



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding I.B.J. HOLDINGS
and [tenant name suppressed to protect privacy]

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 Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on March 8, 2013. Based on the evidence of the Landlord's Agent, 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?

Background and Evidence

This tenancy started on April 1, 2010 as a month to month tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 in advance of the tenancy. The Tenant said they moved out of the rental unit on February 28, 2013.

The Landlord said that the Tenant did not clean the unit and as a result the Landlord hired the Agent, who operates a cleaning company to clean and repair the rental unit. The Landlord's agent said she had cleaners in for 36 hours total to clean, paint and repair the unit so that it was in a condition to re-rent. The Agent said she charges \$20.00 per hour for a total of \$720.00. As well the agent said there was \$472.78 in supplies used to clean the unit, to purchase paint and to purchase items to repair or replace items in the unit. Some of these items were to fill and paint the walls, remove stains from the carpet and walls, vacuum air ducts, wash light fixtures, replace door

knobs, replace batteries in the smoke detectors, wash bathroom fixtures and kitchen appliances, clean the furnace and remove debris from inside and outside the unit. The Landlord's agent said there are photographs in the evidence package that shows the condition of the unit at the end of the tenancy. The Landlord's agent also said she included \$238.56 as management and overhead expenses which represent costs to operate her cleaning business.

The Landlord said he had included the move in (dated March 30, 2010) and move out (dated February 28, 2013) condition inspection reports that were agreed to and signed by the Tenants. The Landlord said the Tenants removed there belongs, but did not clean the unit when they left.

Further the Landlord said that after cleaning the carpet they could not remove the stains and dirt so they had to replace the carpet. The Landlord said they have requested 50% of the cost of the replacement carpet as the carpet was 2.5 years old when the Tenants moved into the unit. The Landlord said the life expectancy of a carpet is 10 years so there could have been another 5 years of use in this carpet if it was not stained so badly. The Landlord requested \$1,303.68 for the replacement of the carpet.

The Landlord agent continue to say she has submitted receipts for the carpet cleaning of \$133.28, a receipt for a broken window of \$108.84 and a receipt for replacement of a blind header for \$154.99. As well the Landlord's agent requested compensation for loss of rental income for 3 days in the amount of \$91.94 because the new tenants could not move into the unit as the Tenants did not move out by 1:00 p.m. on February 28, 2013, repairs to the unit were needed and the unit was not cleaned when the Tenants moved out.

The Landlord said his total claim is \$3,445.83 including the filing fee of \$50.00.

The Landlord also requested to retain the Tenants' security deposit of \$475.00 if his application is successful.

The Tenants said they removed all their belongings from the rental unit, but they did not clean all of the unit when they moved out. The male Tenant said he was injured at the time and they were going through some relationship issues so it was not a good time for them. The Tenants said the Landlord is overstating the condition of the unit and the Landlord's monetary claims are high. The Tenants said most of the damage to the unit was normal wear and tear as they have a young son who is active. The Tenant said his son did break the blinds, but the blinds were old and may have broken anytime.

The Tenants also provided a witness T.Y. who gave affirmed testimony that the he helped the Tenants removed all their belongings and he helped the Tenants clean the rental unit. The Witness T.Y. said he thought the unit looked reasonably clean when they finished.

Further the Tenants said the Landlord's agent is his daughter and she is the one who did the clean up and repairs to the unit so she charged more than the going rate. The Tenant said it should not have taken 36 hours to clean the unit. The Tenant also said that some of the repairs and replacement of items the agent did are the Landlord's responsibility like the smoke alarms and the furnace.

The Landlord's agent said she runs a cleaning business with many clients and she did not charge more than the going rate.

The Tenant continued to say they did not clean the carpets and they understood it was their responsibility so they are not disputing the carpet cleaning claim, but they do not believe they are responsible for replacing the carpets. The Tenant said the carpets were only in fair condition when they moved in to the unit and there were stains on the carpets when they moved in. The Tenant referred to the move in condition inspection report that indicates there were stains on parts of the carpet at the start of the tenancy.

