



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

There was a hearing with respect to the landlord's application for a monetary order. The hearing was conducted by conference call. The hearing commenced on October 26, 2012. It was adjourned and reconvened for a continued hearing on December 19, 2012.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and contents and if so, in what amount?

Background and Evidence

The rental unit is a furnished house in Vancouver. The tenancy began in March, 2010 for a fixed term ending November 30, 2011. The monthly rent was \$4,500.00 and the tenants paid a security deposit of \$2,250.00 and a pet deposit of \$2,250.00 on November 20, 2009. On November 8, 2011 the parties signed a new tenancy agreement for a term said to commence November 1, 2011 and ending July 31, 2012. The monthly rent for the new term was \$4,850.00. There was no explanation as to why the new term was to commence before the expiry of the original term on November 30, 2011.

The tenancy ended and the tenants moved out at the end of July, 2012. The landlord testified that the tenants, their children and two dogs caused extensive and extraordinary damage to the house and furnishings that far exceeded normal wear and tear.

The landlord submitted photographs that were said to show the condition of the rental unit: "before at start tenancy". The landlord submitted a number of photographs of the rental unit to show the condition at the end of the tenancy, although some were taken during the tenancy.

The landlord claimed payment of the maximum allowable amount of \$25,000 permitted pursuant to the *Residential Tenancy Act*. In the initial material submitted by the landlord he listed various repair amounts that he said were quotes for repairs to the rental unit. The amounts totaled \$38,390.40. The landlord claimed that additional amounts totalling \$5,624.84 were the costs cost to replace items destroyed by the tenants.

The landlord's witness, D.V. is a contractor. He agreed to act as the landlord's agent when the tenants were scheduled to move out of the property in July. He arranged to meet the tenants and went to the house on July 27, 2012 to perform a walk through. The tenants were having a going away party so DV and his wife met the tenants in the upstairs bedroom to talk. D.V. testified that the tenant assured him the house would be cleaned and the tenants acknowledged that they had caused some damage for which they were responsible. He said the tenant acknowledged that his dogs had ruined the hardwood floors and stained the carpets. He said there were paint and crayon marks on the walls.

Mr. D.V. said that he was away on holiday and when he returned on August 5th he went to the rental property to complete his inspection. He testified that the house had been left in a complete mess. He said there were dirty dishes in the sink and food in the refrigerator and cupboards, some of it mouldy. D.V. said that the walls were covered with paint and marker stains and the blinds and window coverings were all dusty. The outside walkways which had been soiled by the tenant's dogs, had not been pressure washed as promised. D.V. said that he returned the following day to find that the dishes had been washed and some kitchen counters cleaned, but otherwise the house was still in disarray. The appliances had not been cleaned. According to D.V. a representative from the corporate landlord attended to inspect the rental unit and take photos. D.V. said that the greatest concern about the condition of the unit was the serious damage to the hardwood floors caused by the dogs and the extent of damage to the carpets. According to the landlord the carpets were stained and soiled with dog urine and they were so urine soaked that the landlord's carpet installation company refused to remove them because they constituted a health risk. He said that the walls were covered in blue and purple marker .and it took four and a half days to scrub them clean enough to be re-painted.

Two cleaning companies were asked to provide estimates to clean blinds, window coverings and a sofa and chair that were part of the furnishings in the rental unit. They advised that the sofa could not be cleaned and the stains could not be removed. The landlord did have the sofa cleaned, but significant stains still remained.

There were holes in several walls and a considerable amount of drywall damage. The witness, D.V. acted as the contractor and performed most of the repairs and painting. The landlord itemized his expenses for repairs as follows:

- Patch and repair damaged walls
- Removal of urine soaked carpet and demo
- Cleaning for repair and paint preparation (walls, trim, doors, kitchen bathrooms)
- Repairs of closet and doors
- Remove all toys garbage and clean vacuum ducts
- Central vacuum system (removal of toys, debris, replace broken tubes)
- Refinish desk
- Refinish/removal of scratches to dining room table
- Paint fence and exterior walls

