



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order for damages, an order to be allowed to retain the security deposit and to recover the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving her claims?

Background and Evidence

The evidence is that this tenancy began on October 1, 2011 and ended October 31, 2012. The landlord testified that the carpets were 15 years old but were in good condition at move-in. The landlord says that the tenant had 4 cats in the rental unit and the cats urinated, defecated and vomited on the carpets. The landlord testified that the smell of cat urine was so strong there was no option other than to replace the carpets.

The landlord submitted an invoice dated October 31, 2012 in the sum of \$1,208.98 for replacing the carpets and underlay. The landlord also submitted photographs of the rental unit taken on October 24, 2012 which depict the state of the rental unit. The landlord testified that Condition Inspection Reports were prepared but no reports were submitted in evidence. The landlord testified that she was unable to get in touch with the tenant to prepare the move-out inspection so the landlord prepared the inspection report herself. The landlord testified that she attempted to get in touch with the tenant about the report through phone messages and Facebook to no avail. The landlord testified that she served the tenant with her Application and Notice of this hearing by way of sending the materials to the address provided by the tenant which is the tenant's mother's address. The landlord noted that the tenant does not reside with her mother.

The tenant does not agree with any of the landlord's claims. The tenant says she did not receive an invitation to perform a move-out inspection report nor has she received a copy of that report with this Application. The tenant says that she is a boxer competing on the national team and she is frequently away, however she would have responded to an invitation to do a move-out inspection. The tenant says she did not receive a note from the landlord via Facebook as she is not available on Facebook.

The tenant agrees that she had 4 cats but says that her mother steamed the carpets and cleaned the rental unit thoroughly at move-out. In response to questions from the tenant's counsel, the landlord stated that the photographs submitted in evidence were taken October 24, 2012, 7 days prior to the end of the tenancy on October 31, 2012 at which point in time the tenant was in the process of vacating and the rental unit was in a state of disarray and had not been thoroughly cleaned.

Analysis

The testimony of the landlord and the tenant is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here.

The tenant has stated that the rental unit was in a clean condition at move-out. While responsible for preparing Condition Inspection Reports at move-in and move-out the landlord has failed to supply copies of those reports in evidence. Further the tenant says she was not given an opportunity to perform the move-out inspection. Indeed the landlord has failed to supply evidence that she served the tenant with a Notice of Final Opportunity for Inspection. Further, attempting to notify a tenant through Facebook is not sufficient for the purposes of arranging an inspection. While the landlord says she did not know how to serve the tenant with a notice, she acknowledges receiving the tenant's forwarding address however the landlord noted that it is not the tenant's address but that of the tenant's mother. Even if the tenant does not live at the forwarding address, once a tenant provides a forwarding address it can be relied upon as an address for service as has been the case here with service of the Application for Dispute Resolution.

The landlord has submitted photographs which show a rental unit in disarray. However testimony of the parties has shown that these photographs were taken before the end of the tenancy and while the tenant was in the process of vacating. As most homes are in a state of disarray at move out I find these photographs unhelpful in determining the

condition of the rental unit at move-out. Finally, even if the carpets were damaged by the tenant as stated, the landlord has testified that the carpets are 15 years old. The Residential Tenancy Branch "Useful Life of Work Done or Thing Purchased" Policy Guideline states that carpets have a lifespan of 10 years. At age 15 these carpets were well over being due for replacement whether or not the cats may have damaged them.

The landlord's application is dismissed for the carpet replacement cost is dismissed.

The landlord is ordered to return the security deposit of \$425.00 to the tenant forthwith (no interest having accrued). The tenant has been provided with an Order in this regard. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

As the landlord has not been successful in this application the application for recovery of the filing fee is also dismissed.

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 14, 2013

Residential Tenancy Branch