The Tenant continued to say that they did not break the window and that they believe it was result of stuccoing the house. The Landlord said he inspected the house after the stucco was completed and there were no broken windows.

The Tenant said they are not disputing the loss rental income because they did not move out on time and they did not clean the unit, but it is their understanding that the new tenants could not have move in because the new female tenant was having a baby at that time.

Analysis

Section 37 of the Act says:

- (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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's agent has proved the loss existed and she verified the losses by providing receipts for the claims that the Landlord has made. What the Landlord agent has not proven in each claim is that the loss or damage happened solely because of the Tenants actions.

With respect to the invoice from the Landlord's Agent for the clean-up, repairs and painting in the amount of \$1,603.10, I have reviewed the condition inspection reports and they do not show the unit was freshly painted at the start of the tenancy, some of the carpets were stained on move in, some of the doors and baseboards were in only fair condition and the report indicates that the some of the walls were only in satisfactory condition. Consequently there was some wear and tear to the unit at the start of the tenancy. As well the Tenants said the damage the Landlord is claiming is normal wear and tear. Consequently, I find the Landlord has not established grounds to be compensated for the full claim of the invoice from the Landlord's Agent as the condition of the unit at the start of the tenancy is questionable. As well the Tenants testified that they did not meet their responsibility to clean the complete unit therefore: I award the Landlord \$360.00 for 18 hours to clean the unit and HST of \$43.20 for the cleaning time. I find the balance of the Landlord's Agents invoice is not substantiated by the condition inspection reports. I dismiss the Landlord's claim for painting and repairs to the unit in the amount of \$360.00 for labour and \$472.78 for supplies. When there is wear and tear in a unit at the start of a tenancy it is difficult to show if additional damage to the unit is normal wear and tear or actual damage. I accept the Tenants testimony and the condition reports that the damage to the unit is normal wear and tear.

The supplies claimed on the invoice are primarily for paint and items to repair the unit which I have dismissed above therefore the cost of the supplies are dismissed as well. The overhead and management costs are business costs that are not part of this tenancy and may already be included in the hourly labour rate on the invoice. As a result I dismiss the management and overhead costs of \$238.56 without leave to reapply.

Further there is no dispute about the carpet cleaning costs of \$133.28 and the Tenants were responsible to clean the carpets therefore I award the Landlord \$133.28 for carpet cleaning costs.

With regard to the broken window I accept the Landlord's testimony that the window was broken during the tenancy and was not the result of stuccoing; therefore I award the Landlord \$108.84 in window replacement costs.

With respect to the replace cost of the blind, the Tenant said his son broke the bind; therefore I find for the Landlord and award the replacement cost of the blind of \$154.99 to the Landlord.

In addition the Landlord has claimed \$1,303.68 for 50% of the new carpet. The Landlord said he expected to get another 5 years of use from the carpet before replacing it. The move in condition inspection report indicates stains on parts of the carpet and there are no photographs to show which stains were there at the start of the tenancy and which stains are new; therefore I find the Landlord has not established grounds to show the Tenants are solely responsible for the replacement of the carpet. I dismiss the Landlord's claim for replacement carpet costs of \$1,303.68 without leave to reapply.

In regards to the Landlord's claim for loss rental income for 3 days of \$91.94 I accept the Landlord's testimony that the Tenant's late move out and condition of the unit delayed the new tenants moving in and I award the Landlord \$91.94 for loss rental income.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants 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 in payment of the damages. The Landlord will receive a monetary order for the balance owing as following:

	Cleaning:	\$ 360.00	
	HST	\$ 43.20	
	Carpet cleaning	\$ 133.28	
	Window replacement	\$ 108.84	
	Blind replacement	\$ 154.99	
	Loss rental income	\$ 91.94	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$942.25
Less:	Security Deposit	\$ 475.00	
	Subtotal:		\$475.00
	Balance Owing		\$467.25

Conclusion

A Monetary Order in the amount of \$467.25 has been issued to the Landlord. A copy of the Order must be served on the Tenants: 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: June 10, 2013

Residential Tenancy Branch