RW Carpentry invoices: \$4,495.82 + \$13,136.00 = \$17,631.82

- Refinish hardwood flooring \$1,568.00
- Carpet replacement \$7,607.94
- Recaulking and grout tile, sinks, showers, repair fireplace \$2,072.00
- Cleaning window coverings \$315.00
- Power wash exterior and walk ways \$611.52
- Loss of rent from August to November \$16,140.00
- Charge to hook up media and stereo equipment \$509.60

The landlord said that he replaced the couch valued at \$3,500.00 with one from Ikea at a cost of \$436.24. He estimated the cost to replace missing dining room curtains at \$1,000.00 and claimed that \$1,279.66 was paid to replace missing and soiled linens, pillows and towels “trashed” by the tenants. The landlord said that the tenants wrecked the barbeque valued at \$725.00; it was replaced with one of lesser quality for \$379.68.

The tenant disputed most of the landlord’s claims and said that much of the evidence given on behalf of the landlord was false.

He said that he first viewed the rental property with a realtor in October, 2009. The unit was occupied by tenants at the time. He noted and pointed out several deficiencies to the realtor. He mentioned a missing door knob plate, a broken towel rack, a barbeque grill that was: “very beat-up” and in need of repair, a crack in the base of the fireplace hearth and some mold in the master shower. The tenant said that the Berber carpet in the rental unit was clean, but old and worn with some fraying at the seams and some

pulls. The tenant suggested that picture submitted by the landlord to show the condition of the rental unit before the tenancy began were very old and taken long before the commencement of the tenancy; some of the furnishings and a light fixture were not the same as found in the rental unit at the start of the tenancy. The tenant said there were some large pieces of furniture that were too big for the rental space, covered with white linen slip covers and not practical for a family with young children. The tenant asked the realtor if they could be removed. She confirmed that the landlord would remove any unwanted furniture.

The tenants arrived to move into the rental unit on March 8, 2010. There was no move-in inspection. The tenants were provided with a four digit code for the door lock and let themselves into the house. There was garbage and recycling in the garage left by the previous tenants. The tenant said that he cleaned up the garage. He said that the house was superficially clean, but not properly cleaned and suitable for move-in. The tenant said that he asked the landlord to remove the couch and love seat, but he refused; the landlord told the tenant that he did not have room to store them. The tenant said that he told the landlord that he could not be responsible for these furnishings because of the age of his children and the fact that he had two dogs. The tenant said he made several more requests to remove the furniture, but the landlord continued to refuse to remove the items.

The tenant said the rental unit was advertised to include maid service, but he was told that maid service was not included and this information was left in the internet ad by mistake.

The tenant said he met the landlord some six weeks after moving in. He pointed out some matters that needed to be repaired. The tenant said the landlord agreed to pay him for performing some minor repairs, but when he asked the landlord for payment the landlord refused; later the landlord said that he would consider approving an amount if the tenant sent an invoice which could then be deducted from rent. According to the tenant this was not feasible because his employer was making the rental payments by direct deposit to the landlord.

The tenant said that the landlord inspected the rental unit in November, 2010 and took pictures during a walk through. The pictures included pictures of damage that was pre-existing when the tenancy began.

The tenant said that the following November he arranged with the landlord to extend the term of the lease to end at the end of July, 2012. The tenant said that the landlord told him that he was going to renovate and update the house and try to sell it after the tenant

moved out. In May, 2012 the landlord asked to come to the house to take measurements because he was planning to replace the carpets and some of the cabinets. He said that he was not present when the landlord arrived with his wife, his contractor and a prospective tenant. He said that they were intimidating and rude to his wife and that they were not even aware of a proper inventory of what belonged in the house; they asked about linens that had been removed by the landlord months before. They accused the tenants of damaging the rental property. The tenant's wife asked them to leave. In a later conversation the tenant told the landlord that in future he must only deal with the tenant and not with his wife.

The tenant agreed to meet D.V at the rental unit during the week of July 9th. He was to come to the house to do some measuring. The tenant said they discussed what constitutes normal wear and tear. The tenant reminded D.V that his wife had damaged the dry wall when she was moving an exercise machine. He said that D.V told him not to worry about it and refused to take any money for it. In his written submission the tenant said

He told me that as soon as we left it was going to be a construction site and he was going to splash "landlord white" paint over everything, not to waste my time scrubbing the walls (where our toddler had made marks), or having the carpets cleaned again because they were being torn out and replaced as soon as we moved out, and it would be a waste of money.

