



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to the Tenants, by registered mail, on February 14, 2013. The Tenant acknowledged service of the documents.

The Tenant testified that he sent copies of his documentary evidence and his electronic evidence to the Landlord by registered mail on April 18, 2013. The Landlord acknowledged receipt of the Tenant's documents and confirmed that he was able to open the CD that was enclosed in the Tenant's documents.

Preliminary Matter

In their documentary evidence, the Tenants included written submissions on what they referred to as their "counter claim"; however, at the outset of the Hearing I determined that the Tenants have not filed an Application for Dispute Resolution. I explained to the parties that the only file that was before me was the Landlord's Application and that the Tenants were at liberty to file their own Application, should they so desire.

Issues to be Decided

- Is the Landlord entitled to a monetary award for damages to the rental unit?
- May the Landlord apply the security deposit towards his monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The rental unit is a fully furnished suite. This tenancy began on June 1, 2010. At the end of the tenancy, monthly rent was \$1,460.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 on May 15, 2010.

The Tenants advised the Landlord by telephone on December 28, 2012, that they would be ending the tenancy effective January 31, 2013. On December 31, 2012, the Tenants gave the Landlord their notice to end the tenancy in writing when the Landlord picked up the rent for January, 2013. The Tenants moved out of the rental unit on January 22, 2013.

A Condition Inspection Report was completed at the beginning of the tenancy and at the end of the tenancy. A copy of the Condition Inspection Report was provided in evidence. The male Tenant was present at the move-out condition inspection and signed the form on February 2, 2013, indicating that he did not agree that the Tenants were responsible for damages to the rental unit or its contents. The male Tenant provided the Tenants' forwarding address on the Condition Inspection Report. The Landlord filed his Application for Dispute Resolution, claiming against the security deposit on February 13, 2013.

The Landlord gave the following testimony:

The Landlord testified that the Tenants damaged an ottoman and promised to repair or replace it. He stated that the Tenants attempted to repair the tear in the ottoman with a do-it-yourself leather repair kit, but the repair was poorly done. The Landlord provided an estimate for the cost of replacing the ottoman with a similar one, in the amount of **\$338.96**. The Landlord also seeks to recover the cost of delivery of the ottoman in the amount of **\$60.00**. The Landlord stated that the ottoman was purchased in 2008 by his wife, who owns a business "staging" properties. He said that it sat unopened in a box until January, 2010.

The Landlord stated that a professional carpet company laid new carpet in the rental unit 2 months prior to the Tenants moving in. The Landlord testified that the carpet was nailed down securely. He testified that the Tenant advised him that the carpet had developed a "bulge", and that he told the Tenants it would be repaired at the end of their tenancy. The Landlord submitted that the bulge occurred as a result of the Tenants playing on their knees with their small child and was not normal wear and tear. He stated that the carpet in the common hallway is not nailed down as securely as the carpet in the rental unit and that the hallway carpet, which is much older than the carpet in the rental unit, shows no bulging from normal wear and tear. The Landlord provided an estimate from a carpet layer in the amount of \$552.92 for the cost of replacing the

carpet, but stated that the carpet layer charges a flat fee of \$224.00 to straighten carpets. The Landlord seeks a monetary award for the cost of straightening the carpet and the cost of moving furniture in order to do the job, in the amount of \$80.00, for a total of **\$304.00**.

The Landlord testified that the Tenants broke a "high end" tulip shaped glass lamp shade, which they promised to replace. He stated that the lamp was no longer being made and because of the unusual shape of the shade he was not able to find a replacement shade. The Landlord stated that the lamp was also provided by his wife, who purchased it in a liquidation sale along with other items. Therefore, he could not provide evidence with respect to the cost of the lamp. The Landlord seeks an award for the cost of replacing the lamp with a similar "high end" lamp. He provided an estimate in the amount of **\$350.00**.

The Landlord stated that the Tenants damaged the walls in the rental unit, leaving gouges in the drywall. The Landlord seeks an award in the amount of **\$224.00** for the estimated cost of drywall repair, colour matching, priming and painting. The Landlord provided an estimate for this cost. Photographs of the walls were provided in evidence.

The Landlord also seeks to recover the cost of serving the Tenants with documents, **\$62.04**, and the cost of the filing fee, **\$50.00**.

