



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This was the reconvened hearing dealing 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, unpaid rent and damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee. This Decision may be read in conjunction with my Interim Decision of September 17, 2012.

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

The evidence was discussed and no party raised any issue regarding service of the evidence or application.

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.

The landlord had one witness attending, who was excluded from the telephone conference call hearing until her testimony was heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order against the tenants, for authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on April 1, 2011, ended on May 31, 2012, monthly rent began at \$1795.00, and the tenants paid a security deposit of \$897.50 at the beginning of the tenancy.

This tenancy involved 4 co-tenants; however only tenant KN was served with the Notice of Hearing by the landlord.

The landlord's monetary claim is as follows:

| | |
|--------------------|------------------|
| Carpet cleaning | \$123.20 |
| Hauling of garbage | \$201.60 |
| Unpaid rent | \$130.00 |
| Cleaning | \$537.00 |
| Carpet replacement | \$324.61 |
| Total | \$1441.41 |

The landlord's relevant evidence included approximately 71 photographs of the rental unit, a condition inspection report, the tenancy agreement, receipts for expenses claimed, and copies of communication from the tenants.

The landlord provided the following relevant evidence-

Carpet cleaning-The landlord stated that the tenants did not have the carpet professionally cleaned at the end of the tenancy, which required the landlord to hire a carpet cleaning company. The landlord provided the receipt from this company.

Flea treatment-The landlord said that it was necessary to have the rental unit treated for fleas due to the flea infestation from the tenant's cat. When questioned, the landlord said that fleas were detected when the cleaning crew began working after the inspection of the rental unit.

Garbage hauling-The landlord said that the tenants left a substantial amount of garbage, debris and personal property, which required that a hauling company be hired for removal.

Unpaid rent-The tenant agreed that this amount was owed.

Cleaning-The landlord said the tenants failed to properly clean the rental unit, which required that the landlord hire their staff cleaning crew. In support, the landlord directed my attention to their photographic evidence and the condition inspection report.

The landlord further stated that the two tenants attending the final inspection requested additional time to clean the rental unit, to which the landlord agreed so long as the tenants informed the landlord of their intention by 3:00 p.m. that day. The landlord did not hear from the tenants by that time, which resulted in the 4 person cleaning crew going in to clean for the upcoming tenants, according to the landlord.

Carpet replacement-The landlord said that new carpet was laid prior to the start of this tenancy; however, the tenants damaged a portion of the carpet with burns, which necessitated a replacement as it could not be repaired.

The landlord said that the carpet replacement listed on the condition inspection report was an estimate due to a similar replacement in another rental unit. The landlord also said the burns were in the front bedroom, which was not the attending tenant's room.

Testimony of the landlord's witness-

The landlord's witness, a member of the 4 person cleaning crew, said that she attended the final inspection with the landlord, and noted that the rental unit was not cleaned. The witness stated that she assisted in the inspection and that the two tenants declined to participate in the walk-through with the landlord.

The witness further said that the landlord allowed the tenants until midnight to clean the rental unit, with the proviso that they inform the landlord by 3:00 p.m. of their intention.

As to the work performed, the witness said that she and the cleaning crew spent many hours washing walls, dusting, and window cleaning.

When questioned, the witness said that she detected the presence of fleas when she assisted in the inspection.

The tenant provided the following relevant evidence in response to the landlord's application-

Carpet cleaning, garbage hauling and cleaning-The tenant agreed that some garbage and debris were left at the rental unit and that some cleaning was required; however, the tenant said that she and the other attending tenant was told by the landlord that they

had until midnight on the day of the final inspection to come back to do a final clean and garbage removal. According to the tenant the landlord, however, denied them entry into the rental unit when she came back with some friends and a moving truck.

The tenant questioned the number of cleaners and the amount of time listed by the landlord necessary to clean the rental unit as she received a quote from a professional cleaning company that the work would require 2 people for 4 hours.

The tenant also stated that they were not allowed to participate in the final walk-through and that the landlord refused to provide the tenants a copy of the condition inspection report. Due to this, the tenant refused to sign the document as she was not informed of the contents of the condition inspection report.

The tenant questioned the validity of the landlord's photographic evidence as there were no dates or times listed on the photos.

Flea treatment-The tenant said that she detected fleas on her cat one time, and she immediately put her cat on flea prevention medication and has been on the treatment since that time. The tenant denied that her cat had fleas after he started on the flea treatment and that none were in the rental unit as she would not allow her cat to stay in that condition.

Unpaid rent-The tenant agreed that this amount was owed.

Carpet replacement-The tenant denied that the carpet needed to be replaced and questioned the landlord's evidence which showed a different address on the receipt apart from the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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.

