroborate the Landlord's claim that the smell remained after the carpet had been cleaned for a second time.

In reaching this conclusion I placed little weight on the letter from the Landlord's realtor. Although the realtor does note there was an overwhelming smell of animal waste and urine, she notes in the same sentence that the suite was untidy. This causes me to conclude that the observations were made prior to the end of the tenancy and prior to the carpet being cleaned on two occasions. It does not provide me with any insight into the condition of the carpet after it had been cleaned. I note that the realtor was not called as a witness at the hearing and I did not have the opportunity to ask questions about her observations.

In reaching this conclusion I placed little weight on the Landlord's testimony, as it was countered by the Tenant's testimony and I could find no reason to discredit the testimony of either party. As the Landlord has failed to establish that the carpet needed replacing, I dismiss the Landlord's claim for the cost of replacing the carpet.

On the basis of the undisputed evidence presented at the hearing, I find that the stove elements and rings were not perfectly clean at the end of the tenancy. I find that the Landlord submitted insufficient evidence, however, to establish that they were so dirty that they needed to be replaced. In reaching this conclusion I specifically note that I was unable to view any of the images submitted in evidence by the Landlord, as the images served to the Tenant by the Landlord were not served in a format that could be viewed by the Tenant. As the Landlord has failed to establish that the elements and rings needed replacing, I dismiss the Landlord's claim for these replacement costs.

As the Tenant agrees that she owes the Landlord \$112.87 for unpaid utilities, I find that she must pay this amount to the Landlord. As the Landlord was responsible for paying the utility bills, I find that the Landlord is obligated to pay those bills on time. I therefore dismiss the Landlord's claim for compensation for late fees.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant was entitled to reduce her rent by \$50.00 per week when she cleaned the Landlord's home on a weekly basis. As the Tenant agreed that she reduced her rent by \$100.00 and she did not clean the Landlord's home for two weeks, I find that she must pay the Landlord \$100.00 in unpaid rent.

I find that the Landlord submitted insufficient evidence to establish that the Tenant owes an additional \$50.00 in rent for a third week of missed cleaning. In reaching this conclusion I note there was no evidence submitted to corroborate the Landlord's statement that the Tenant did not clean her home for three weeks during the tenancy or to refute the Tenant's statement that she only missed two weeks of cleaning. I therefore dismiss the Landlord's claim for an additional \$50.00 of unpaid rent.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$352.86, which is comprised of \$100.00 in unpaid rent, \$112.87 for unpaid utilities, \$89.99 for cleaning the carpet, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit.

As the Landlord has already returned \$500.00 of the Tenant's security/pet damage deposit and she has been authorized to retain \$352.86, I find that the Landlord must

return the remaining \$347.14 to the Tenant. Based on these determinations I grant the Tenant a monetary Order for the amount \$347.14. In the Landlord that the Landlord does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: May 14, 2012.
