



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

This tenancy started as a one year fixed term tenancy on June 12, 2010 and continued as a month-to-month tenancy thereafter. The tenancy ended on September 1, 2011 when the Tenant moved out. Rent was \$795.00 per month. The rental unit is approximately 600 square feet in area.

The Landlord did not complete a move in condition inspection report. The Parties met at the rental property on September 1, 2011 to complete a move out inspection report however the Landlord claimed the Tenant left without doing it. The Tenant claimed that the Landlord began yelling at him about some nail holes in the walls so he handed her the keys and left. The Landlord did not complete a move out condition inspection report.

The Landlord said the walls were in a good state of repair and freshly painted at the beginning of the tenancy. The Tenant denied the walls were freshly painted. The Landlord said the Tenant left a number of nail holes in the walls that he had filled with putty but had not painted over. The Landlord also claimed that she had to paint the ceilings because the Tenant smoked in the rental unit (which the Tenant denied). Consequently, the Landlord sought compensation of \$260.00 to repaint the walls and ceiling. The Tenant claimed that the Landlord only asked him to fill the holes with putty and said nothing about repainting until September 1, 2011. The Tenant argued that he was not responsible under the Act for repairing holes made by finishing nails.

The Landlord also said the Tenant did not leave the rental unit clean at the end of the tenancy and that she had to hire someone to clean the oven and to wash the kitchen cabinets, windows and floors. The Landlord claimed that all of the walls also had to be

washed to remove cigarette smoke residue. The Landlord did not have a receipt for this expense but argued that it was a term of the tenancy agreement that the Tenant would be responsible for cleaning expenses of \$100.00 at the end of the tenancy if additional cleaning was required.

The Tenant admitted that he left before he finished cleaning the rental unit however the Tenant claimed that he cleaned the cupboards and kitchen appliances and only the floors had to be mopped. The Tenant argued that it would have been unnecessary to wash the walls if the Landlord was repainting them because they would have to be sanded and primed first. The Tenant also argued that it was unclear if some of the cleaning costs were incurred due to the need to clean up after the suite was painted.

The Landlord also claimed that the Tenant removed a 1950s vintage sink (that matched the bathroom fixtures) without her consent and replaced it with a new, marble countertop and basin. The Landlord said the Tenant got rid of the old sink which she estimated had a value of \$350.00 - \$400.00. The Tenant admitted that he replaced the sink in February 2011 however he said he showed it to the Landlord at that time and she was very happy with it and the fact that she was receiving a *significant* upgrade for free. The Tenant said he also showed the Landlord where he had put the old sink by the carport and assumed that she removed it because he did not see it again after that time.

The Landlord also claimed that some blinds were damaged at the end of the tenancy and had to be replaced. The Tenant said there was nothing wrong with the blind slats as alleged by the Landlord but that the plastic on the blinds appeared very old and brittle at the beginning of the tenancy and the draw strings were old and frail and when he tried to open it for the first time, the string broke.

The Landlord said the Tenant gave her notice he was ending the tenancy on or about August 1, 2011 and she started advertising it and showing it to prospective Tenants on August 3, 2011. The Landlord claimed, however, that she decided to stop showing it on August 15, 2011 because there were a number of issues. In particular, the Landlord said the Tenant's girlfriend moved in partway through the tenancy with all of her belongings and the rental unit was cluttered. The Landlord said the Tenant had also taped cardboard along part of the windows making it dark, there were nail hole patches all over the walls and the rental unit smelled of smoke. The Landlord said once the Tenant vacated and the cleaning and repairs were made, she was able to get a new tenant effective September 15, 2011. Consequently, the Landlord sought to recover a loss of rental income for ½ of September 2011.