The Tenant gave the following testimony:

The Tenant stated that he noticed that the ottoman was torn at a seam approximately one year before the end of the tenancy. He stated that he did not know how the tear occurred, but stated that he liked the ottoman and that he agreed to either replace it with another similar ottoman and keep the damaged ottoman, or have the tear repaired. The Tenant stated that he found a similar ottoman for sale in August, 2012, at another staging company, and asked the Landlord what he wanted to do. The Tenant stated that the Landlord did not give the Tenants an answer until January 22, 2013, when he told the Tenants that he would not accept the repair. By then, it was too late to purchase the ottoman he had found in August, 2012. The Tenant provided a photograph of the repaired ottoman in evidence.

The Tenant stated that the Tenants were not responsible for the bulge that developed in the carpet. He stated that his son was very young, with a disability, and was not able to walk. The Tenant suggested that the carpet may have stretched due to an excess of underlay for soundproofing. The Tenant stated that he believed the bulge in the carpet was due to normal wear and tear.

The Tenant acknowledged breaking the glass lamp shade by accident. He stated that he asked the Landlord to let him know how much a replacement shade would cost. The

Tenant said that the Landlord originally told the Tenants that it would cost \$200.00 to replace the shade, but later said that he could not find a replacement and that it would cost \$350.00 to replace the whole lamp. The Tenant stated that he found replacement shades for \$70.00 to \$80.00, but the Landlord was not satisfied with its quality.

The Tenant stated that the paint chips were less than one centimeter wide and were under some shelving and in the kitchen in a high traffic area. The Tenant stated that he wanted to repair the walls and asked the Landlord if there was any of the original paint left, but the Landlord did not reply until January, 2013. The Tenant stated that he went to some paint shops, but could not find a colour match that he was confident would be right.

The Landlord gave the following reply:

The Landlord denied that the Tenants told him about finding a possible replacement for the ottoman in August, 2012.

The Landlord stated that the lamp shades that the Tenants found were not suitable because they were poor quality and did not match the high end look that the Landlord sought for furnishings in the rental unit.

Analysis

I explained to the parties that the Act does not provide for the cost of serving another party and preparing for dispute resolution. These are costs that each party must bear. Therefore, the Landlord's claim for the cost of serving the Tenants is dismissed.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Tenants in violation of the Act,**
3. Proof of the **actual amount required to compensate** for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by **taking steps to mitigate or minimize the loss or damage being claimed.**

Based on the testimony of both parties and the documentary evidence provided, I find that the Landlord did not provide sufficient evidence of his attempts to mitigate or minimize the loss or damage being claimed with respect to the ottoman. I accept the Tenant's testimony that he had located a replacement ottoman in August, 2012. I also accept the Tenant's testimony that he contacted the Landlord seeking direction with respect to the ottoman and that the Landlord did not answer the Tenants until January of 2013. I find that the Landlord has failed to meet part 4 of the test for damages and this portion of the Landlord's application is therefore dismissed.

I find that the Landlord did not provide sufficient evidence of the amount required to compensate him for the damaged lamp. The lamp was purchased in a liquidation sale and therefore I find it probable that the Landlord's wife did not pay full price for the lamp. In addition, the Landlord did not provide evidence of the age of the lamp, in order to calculate depreciated value. During the Hearing, the Tenant agreed that \$70.00 to \$80.00 was a reasonable price to pay to replace the lamp. Therefore, I find that the Landlord is entitled to a monetary award in the amount of **\$80.00** for this portion of his claim.

I find that there was insufficient evidence that the bulging carpet was caused by the actions of the Tenants. There was no statement by the professional carpet layer indicating what was likely to have caused the bulge in the carpet. Therefore, I find that the Landlord has failed to meet part 2 of the test for damages and this portion of his claim is dismissed.

Tenants are expected to live in a rental unit. Day-to-day living causes normal wear and tear. I find that the two small chips in the wall constitute normal wear and tear. This portion of the Landlord's claim is dismissed.

I find that the Landlord has established a total monetary claim for damages in the total amount of \$80.00.

The Landlord has not been successful in his application, except for partial success with respect to the cost of replacing the lamp shade, for which the Tenant was prepared to pay. Therefore, I order that the Landlord bear the cost of filing the Application for Dispute Resolution.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply a portion of the security deposit in satisfaction of his monetary award. No interest has accrued on the security deposit.

I order that the Landlord return the residue of the security deposit, in the amount of **\$620.00**, to the Tenants forthwith.

Conclusion

The Tenants' copy of this Decision is accompanied by a Monetary Order in the amount of **\$620.00**, representing return of the residue of the security deposit after deducting the Landlord's monetary award. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 13, 2013

Residential Tenancy Branch