The tenant said that he then cancelled the scheduled rug cleaning and did not bother to clean the walls.

The tenant said that the lease ended July 31st, but the tenants' move was scheduled for July 30th. D.V., acting as the landlord's agent was supposed to meet them on July 30th to do a walk through, but he phoned the tenant on July 26th and asked to meet on July 27th to do the walk through. The tenant said that D.V came with his wife during a farewell dinner that was in progress. He gave the tenant a bottle of wine and walked through the house. He said there might be some items that were above normal wear and tear. According to the tenant D.V. suggested that repairs that were the tenant's responsibility might amount to half of the security deposit.

The tenant said that he arranged for cleaning at the end of the tenancy, but it was not performed as arranged; he believes because the landlord canceled the cleaning, which was to be performed by the same cleaner employed by the landlord.

The tenants responded to the landlords claims for repairs. The tenant noted that there was no condition inspection when the tenants moved in and there was no inspection or pictures taken by the landlord until eight months after the tenants moved in. The tenant said they are not responsible for the overwhelming majority of the repairs and upgrades made by the landlord after they moved out. The tenant suggested that the landlord was attempting to have his employer: "foot the bill for a long overdue remodel of (the rental property)".

The tenants responded to specific claims by the landlord:

- Patch and repair damaged walls. The tenants said that they damaged walls when moving a large exercise machine; there was a scrape and puncture in the hall and a round hole in the guest bedroom. The tenants said D.V accepted \$100.00 to perform these repairs when he came to the house on July 27th.
- Removal of urine soaked carpet: The tenants denied that the carpet was urine soaked. They said there were some stains from the dogs and children that could have been removed by professional cleaning, but the cleaning was not performed because the landlord's agent assured them the carpet would be replaced.
- Cleaning for repair and paint preparation: The tenants acknowledged that their two year old child marked the walls in a few locations with water based markers and coloured pencils. The tenants said there was a picture of some markings and were present when the tenancy started and had been made by the child of a previous tenant. Once again the tenants said they were told not to worry about it because the rental unit had not been painted for years and it was due to be painted in any case.
- Repair of closet doors: The tenants said they were unaware of any problems apart from the fact that the closet doors were old and not in great shape, but were the same on move out as they were when they move in.
- Remove toys, clean vacuum ducts. The tenants said they did not vacuum up toys and questioned why they should be responsible for maintenance of the vacuum system.
- Refinish desk: The tenants said the desk was seldom used and in the same condition as when they arrived. According to the tenants, an antique desk referred to by the landlord had the landlord's 32" tube television on it and looked the same at the beginning and end of the tenancy.
- Refinish/Removal of scratches to Dining room table: The tenants said it had imperfections when they arrived. It was covered with a thick vinyl table cloth and was left in the same condition as it was found.

- Paint fence and exterior walls with paint and marker: The tenants denied that there was paint or marker anywhere outside. The tenants acknowledged that the children drew with sidewalk chalk that they forgot to wash off before they left; they said it would have taken no more than 20 minutes with a power washer.
- Refinish hardwood floors: The tenants said the floors were not perfect when they moved in and there was some pre-existing damage caused by a chair leg. The tenants said they put down some rugs to protect the floors and they said that the landlord rented to them, knowing that they had two large dogs, which is why they collected a pet deposit.
- Carpet replacement: The tenants repeated that the carpets were clean, but worn and not new when they moved in, particularly in high traffic areas. They did not clean them at the end of the tenancy because the contractor told them that the landlord was going to replace the carpets.
- Caulking and re-grouting: The tenants said the sinks, tubs and showers as well as the fireplace needed work when they moved in. The tenants disputed this claim and said that this constituted necessary regular maintenance.
- Cleaning window coverings: The tenants said that the window coverings were dingy and not well cleaned when the tenancy began. They blinds were old and most were non-functional. When a blind on the French doors broke the tenants told the landlord who said that they were old and to throw out the broken one. The tenants stored the other blind in the garage.
- Power wash exterior and walkways: The tenants said the exterior and walkways were covered in green lichen due to the damp and this was not the tenant's responsibility. The tenants said they regularly cleaned up after their dogs and power washed the back portion.
- Loss of rent: The tenants said the loss was not their responsibility; it was due to the landlord's decision to update his house.
- Hook up media equipment: the tenants said they did not use the landlord's stereo and media equipment; they had cable hooked up when they moved in; they said there were many remotes and some bundled wires crammed into a cabinet when they moved in.
- Scratches on tub: The tenants denied scratching the tub.
- Damaged antique lamp: The tenants said the lamp was in several pieces when they arrived. They stored it in a closet. They told the landlord about it and asked him to remove it because space was limited, but he refused.
- Cleaning charge to remove urine and marker/paint from couch and chair: The tenants suggested that there was no proof that the cleaning was not successful. They disputed the landlord's evidence as to the value of the couch and described

