



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and pet deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 5, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit and pet deposit?

Background and Evidence

This tenancy started on October 15, 2009, as a 1 year fixed term and there renewed on a month to month basis. Rent was \$928.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on October 15, 2009 and a pet deposit of \$464.00 later in the tenancy. The Tenant said they moved out of the rental unit on October 15, 2012.

The Landlord said the Tenants moved out of the house on October 14, 2012 at which time the move out condition inspection report was completed and signed by both the Landlord and the Tenant. The Landlord said the move in condition inspection report was completed and signed by the Tenant on August 28, 2009 and both report have been submitted into evidence. The Landlord continued to say the Tenant signed the report in agreement to the damages listed on the move out condition inspection report and as a result the Landlord said she has made this application for monetary compensation for the damages listed on the condition inspection report. In addition the Landlord said she submitted paid invoices for the work completed. The Landlord said her claims are for the following:

Cleaning and repairs to the unit	\$666.40
Painting and repairs to walls	\$585.00
Carpet repairs	\$225.00
HST on painting and carpet repairs	\$ 97.20
Recover filing fee	\$ 50.00
Total	\$1,623.60

The Landlord said the unit was left in a poor condition and the damage was in excess of normal wear and tear. The Landlord said the unit was freshly painted and the carpet was new when the Tenants moved in and as the move out condition inspection report shows all the items that she is claiming are deficiencies that the Tenant agreed to by signing the move out condition inspection report. The Landlord submitted the inspection report, paid invoices, photographic evidence, and copies of email correspondence between the Tenants and herself to support the application.

The Tenants said the unit was not in as good a shape when they moved in as the move in condition inspection report says it was and the damages the Landlord is claiming are actually normal wear and tear of living in the unit for 3 years. The Tenants said they told the Landlord that if there were issues with the condition of the unit on move out they would be willing to come back and clean the unit or repair the damages. The Tenant continued to say the Landlord did not return their communication about this and therefore they did not return to the unit and fix any of the issues on the move out condition inspection report. The male Tenant said he did go over the move out condition inspection report with the Landlord and he did agree to the damages. The male Tenant said he did not think these issues were very important and he did not think anything would come of the report so he was surprise when they received the Landlord's application and claims. The male Tenant said the damages are a result of normal wear and tear of a 3 year tenancy.

The female Tenant said there were a number of repair issues with this tenancy and the unit was not in good shape when they moved in. The female Tenant said many of the broken items that the Landlord is claiming were broken on move in or were not in the unit at all. As well the female Tenant said the carpet is a burbur and because there was not trim on the walls when she vacuumed the carpet, it would get suck and the vacuum and threads would pull out. She said the carpet pulls were not her fault. The female Tenant did agree that the bare patch in the carpet was a result of her dog scratching the carpet. In addition the female Tenant said that they had poor communications with the Landlord about many repair items and she believes the damage the Landlord is claiming is actually normal wear and tear of a 3 year tenancy.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has proven the loss and damage exists because the condition inspection report is evidence of the condition of the unit at the start of the tenancy and the end of the tenancy. As well the Tenants agreed to the report and signed it with no reference that they did not agree with anything on the report. Consequently the Landlord has proven a loss or damage exists due to the tenancy.

As well the Landlord has provided paid invoices for the repairs done; therefore the Landlord has established and verified the amount of the loss or damage. I find the Landlord has established a loss of \$666.40 for repairs and cleaning, \$585.00 for wall repairs and painting and \$225.00 for carpet repairs. I also accept the Tenants claim that there is wear and tear resulting from a tenancy and there is also an economic life of decor in a rental unit. Normally a rental unit is painted at least once in 5 years, and carpets are replaced at least once in 8 years; therefore as the tenancy was for 3 years, I award an adjusted amount of damage to the Landlord taking into account the economic life and normal wear and tear of a tenancy on the decor of a rental unit. I award the Landlord $\frac{2}{5}$ th of the painting costs ($\frac{2}{5} \times \$585.00 = \234.00), $\frac{5}{8}$ th of the carpet repair costs ($\frac{5}{8} \times \$225.00 = \140.63) and the full amount of cleaning and repairs in the amount of \$666.40 as the unit was left in poor condition as indicated by the condition inspection report and the testimony of both the Landlord and the Tenants. Consequently I find the Landlord has established grounds for monetary compensation for damages to the rental unit in the amount of \$1,041.03.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposit in partial payment of the damages. The Landlord will receive a monetary order for the balance owing as following:

	Wall repair and painting	\$234.00	
	Carpet repair	\$140.63	
	Repairs and cleaning	\$666.40	
	HST	\$ 51.08	
	Recover filing fee	\$ 50.00	
	Subtotal		\$1,142.11
Less:	Security Deposit	\$450.00	
	Pet Deposit	\$464.00	
	Subtotal:		\$ 914.00
	Balance Owing		\$ 228.11

Conclusion

A Monetary Order in the amount of \$228.11 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 28, 2013

Residential Tenancy Branch

