



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the security & pet damage deposits / and recovery of the filing fee; and ii) by the tenants for a monetary order reflecting the return of the security & pet damage deposits / and recovery of the filing fee.

Both parties attended the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on February 1, 2011. Monthly rent of \$680.00 was due and payable in advance on the first day of each month. A security deposit of \$340.00 was collected at the start of tenancy, and a pet damage deposit of \$340.00 was collected nearer to the end of tenancy. A move-in condition inspection and report were completed with the participation of both parties.

By letter dated September 30, 2012, the tenants gave notice to end the tenancy effective October 31, 2012. A move-out condition inspection and report were completed variously on October 31 and on November 2, 2012. Copies of the move-out condition inspection report submitted by each of the two parties vary in a number of minor ways. The tenants' forwarding address was provided on the move-out condition inspection report submitted in evidence by the landlord.

The landlord filed his application for dispute resolution on November 14, 2012, and the tenants' application for dispute resolution was filed on February 6, 2013.

In summary, the tenants seek return of the security / pet damage deposits, and recovery of the filing fee; the landlord seeks to retain both deposits in addition to further compensation related to carpet replacement, tree damage and recovery of the filing fee. Efforts undertaken by the parties to resolve the dispute between them during the hearing did not lead to a mutually agreeable settlement.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, beginning with the two principal aspects of the landlord's claim my findings are set out below.

LANDLORD:

\$1,096.96: *carpet replacement*.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Residential Tenancy Policy Guideline # 40 addresses the "Useful Life of Building Elements." With respect to carpets, this Guideline estimates the useful life to be 10 years.

The landlord considers that the carpets in the unit had previously been replaced approximately 5 years ago. The tenant's view is that the carpets in the unit during his tenancy were of lower quality than the carpets purchased for replacement. Evidence submitted by the landlord includes an invoice for the full amount claimed for the replacement carpets.

The tenant testified that the carpets were professionally cleaned at the end of tenancy. However, he claimed that the carpets had not been properly cleaned by the previous tenants who owned a pet(s), and that he undertook himself to vacuum dog hair from the carpets upon moving into the unit.

Reference on the move-in condition inspection report to the condition of carpet in the living room is as follows: "slight stains," condition "F" (Fair). Reference on the move-in condition inspection report to the condition of the carpet in master bedroom (1) is as follows: "stained," condition "P" (Poor). Reference on the move-in condition inspection report to the condition of the carpet in bedroom (2) is as follows: "two [unreadable, but possibly "tiny"] spots," condition "F" (Fair).

Reference on the move-out condition inspection report to the condition of carpets within the unit is limited to the following:

Living room: "damaged dog urine [unreadable, but possibly "small dog"]

"Living room and small bedroom carpet damaged by urine from dog. Living room carpet scratch damage at middle..."

It is noted that the landlord was represented by his son for completion of the move-in condition inspection and report, whereas the landlord and one or two others were variously involved in completion of the move-out condition inspection and report. The landlord's son was not present at the hearing to testify and neither did he submit any letters or affidavits in support of the landlord's application.

Further, by way of his signature on the move-out condition inspection report the tenant indicated his agreement that the "report fairly represents the condition of the rental unit." However, the tenant testified that his signature was provided under duress as he felt intimidated by others representing the landlord.

If I accept that the carpets were in good condition at the start of tenancy, in view of the 5 year estimated age of the carpets when tenancy ended, it is arguable that the tenant is responsible for approximately half the replacement cost. However, the move-in condition inspection report clearly documents that the carpets were not in good condition at the start of tenancy.

Further, consideration must be given to the impact of "reasonable wear and tear" on carpets during a tenancy which lasted approximately 1½ years.

Additionally, it must be taken into account that the landlord's estimation of the condition of the carpets at the start of tenancy was pronounced by the landlord's son on the move-in condition inspection report, but by the landlord himself at the end of tenancy on the move-out condition inspection report.

Finally, whether or not the tenant felt duress when he affixed his signature to the move-out condition inspection report, thereby indicating his agreement with the report, his signature nevertheless appears.

In consideration of all the foregoing, I find on a balance of probabilities that the landlord has established nominal entitlement in the limited amount of **\$150.00**.

\$2,139.20: (\$1,910.00 + tax of \$229.20) *remedy damaged tree*.

The tenant claims that low hanging branches from a tree located on the property marked up the roof of his car, and that repeated requests of the landlord to trim the branches were ignored. Ultimately, the tenant undertook himself to prune some branches from the tree. Any interactions between the parties with regard to the tree appear to have been oral, rather than in writing. The move-out condition inspection report documents the landlord's perspective, in part, that "Tree branches cut down without my permission." As earlier noted, the tenant's signature appears on the move-out condition inspection report beside a ticked box noting his agreement that the report "fairly represents the condition of the rental unit...." although, again it is noted that he claims his signature was given under duress. The amount of compensation being sought by the landlord is reflected on a quote provided by a professional "land design" business, however, the landlord acknowledged that he has not had any work done on the tree since the end of the subject tenancy.

In consideration of all the foregoing, I find that the landlord has established entitlement in the limited amount of **\$375.00**.

Sub-total: \$525.00 (\$150.00 + \$375.00).

The respective applications to recover the filing fee are both hereby dismissed.

I order that the landlord retain **\$525.00** from the combined amount of the security / pet damage deposits of **\$680.00** (\$340.00 + \$340.00), and I order the landlord to repay the balance to the tenants in the amount of **\$155.00** (\$680.00 - \$525.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$155.00**. Should it be necessary, this order may be served on the landlord, filed 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 19, 2013

Residential Tenancy Branch