it as already tattered. They disagreed with charges for cleaning, the cost of the couch and of its replacement with a new couch.

- Missing orange curtains: The tenants said the curtains were accidentally packed by the movers along with some other items belonging to the landlord. These items were mailed to the landlord, but the delivery was not accepted and they were returned to the tenants unopened. The tenants placed an inquiry with Canada Post to determine why the package was returned.
- Receipts for replacement of linens: The tenants said this claim was completely false. The tenants said they told the landlord before they moved that they had no intention of using the landlord's linens; they were packed up in plastic storage bins supplied by the landlord and returned to him.
- Barbeque: The tenants said the barbeque was in disgusting shape when they moved in. It was outside and although it had a cover it was rusty. The tenants bought a new grill for the barbeque because the old one was so badly corroded.

B.V, the landlord's contractor disputed much of the tenants' evidence. He said that the rental unit was in deplorable condition and this is why he had to take more than 400 pictures to document its condition. He said that many of the markers used by the tenants' children were permanent markers and not washable as claimed. He said that no cleaning was done by the tenants at the end of the tenancy. B.V. said that the tenant paid him \$100.00, not to pay for the repair of holes in the drywall. But as compensation for wasting his time when he came to the house to inspect it and was unable to do so because the tenant had guests. D.V stated his estimate as to the tenants' responsibility for repairs; with respect to painting, he said the tenants should be responsible for 70% of the walls, 50% of the trim and doors, 30% of the kitchen. He said the tenants should be responsible for 100% of the carpet replacement and for all of the cleaning costs. He said that he removed the carpet and could attest to the fact that it was urine soaked and it was not a pleasant job to remove it. He said that he did not tell the tenants that the carpets were to be replaced. He said that he received several flea bites when he was at the rental unit and when he told the landlord about the fleas that is when the landlord decided to obtain estimates for carpets and floor refinishing.

With respect to the couch and chair B.V. reiterated that it was stained by permanent markers and could not be cleaned. Similarly the walls and trim could not be cleaned. He said that the tenant acknowledged on July 27th that his dogs had "trashed" the floors. He said that he endeavoured to be cost efficient in performing repairs and he mentioned that he received a quote of \$4,400.00 for floor refinishing, but found someone else to do the work for \$3,400.00.

Analysis and Conclusion

The landlord did not conduct a condition inspection at the beginning of this tenancy. He submitted a form of condition inspection as part of his documentary evidence, but it was prepared by the landlord without the involvement of the tenant and it is unhelpful in establishing the condition of the rental unit at the commencement of the tenancy.

Although hundreds of pictures were said to have been taken to document the condition of the rental unit, far fewer were introduced as evidence to show the condition of the rental unit at the end of the tenancy. The tenant said that pictures submitted by the landlord to show the condition of the rental unit at the beginning of the tenancy did not accord with its condition at move-in; there were different fixtures in some of the pictures than the ones in place when the tenants moved in and the pictures were taken much earlier than the beginning of the tenancy. I note that the landlord did not produce any photographs to show the condition of rental unit after the work was completed, making it difficult to evaluate to what extent the work could be considered as repairs as opposed to a remodeling as alleged by the tenants.

I listened carefully to the evidence of both parties and, not surprisingly, I found that there was an effort on the part of the landlord to exaggerate the extent of the damage caused by the tenants, and on the tenants' part, to minimize damage and emphasize pre-existing deficiencies to the rental unit.

