



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant said she was relying on documentary evidence from a previous dispute resolution hearing. The Tenant provided those documents to the Residential Tenancy Branch prior to this hearing but admitted that she had not re-served the Landlord with a copy of them. RTB Rule of Procedure 4.1 says that any evidence upon which a respondent intends to rely at a dispute resolution proceeding must be served on the applicant. The Tenant argued that the Landlord would have these documents in his possession because he had previously been served with them and should have anticipated that she would rely on them at this hearing however the Landlord claimed that he did not have a copy of the Tenant's documentary evidence at this hearing.

I find that the Rules to the Act require the Respondent to serve on the Applicant any documentary evidence she is relying on for **each** dispute resolution hearing. A Party cannot be expected to anticipate the evidence upon which the other Party intends to rely or assume that those documents are still in that Party's possession. As the Landlord does not have an opportunity to respond to the Tenant's documentary evidence at this hearing, it is excluded pursuant to RTB Rule of Procedure #11.5(b).

Issue(s) to be Decided

1. Is the Landlord entitled to cleaning and repair expenses and if so, how much?

Background and Evidence

This tenancy started on August 1, 2009 and ended on March 30, 2012 when the Tenant moved out. Rent was \$1,100.00 per month payable in advance on the 1st day of each month. The Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy.

The Landlord said the rental unit was clean and in a good state of repair at the beginning of the tenancy but that at the end of the tenancy, he spent 10 hours cleaning the following things:

- the balcony floor;
- the living room window sills, blinds and baseboards;
- the kitchen counters, drawers, shelves, tile grout, floor and oven;
- the floor in the laundry closet; and
- the floor in the storage closet.

The Tenant argued that the balcony was not fully clean at the beginning of the tenancy and that she could not clean it at the end of the tenancy because Strata rules permitted occupants of the rental property to do so only twice per year at designated times. The Tenant also argued that the blinds in the living room were in the same state of cleanliness at the end of the tenancy that they were at the beginning and that she cleaned the window sills and baseboards. The Tenant said the oven had stains in it at the beginning of the tenancy and that she rarely used it during the tenancy. The Tenant also claimed that she cleaned the kitchen cupboards, shelves and drawers. The Tenant said she scrubbed the grout around tiles but that it discolored over time. The Tenant said she did not clean behind the refrigerator or washer and dryer because they were not on wheels and she could not pull them out. The Tenant admitted that the floors in the storage and laundry closets may have needed to be swept. The Tenant also argued that in the 3 weeks leading up to the end of the tenancy, the Landlord's realtor thanked her for keeping the rental unit in a very "presentable" or clean condition for showings.

The Landlord also claimed that the carpets in the rental unit were cleaned at the beginning of the tenancy but that the Tenant did not clean them at the end of the tenancy. The Tenant claimed that the Landlord's spouse advised her that she was not responsible for cleaning the carpets at the end of the tenancy and that in reliance on that advice she only vacuumed them.

The Parties agree that the Tenant's movers left two gouges in the walls at the end of the tenancy. The Landlord said the Tenant filled the damaged areas with putty but that he had to sand over them and repaint them. The Landlord said all light bulbs were working at the beginning of the tenancy but that there were also seven burned out light bulbs at the end of the tenancy that he had to replace. The Tenant claimed that there were only 3 burned out light bulbs at the end of the tenancy and that both she and the Landlord had difficulty removing them from the light fixture.

