



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF O

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the security deposit, and to recover the filing fee.

The tenants, two witnesses for the tenants, and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The parties agreed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord requested to reduce his monetary claim from \$1,600.00 to \$1,104.00. As a reduction in the landlord's monetary claim does not prejudice the tenants, the landlord's request to reduce his claim to \$1,104.00 was granted.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The parties agree that a fixed term tenancy began on August 1, 2012 and was to revert to a month to month tenancy as of July 31, 2013. Monthly rent in the amount of \$1,800.00 was due on the first day of each month. The landlord requested and received a security deposit of \$1,100.00 from the tenants at the start of the tenancy which exceeds the maximum amount permitted under the *Act* for a security deposit, which will be addressed later in this decision.

The tenancy ended on February 28, 2013 through the mutual agreement of the parties. The landlord is claiming \$1,104.00 comprised of \$784.00 for carpet repairs, \$280.00 for carpet cleaning, and \$40.00 for a garage door remote control. The tenants agreed that they owe the landlord \$40.00 for the garage door remote control, and as a result, the mutual agreement regarding the \$40.00 for the garage door remote control will be addressed later in this decision. The tenants disputed the \$784.00 claim for carpet repairs and the \$280.00 claim for carpet cleaning.

The landlord testified that the rental unit was built in 1990 or 1991. The landlord stated that the upstairs carpets were the original carpets and claims that the downstairs carpets were approximately two or three years old. The landlord stated that he did not have any supporting documentary evidence supporting the age of the carpets downstairs. The tenants disputed the landlord's testimony by stating that all of the carpets in the rental unit looked like original carpets and that the photos submitted in evidence support that the carpets were stained and worn at the start of the tenancy.

During the hearing, page 13 of the tenants' evidence was examined. Page 13 has a photo with obvious staining of the carpet which the landlord did not deny which was part of an e-mail dated August 3, 2012 which was the timeframe of the start of the tenancy. In that e-mail the tenants write "And don't get me started on the smell in here! \$100 on air fresheners!!! Still smells!" The tenants testified that the stain shown on page 13 of their evidence looked like urine and smelled like urine at the start of the tenancy. The landlord confirmed that he received that e-mail and did not dispute the e-mail during the hearing.

The landlord submitted a document which he claimed was an invoice for \$784.00 for repairing the carpet after the tenants vacated the rental unit. The invoice is not on company letterhead and appears to be a document typed on the computer. The landlord confirmed during the hearing that the document looked liked something typed as a document. The document is not signed by a company representative and in typed font it reads:

“1] Cut seam in two different doorways and put a strip that goes Jam to jam in there.

2] fix five different cigarette burns

3] replace the whole step which I took from the closet

4] Then I took another piece of different colored carpet from elsewhere to replace the carpet in the closet.

\$700.00

\$.12

\$84 tax

\$784.00 total...”

[reproduced as written]

In hand writing and in blue pen below the total it reads “March 11/ 2013”. At the top of the document it has the name of a carpet repair company and address but is missing a contact phone number.

The landlord is also claiming \$280.00 for carpet cleaning and submitted an invoice for \$280.00 from a carpet cleaning company on company letterhead and is dated March 09, 2013 and reads “Deep cleaning – carpet 5 rooms + hall + stairs, Urine stain removed”. The tenants disputed that a second carpet cleaning was required as they had the carpets cleaned before vacating the rental unit and submitted their invoice in evidence. The tenants’ invoice was from the same carpet cleaning company and is in the amount of \$222.88 and is dated February 27, 2013 and reads “Carpet cleaning for 4 rooms + hall + stairs”.

The landlord disputed that the tenants had all the rooms in the rental unit cleaned. The tenants stated that although there was some confusion with the carpet cleaning company, the carpets were cleaned thoroughly before they vacated the rental unit.

The photos of the carpet submitted by the landlord in evidence were reviewed during the hearing. In two photos, the landlord stated they show cigarette burns. The tenants confirmed that they caused the cigarette burns on the carpet as shown in the photos during the tenancy, however, the carpets were “really old” and were not a few years old as being claimed by the landlord. The tenants called two witnesses BM and CA. Witness CM stated the carpets looked “aged and worn” as she had seen the carpets before they were cleaned but not after. Witness CA stated that she viewed the rental unit when the tenants first moved in and stated that the rental unit was “not move in ready” as the “carpets were filthy”. The landlord asked witness CA what colour the carpets were and the witness responded “beige”. The landlord later stated that the

carpets were two different colours, with the difference between the upstairs and the downstairs carpets being a darker tone of brown or beige. The landlord submitted several photos of the carpets in his evidence.