The Tenant admitted that the rental unit was cluttered but denied that he smoked in the suite. The Tenant claimed that any cigarette smell was from him bringing extinguished cigarettes into the rental unit. The Tenant argued that the Landlord initially was only seeking to retain approximately \$300.00 for damages but due to him receiving a monetary award for double the security deposit, she has now increased her claim to

approximately \$1,200.00. The Landlord argued that she was only seeking to recover her actual expenses.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB 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.”*

The Parties agree (and the Landlord's photographs show) that the Tenant hung a number of items on the walls secured by nails. The Tenant said he patched these holes at the Landlord's request although not legally responsible for doing so. However, RTB Policy Guideline #1 at p. 4 says as follows:

“If the Tenant follows the Landlord's reasonable instructions for hanging and removing pictures , it is not considered damage and he or she is not responsible for filling the holes...The Tenant must pay for repairing walls where there are an excessive number of nail holes, or large nail holes, or screws or tape have been used and left wall damage.”

I find that there is nothing in the Act or Regulations or the Parties' tenancy agreement that excuses the Tenant from repairing holes in the walls made by finishing nails. Consequently, I find that the Tenant is responsible for repairing and repainting the walls in question. However, the Landlord provided a receipt for \$200.00 for painting *and for bathroom repairs*. Consequently, I award the Landlord \$150.00 for labour to repaint and \$40.00 for paint supplies (she already had on hand) for a total of **\$190.00**.

I also find that some cleaning was necessary. The Landlord's photographs show an area of dirt on a wall and in the oven of the stove as well as some dust or grime on a set of blinds. However, I find that there is insufficient evidence to conclude that all of the walls and floors had to be cleaned because the Tenant smoked inside. Consequently, I award the Landlord **\$50.00** for cleaning expenses. The Landlord also relied on a clause in the Parties' tenancy agreement that said “when leaving all tenants belongings [must] be removed from property and premises cleaned otherwise \$100.00 cleaning fee...and deducted from the deposit.” Section 20(e) of the Act says that *“a Landlord must not include as a term of a tenancy agreement, that the Landlord automatically keeps all or part of the security deposit or pet damage deposit at the end of the tenancy agreement.”* As a result, I find that this term of the tenancy agreement contravenes s. 20(e) of the Act and is unenforceable pursuant to s. 5 of the Act.

I find that there is insufficient evidence to grant the Landlord compensation for the bathroom sink. Although I find that the Tenant replaced the sink and countertop without the Landlord's prior consent, I find that the Landlord was aware of that the sink was

replaced and approved of it because she took no steps to have the Tenant put it back during the tenancy. I also find that there is insufficient evidence to conclude that the Tenant disposed of the old sink. Consequently, this part of the Landlord's application is dismissed without leave to reapply.

I also find that there is insufficient evidence to grant the Landlord compensation for blinds. The only evidence of blind damage was a photograph submitted by the Landlord showing a slightly bent slat. The Tenant argued that the blinds were old and suffering from excessive wear at the beginning of the tenancy. In the circumstances, I cannot conclude that the Tenant was responsible for any damage that may have occurred to the blinds and that part of the Landlord's application is dismissed without leave to reapply.

The Landlord also argued that she lost rental income for ½ of September 2011 because the Tenant smoked in the rental unit (although he was not supposed to) and because he failed or refused to remove clutter and remove cardboard from windows. The Tenant admitted that the rental unit was cluttered because he was in the middle of packing and that he kept cardboard on the windows to keep out the heat. I find that the Tenant's actions may not have helped the Landlord's efforts to show the rental unit. However, s. 7 of the Act says a Party must take reasonable steps to minimize their losses. In other words, I find that it would have been reasonable for the Landlord to warn the Tenant that she would seek to recover a loss of rental income from him if he failed to take steps to clean up the rental unit. Instead, the Landlord admitted that she simply stopped showing the rental unit until the Tenant vacated. In these circumstances, I find that the Landlord is not entitled to recover a loss of rental income and that part of her application is dismissed without leave to reapply.

As the Landlord has recovered less than 25% of the compensation she applied for, I find that she is only entitled to recover one half of the filing fee for this proceeding or \$25.00. Consequently, I find that the Landlord is entitled to a Monetary Order for \$265.00.

Conclusion

A Monetary Order in the amount of **\$265.00** has been issued to the Landlord 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: May 14, 2012.

Dispute Resolution Officer