I accept the landlord's evidence that the tenants did not clean the rental unit at the end of the tenancy. I find that the tenants should be responsible for cleaning charges. I find that the tenants' dog did cause damage to the hardwood floors, as alleged by the landlord and I find that the tenants dogs and children did stain and soil the carpet and that it was not cleaned at the end of the tenancy.

The tenants acknowledged causing some damage to the walls in the rental unit and admitted that their children did mark and draw on the walls and the walls were not cleaned at the end of the tenancy.

The landlord did not say when the rental unit was last painted and I was not provided with information to establish the age of the carpets in the rental unit. Even though the tenants must bear some liability for the cost of painting, carpet replacement and floor refinishing; the whole cost cannot be visited upon them because the paint finishes, the floors and the carpet were not new when the tenancy commenced. There was no move-in condition inspection and, according to the tenants, there was wear and damage when the tenancy started. The invoices submitted by the landlord's contractor do not

contain much in the way of detail; no rates or hours are mentioned in the invoices. With respect to painting the landlord was billed \$7,000.00 to paint “– entire interior” and a further \$1,200.00 to repair wall damage prior to painting. There is an additional \$1,500.00 charge for site and trades supervision during repair process.

In a separate invoice the contractor billed \$2,000 for cleaning of walls, baseboards, doors, bathrooms, kitchen, cabinets, floors, closets and removal of all moldy food waste, garbage and debris and cleaning appliances. There is no indication as to who did all the cleaning or what the actual charges were for cleaning, but presumably the contractor did not perform this work himself. There are several bills for power washing. The landlord claimed \$611.52 to “power wash exterior of house and walk ways”, paid to a lawn and garden company and the landlord’s contractor charged a further \$1,000.00 to “power wash exterior with green biodegradable soap”. He also charged \$1,800.00 for the cost to make and install a new rear gate and paint over markers and chalk on west fence. One of the contractor’s invoices contains a \$3,200.00 charge for refinishing hardwood flooring. The landlord claimed a separate amount of \$1,568.00 for an amount paid to a hardwood flooring company for refinishing hardwood flooring including sanding and stain.

I find that the landlord’s invoices are inflated and cover work that transcended mere cleaning, repairs and refinishing that was necessary to repair damage that exceeded normal wear and tear. I find that the work performed amounted to the provision of more extensive renovations and upgrades and I note that the landlord did not produce a single photo of the completed work that would show the state of the finished unit for comparison.

The burden of proving the extent of the tenants’ liability and establishing the appropriate quantum of an award rests with the landlord. Many of the landlord’s claims are disputed and unproved; he claimed more than \$1,200.00 for the cost to replace linens; the tenants said they supplied their own linens and returned the landlord’s at the start of the tenancy; this claim has not been established. The landlord claimed for the cost of a barbeque. The tenants said the unit was in poor shape when they moved in; this claim has not been established. The landlord claimed \$3,500.00 for a replacement couch; he did not submit evidence to establish the value of the couch, although some amount may be attributed for damage to the couch, the amount sought has not been proved.

I do not find that the landlord has shown that the tenants should be responsible for loss of revenue for any period after the tenancy ended. The landlord took three months to perform work to the rental property and I have found that the landlord embarked on

work to the rental unit that was more ambitious than what was called for to repair the damage caused by the tenants. I deny the claim for loss of revenue.

I have found that the tenants should bear a portion of the painting costs, of end of tenancy cleaning, floor refinishing and carpet replacement. Given the state of the evidence and the absence of a proper form of condition inspection report, I fix the total award to the landlord for the items mentioned at the sum of \$6,000.00. All other claims are dismissed. This award takes into account existing wear before the tenancy began, normal wear and tear during the tenancy and reductions necessary to take into account the betterment realized by the landlord by having new paint, finishes and flooring throughout. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$6,100.00. I order that the landlord retain the security and pet deposits that he holds in partial satisfaction of this award and I grant the landlord a monetary order for the balance of \$1,600.00. This order may be registered in the Small Claims Court 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: February 18, 2013

Residential Tenancy Branch