Regarding the security deposit, the tenants stated that they provided their forwarding address to the landlord in writing on February 28, 2013 which the landlord confirmed. The landlord filed his application which included applying to keep all or part of the security deposit on March 11, 2013.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As the landlord has failed to provide any evidence supporting the age of the downstairs carpets and confirming that the upstairs carpets were the original 1990 or 1991 carpets I find the following. According to the Residential Tenancy Branch Policy Guideline #40 - Useful Life of Building Elements, the useful life of carpets is 10 years which means the upstairs carpets were between 22 and 23 years old and well beyond their useful life.

The age of the downstairs carpets was disputed. The landlord testified that the age of the carpets was between two and three years old, however, failed to submit any evidence to support the age of the carpets, other than some photos which the landlord claims shows a colour difference between the upstairs and downstairs carpets. The tenants claim the carpets downstairs were the original carpets and were in the same condition as the upstairs carpets. Two witnesses for the tenants testified that the carpets looked “filthy” and “worn”. The photos have different lighting but do not clearly show a colour difference in the lighting. **I find** the photos submitted of the carpets by the landlord do not show a colour difference between the upstairs carpets and the downstairs carpets as the landlord claimed during the hearing.

At the very least, the landlord should have provided an invoice or other document supporting that the downstairs carpets had been replaced two or three years ago to support his testimony. Therefore, based on the above, **I find** that the landlord has failed to meet the burden of proof to prove the age of the downstairs carpets. In the absence of evidence to support that the carpets had been replaced two or three years ago, **I find** the carpets downstairs have more likely than not exceeded their useful life of 10 years based on the testimony of the tenants and their two witnesses. Therefore, **I find** the landlord is not entitled to any compensation towards damage to the carpets as a result as the carpets have been used beyond their useful life of 10 years.

Regarding the carpet cleaning, the tenants provided a receipt for carpet cleaning. As a result, **I accept** that the tenants had the carpets cleaned prior to vacating the rental unit. **I find** that on the balance of probabilities, the condition of the carpets after the tenants had the carpets cleaned prior to vacating the rental unit, is a result of their age being between 22 and 23 years of age and in need of replacement, and not the need for further cleaning as being claimed by the landlord. In the matter before me, carpet replacement is a cost that the landlord must bear as the carpets have exceeded their useful life of 10 years.

Based on the above, **I find** the landlord has failed to meet the burden of proof to prove his claim. Therefore, **I dismiss** the landlord’s claim in full due to insufficient evidence, without leave to reapply, with the exception of the \$40.00 garage door remote control which will be addressed below.

As the landlord was not successful with a majority of his claim, I **do not** grant the landlord the recovery of the filing fee.

As the tenants agreed to the \$40.00 claim for the garage door remote control, I will address the \$40.00 garage door remote control, and the security deposit of the tenants. The landlord confirmed that he continues to hold the tenants \$1,100.00 security deposit. Section 19 of the *Act*

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Given the above, I **find** the landlord breached section 19 of the *Act* as the maximum security deposit was \$900.00 for monthly rent of \$1,800.00. Therefore, the landlord exceeded the maximum security deposit by \$200.00. I **caution** the landlord to comply with section 19 of the *Act* in the future.

I **find** the landlord completed a move-in and move-out condition inspection report. I **find** the landlord complied with section 38 of the *Act* by applying on March 11, 2013 towards the tenants' security deposit within 15 days of the end of tenancy and receiving the written forwarding address of the tenants, both of which were on February 28, 2013.

I **authorize** the landlord to retain **\$40.00** of the \$1,100.00 security deposit as per the mutual agreement of the parties where the tenants agreed to \$40.00 as compensation for the landlord's garage door remote control. The security deposit balance owing to the tenants is **\$1,060.00**. The security deposit has accrued \$0.00 in interest since the start of the tenancy.

I **order** the landlord to return to the tenants' security deposit balance of \$1,060.00 within one week of receiving this decision. I **grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,060.00. Should the landlord fail to return the tenants' security deposit as ordered, the tenants may serve the monetary order on the landlord and enforce the order in the Provincial Court of BC (Small Claims).

Conclusion

I authorize the landlord to retain \$40.00 of the \$1,100.00 security deposit as compensation for the \$40.00 garage door remote control based on the mutual agreement of the parties during the hearing, leaving a security deposit balance owing to the tenants in the amount of \$1,060.00. The security deposit has accrued \$0.00 in interest since the start of the tenancy.

I dismiss the remainder of the landlord's application due to insufficient evidence, without leave to reapply.

I order the landlord to return to the tenants' security deposit balance of \$1,060.00 within one week of receiving this decision. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,060.00. Should the landlord fail to return the tenants' security deposit as ordered, the tenants may serve the monetary order on the landlord and enforce the order in the Provincial Court of BC (Small Claims).

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2013

Residential Tenancy Branch

