



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord's agents and the female tenant appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenant acknowledged that she received the landlord's documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation, for authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The evidence showed that this tenancy began on May 1, 2010, ended on February 28, 2013, monthly rent began at \$1210, the monthly rent at the end of the tenancy was \$1255, and the tenants paid a security deposit of \$605 at the beginning of the tenancy.

The landlord's monetary claim listed in their application for dispute resolution was \$3713.85; however at the hearing the landlord informed me that their monetary claim has been revised, to the amount of \$1422.68, comprised of the following:

Hydro bill left owing	\$211.18
Carpet replacement	\$122.98
Drape cleaning	\$108.64
General cleaning	\$228
Drywall repair	\$202
Kitchen floor	\$96.84
Drapery panel replacement	\$203.17
Bathroom cove top	\$249.87

In response to my question, the tenant said she agreed to the hydro bill, the carpet replacement, and the drape cleaning; however the tenant did not agree with the other requests. Therefore the hearing proceeded on the contested claims of the landlord.

The landlord's relevant documentary evidence included photographs of the rental unit, a security deposit work-up request sheet, a move-in and move-out condition inspection report, a notice to vacate from the tenants, notice of a rent increase, the tenancy agreement, and invoices for carpet cleaning, drape cleaning and utility bills.

#1-Cleaning-The landlord submitted that a crew of 2 people took 8 hours to clean the rental unit after the tenants vacated. The landlord pointed out that the tenant agreed to the charges as shown by her signature on the move-out condition inspection report.

In response, the tenant submitted that the property manager told her as they were moving out that it would be best to leave the cleaning to the landlord's cleaner so that the rental unit would be left to the landlord's standards; otherwise the tenants would still be charged for cleaning.

#2-Drywall repair-The landlord testified that the damage to the drywall left by the tenants required the landlord to incur expenses in the amount of \$202; the landlord again pointed out that the tenant agreed to the charges as shown by her signature on the move-out condition inspection report.

The tenant disagreed that the landlord incurred this amount for drywall repair, as there was no accompanying invoice as with other claimed costs.

#3-Kitchen floor-The landlord said that a large stain in front of the kitchen sink would not come out after cleaning, which meant that the landlord was required to replace the linoleum. The landlord submitted that the floor was installed in 2005, and that they had depreciated the cost by 8 years, as there were two years of useful life remaining.

The tenant agreed that there was a stain, as she had to put a rug in front of the sink to protect the floor from the inadequate plumbing fixtures. The tenant did not agree that she was responsible for replacing the flooring, due to the plumbing fixture issue.

#4-Drape replacement-The landlord submitted that the drape panels were soiled and could not be cleaned. The landlord also stated that the cost of the 6 panels was amortized along with the table for useful life, as the panels were new in 2010.

The tenant testified that during the final walk-through, the landlord informed her that they would not attempt to clean the panels as they would be replaced, which is why she did not attempt to clean the panels.

#5-Covetop-The landlord submitted that the cove top in the bathroom was damaged by the tenants, requiring a replacement.

In response, the tenant said that the cove top was never addressed in the final inspection or the inspection report, as the condition inspection report mentioned that the bathroom counter was in good condition.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I grant the landlord's monetary claim for the hydro bill of \$211.18, the carpet replacement for \$122.98, and the drape cleaning for \$108.64 due to the tenant agreeing to such charges.

As to the remaining claims of the landlord, the Residential Tenancy Branch Regulations state that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As to the landlord's request for compensation for cleaning, drywall repair, and drape replacement, I find the landlord is entitled to such compensation as the tenant signed her agreement to these charges on the move-out condition inspection report.

Additionally I find the landlord submitted sufficient evidence through their photographic submissions and the condition inspection report that such charges were reasonable and necessary.

I therefore find the landlord is entitled to a monetary award for these three items in the amount of \$633.17, comprised of general cleaning for \$228, drywall repair for \$202, and drape replacement for \$203.17.

Kitchen floor replacement-I find the landlord submitted sufficient evidence that the kitchen floor was stained and that the stain could not be cleaned. I find the stain was of such a size that the only option for the landlord was a replacement and I additionally do not accept the tenant's argument that the rug used by her was necessary to protect the floor, as I find it unlikely that the tenant would fail to mention to the landlord a problem with plumbing in the kitchen.

The floor stain was also mentioned on the condition inspection report.

I therefore grant the landlord's request for \$96.84, for the depreciated value of the linoleum replacement.

Cove top-I dismiss the landlord's request for the replacement as I find the landlord submitted insufficient evidence that the cove top was damaged during the tenancy. I find it likely that if the cove top was so damaged as to require replacing, such damage would be noted on the condition inspection report.

I grant the landlord recovery of the filing fee of \$50 as I find that their application contained merit.

For the reasons stated above, I find the landlord has proven that they are entitled to monetary compensation in the amount of \$1222.81, comprised of the hydro bill of \$211.18, carpet replacement for \$122.98, drape cleaning for \$108.64, general cleaning for \$228, drywall repair for \$202, drape replacement for \$203.17, linoleum replacement for \$96.84, and the filing fee of \$50.

Conclusion

The landlord's application has been granted in large part and they are entitled to monetary compensation in the amount of \$1222.81.

At the landlord's request, I direct that they retain the tenants' security deposit of \$605 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order for the balance due in the amount of \$617.81, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondents.

Dated: June 14, 2013

Residential Tenancy Branch