The Landlord claimed that the refrigerator was only 2 months old at the beginning of the tenancy and that at the end of the tenancy, one of the glass shelves was cracked. The Tenant claimed that she did nothing to cause the shelf to crack and that based on some research she had done, she believed it was a product defect. The Tenant claimed she did not store a lot of food in the refrigerator during the tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 (Responsibility for Residential Premises) describes the responsibilities of a Tenant (and Landlord) in this regard.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean and that any damages were caused by an act or neglect of the Tenant rather than reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlord did not complete a condition inspection report at the beginning or at the end of the tenancy; instead the Landlord relied on photographs he said he took of the rental unit on July 31, 2009 and on April 1, 2012. The Tenant agreed that the photographs taken on July 31, 2009 accurately depicted the condition of the rental unit at the beginning of the tenancy but questioned whether others were taken on April 1, 2012 as alleged by the Landlord. The Tenant also claimed that the photographs taken by the Landlord at the beginning of the tenancy were taken at a distance whereas those allegedly taken at the end of the tenancy were close ups. The Tenant argued that any finger prints, for example shown in the close ups could also have existed at the beginning of the tenancy but would not have been visible in the Landlord's photographs taken at the beginning of the tenancy because they were taken from a distance.

Based on the Landlord's photographs, the interior of the rental unit appears to be generally clean and undamaged at the beginning of the tenancy. However, I find that these photographs are limited in their usefulness because they do not show certain items in dispute. In particular, there is only one photograph of the balcony taken from a distance that shows a very small portion of the floor area. Furthermore, there are no photographs of the inside of the oven, the storage and laundry room floors or inside the kitchen cupboards. As noted by the Tenant, there are also no close-up photographs of such things as the window sills, baseboards, blinds and light switches at the beginning of the tenancy.

Furthermore, the Tenant argued that the Landlord's photographs showed dirt on many of the things that she cleaned at the end of the tenancy and therefore she called into question whether the Landlord's photographs were taken when he said they were. The Tenant also argued that she was not responsible for leaving the rental unit in a cleaner condition than it was at the beginning of the tenancy and to that end claimed that the balcony, oven and blinds were as clean at the end of the tenancy as they were at the beginning of the tenancy. I also accept the Tenant's evidence that the Strata Rules for the rental property prohibited her from washing off the balcony at that time. RTB Policy Guideline #1 says that a Tenant is not responsible for cleaning under or behind appliances if they are not on wheels. Based on the un-contradicted evidence of the Tenant, I find that the refrigerator and washer and dryer were not on wheels and therefore the Tenant was not responsible for cleaning behind them.

In summary, given that the Tenant has called into question the reliability of the Landlord's photographs he said he took at the end of the tenancy regarding areas that allegedly were not cleaned, I cannot give those photographs a lot of weight. Furthermore, given the contradictory evidence of the parties on the issue of whether the rental unit was left in the same state of cleanliness at the end of the tenancy as it was at the beginning of the tenancy, and in the absence of any reliable corroborating evidence of the Landlord to resolve this contradiction, I find that he has met the evidentiary burden of proving that the Tenant did not leave the rental unit reasonably clean and should therefore be responsible for additional cleaning. Consequently, I find that there is insufficient evidence to conclude that the Landlord is entitled to be compensated for 10 hours of cleaning and the cost of cleaning supplies and those parts of his claim are dismissed without leave to reapply.

I find that the Landlord is entitled to recover carpet cleaning expenses of \$112.00. Although the Tenant claimed that the Landlord's spouse told her that she was not responsible for cleaning the carpets, I find that this is hearsay evidence and unreliable. In the absence of any reliable, corroborating evidence from the Tenant that the Landlord waived the requirement of her to clean the carpets, I find that the Landlord is entitled to be compensated for this expense.

I also find that the Landlord is entitled to recover his reasonable expenses for repairing damage to some walls caused by the Tenant's movers and for replacing 3 light bulbs. Consequently I award the Landlord \$77.27 or (\$48.70 + \$28.57). The Parties also gave contradictory evidence as to whether the Tenant was responsible for damaging a refrigerator shelf. The Tenant argued that this was a manufacturer's defect however she provided no evidence to support that allegation. Consequently, I also award the Landlord the amount he claimed to replace the shelf of \$139.98. As the Landlord has been successful in recovering more than ½ of the amount claimed on his application, I find that he is also entitled to recover the filing fee of \$50.00 from the Tenant.

Conclusion

A Monetary Order in the amount of \$379.25 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: September 20, 2012.

Residential Tenancy Branch