



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on April 1, 2011, and ended on July 31, 2011. I note that the tenant has resided in the rental unit since 2010, with another tenant who eventually vacated the rental unit, but that a new tenancy agreement and condition inspection report were executed with this tenant.

The rental unit was in the lower suite and the landlord lived in the upper suite.

The landlord has applied for a monetary order for \$3000.00, without providing a specific breakdown of the claim. The landlord said that he is claiming \$2406.88 for the cost of carpet replacement and the balance of the claim is for remediating alleged damage to a neighbour's yard, caused by the tenant's dogs, fees for processing the claim and the filing fee for the application.

The landlord provided the following evidence-

It was necessary to replace the carpet in the rental unit after the tenant vacated, due to the urine odour and damage caused by the tenant's pets. The odour was masked on the day of the move out inspection as the tenant had just completed shampooing and cleaning the carpet, and the only smell was of a cleaner/bleach. Therefore the odour was not mentioned on the condition inspection report.

Shortly after the final inspection, when the carpet began to dry, the urine smell became so strong, the landlord had three carpet companies attend the rental unit for an assessment. The landlord was informed by all three companies that there was no salvation for the carpet, but that a complete replacement, including the underlay, was required, all due to the pet urine. The landlord pointed to his evidence of the photos of the carpet as well as the reports from the carpet companies.

The landlord said the carpet was three years old.

The landlord was required to repair damage to a neighbour's yard, due to the complaints by the neighbour of the tenant's dog damaging the yard.

The landlord's other relevant evidence included the condition inspection report and the tenancy agreement.

The tenant provided the following evidence-

The carpet was cleaned and shampooed, as required, on the final day of the tenancy. The carpet did not require replacing and that if the odour was so strong, it would have been noticed on the day of the final inspection.

The landlord had no issues with the condition of the rental unit, as her security deposit was returned immediately and nothing was mentioned about the carpet until mid August 2012.

The tenant did not have a door blocking access to her rental unit from the upper suite, as the only door was to the landlord's suite. The landlord's dogs have come into her rental unit, both from upstairs and the yard and she has seen them urinate on her carpet.

When questioned, the tenant could not deny that her pets urinated on the carpet, but she did say her pets were house trained and that she cleaned up after them.

In response, the landlord did not deny that his dog may have urinated on the carpet.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Residential Tenancy Branch Regulations state that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Due to the landlord's photographic evidence and the carpet professionals' recommendations, I accept that the carpet in the rental unit required replacement.

Although the pet urine odour or stains were not mentioned on the condition inspection report I find it reasonable that the strongest odour on the date of the final inspection was of the carpet shampoo and cleaner, given that the carpet was cleaned and shampooed on that date, and that the carpet was still wet.

I also find it reasonable that the tenant's pets did urinate on the carpet, due to the evidence of the photographs and the tenant's admission. However, I also find it reasonable that the landlord's dogs also urinated on the carpet, given the landlord's admission that his dog also urinated on the carpet. The landlord also said his friend lived in the rental unit prior to this tenancy, and I therefore find it reasonable that the landlord would visit with his pet during that tenancy.

Due to both parties admission that their respective pets have urinated on the carpet, I find it reasonable that the parties share equally in the cost of its replacement.

RTB Guidelines 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Carpet has a useful life of 10 years and this carpet was three years old. Therefore the carpet must be depreciated by 30%.

I therefore find the landlord has established a monetary claim for carpet replacement in the amount of \$842.41. ($\2406.88 for carpet replacement, less 30% depreciation = $\$1684.82 \div 2$ for landlord/tenant shared costs = $\$842.41$)

As to the landlord's claim for the damage to the neighbour's yard, I find the landlord submitted insufficient evidence that the yard was damaged, that even if so, I can find no violation of the Act, or verification of a loss. I therefore dismiss the landlord's claim for damage to the neighbour's yard.

As to registered mail costs, I also find that I do not have authority to award an applicant for costs associated with preparing for a hearing or serving hearing documents as these are not costs enumerated as recoverable under the Act. I therefore dismiss his monetary claim for those costs.

I find the landlord's application contained merit and I therefore allow him recovery of the filing fee of \$50.00.

Conclusion

I find the landlord has established a total monetary claim in the amount of \$892.41, comprised of costs of the carpet replacement as noted above in the amount of \$842.41 and recovery of the filing fee of \$50.00.

I therefore grant the landlord a final, legally binding monetary order in the amount of \$892.41, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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