Carpet cleaning- Under the Act, a tenant is generally held responsible for steam cleaning or shampooing the carpets after one year, as is the case before me. I therefore accept the evidence of the landlord, in light of the tenant's failure to provide evidence to the contrary, that the carpet was not cleaned as required and I therefore allow the landlord's claim for \$123.20, as shown by their receipt.

Flea treatment-I find the landlord provided contradictory evidence regarding the presence of fleas in the rental unit, necessitating a flea treatment. The landlord stated that the presence of fleas was detected once the cleaners began working and the witness, a member of the cleaning crew who attended and inspected the rental unit with the landlord, said fleas were detected during the walk-through inspection. However, there was no mention made of fleas on the condition inspection report, which otherwise was quite detailed as completed by the landlord. I find there is no reason why the presence of fleas, if detected during the condition inspection, would not have been noted on the condition inspection report.

I therefore find the landlord submitted insufficient evidence that the rental unit required a flea treatment and I dismiss their claim for \$125.00.

Garbage hauling-In the case before me, the parties provided disputed verbal testimony as to whether or not the tenants were told they would be given access to the rental unit up until 12:00 p.m. to clean the rental unit on the last day of the tenancy and following the inspection. Under the Act, a tenancy ends at 1:00 p.m. on the last day of the tenancy, unless otherwise agreed to by the parties. As there is no conclusive proof that the landlord did allow unfettered access to the rental unit until midnight, I find I must adhere to the requirements of the Act. I therefore find that the tenants were required to have all personal property and garbage removed from the rental unit by 1:00 p.m.

I find it more likely that the landlord did give the tenants a 3:00 p.m. deadline to let her know if they, the tenants, were to return to the rental unit later that day for cleaning. I arrived at this conclusion as I find it reasonable that the landlord would need time to have the rental unit cleaned before the new tenants moved in.

Due to the above, I find the landlord submitted sufficient evidence that the tenants left garbage and personal property at the rental unit which required removal and approve their monetary claim of \$201.60, the amount listed on their receipt.

Unpaid rent-This amount is approved as the tenant agreed that it was owed. I therefore find the landlord has proven their monetary claim of \$130.00.

Cleaning-At the end of a tenancy, the tenant is required to leave the rental unit in a reasonable state of cleanliness, and after reviewing the landlord's documentary evidence, I am persuaded that the tenants did not leave the rental unit reasonably clean.

However, after reviewing the photographs, I do not find that the state of the rental unit would require a team of 4 cleaners over the course of 2 days to bring the rental unit to the standard of reasonably clean. Even had the tenants fulfilled their requirements under the Act, I find it reasonable that the landlord would still require further cleaning to ready the rental unit for occupancy for the next tenants. I therefore am not prepared to grant the landlords the full amount requested and find that a more reasonable amount would be ½ of the claimed sum. I therefore find the landlord has proven a monetary claim of \$268.50.

Carpet replacement-I find the landlord submitted sufficient evidence that the carpet in one of the bedrooms was burned beyond repair and required a replacement. The landlord said the carpet was new at the beginning of the tenancy and was approximately 1 year old at the end of the tenancy.

Residential Tenancy Branch ("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 therefore I find that the carpet had depreciated by 10%. I therefore find the landlord has proven a monetary claim of \$292.15 (\$324.61 carpet replacement costs – 10% depreciated value).

Filing fee-I find the landlord's application contained merit and I award them recovery of the filing fee of \$50.00.

While I am not convinced that the attending tenant was the principal cause for the damage suffered or costs incurred by the landlord, the four listed tenants were co-tenants of the rental unit and are therefore jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the landlord's losses.

The law places the responsibility on the tenants to apportion among themselves the amount owing to the landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the landlord may recover the full amount of money due from all, or any one of the tenants.

Due to the above, I find the landlord has proven their entitlement to a monetary award against the tenant in the amount of **\$1065.45**, comprised of carpet cleaning of \$123.20, garbage hauling of \$201.60, unpaid rent of \$130.00, cleaning for \$268.50, carpet replacement of \$292.15, and the filing fee of \$50.00.

As authorized by section 72(2)(b) of the *Act* and at the landlord's request, I order that the landlord retain the tenants' security deposit of \$897.50 in set off against the amount owed and grant the landlord a monetary order for the balance due in the amount of \$167.95. The monetary order is enclosed with the landlord's Decision.

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

Conclusion

The landlord has proven a monetary claim in the amount of \$1065.45, is ordered to retain the tenants' security deposit in set off against that amount and is granted a monetary order for the balance due in the amount of \$167.95.

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* and is being mailed to both the applicant and the respondent.

Dated: October 29, 2012.

Residential Tenancy Branch