



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. It is apparent from information submitted with the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for money owed or compensation for damage or loss, and the Application has been amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that he served the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs that he wishes to rely upon as evidence to the Tenant sometime in early August of 2013. The Tenant acknowledged receipt of those documents and they were accepted as evidence for these proceedings. The Tenant stated that she only received photocopies of photographs, some of which are not clear because of the photocopying. While I accept the photographs as evidence, I remain cognizant of the fact that the images in the Tenant's possession are not clear.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for damage to the rental unit; compensation for lost revenue, and to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began, officially, on May 01, 2013, although the Tenant was given the keys on April 01, 2013. The Tenant stated that she began moving her property into the rental unit on April 14, 2013. The Landlord stated that he does not know when the Tenant moved into the unit, as he was out of town in April.

The Landlord stated that the keys to the rental unit were returned on July 27, 2013 and the Tenant believes they were returned on July 22, 2013. The parties agree that the tenancy ended in July of 2013 and that the Tenant left her forwarding address, in writing, in the rental unit before she vacated the rental unit.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$325.00 for this tenancy; that a condition inspection report was not completed at the start of the tenancy; and that a condition inspection report was not completed at the end of the tenancy. The Landlord filed an Application for Dispute Resolution on August 01, 2013.

The Landlord is seeking compensation, in the amount of \$1,778.74, for replacing the carpets in the bedrooms and hallway. He stated that the carpets were in "fine" condition at the start of the tenancy; that they are now approximately 8 years old; that the carpets in one of the bedrooms was removed because it was wet and smelled strongly of pet urine; that the carpet was stained by pet urine; that none of the carpets have been replaced yet; and that all of the carpets in the bedrooms and hallway will need to be replaced as they are the same type and colour.

The Tenant stated that the carpets were in "okay" condition at the start of the tenancy, although they had an odour; that the carpets had the same odour at the end of the tenancy; that the carpets were at least ten years old; that her dog is well trained and has never urinated or defecated in the rental unit; that she did ask to keep a puppy in the rental unit, but was told that she could not keep one; that she did not keep a puppy in the rental unit; that the carpets were not stained at the end of the tenancy; and that the carpets were not damp at the end of her tenancy.

The Landlord submitted photographs of the back side of the carpet that was removed from one of the bedrooms, which show the carpet has been stained by fluid(s). The Landlord also submitted photographs of the subfloor in the bedroom, which shows the floor has been stained by fluid(s). The Tenant stated that she cannot see staining on the photographs that were submitted to her, given the quality of the photographs, but she accepted my explanation of the photographs.

The Tenant submitted a letter from her mother, in which her mother declared that the rental unit had a "funky odor" at the start of the tenancy and that she spent several hours helping the Tenant weed the yard at the start of the tenancy.

The Landlord submitted an estimate from a carpet company for installing carpet in the bedrooms of the rental unit. There is a notation on the estimate that reads: "to replace pet stained carpet that retains a very strong odour". The Landlord contends that pets were not kept in the house prior to this tenancy.

The Landlord is seeking compensation for lost revenue from the month of August, as he was unable to rent the unit due to the condition of the carpet.

The Landlord is seeking compensation, in the amount of \$225.00, for yard maintenance. The Landlord and the Tenant agree that the Tenant agreed to cut the grass during the tenancy. The Tenant stated that she mowed the lawn on a regular basis, weather permitting.

The Landlord stated that the Tenant also agreed to weed-eat the yard. The Tenant denies that she agreed to weed-eat the yard. The parties agree that the Tenant did not weed-eat the yard during this tenancy.

The Landlord stated that the Tenant also agreed to weed the garden and to keep the garden "looking good". The Tenant stated that she agreed to "do what she could to keep it reasonable". She stated that she did some gardening during her tenancy, but that it was a large yard, it was overgrown at the start of her tenancy, and that she could not do it all. The Landlord stated that the gardens were completely overgrown at the end of the tenancy.

The Landlord submitted photographs of the yard at the end of the tenancy and photographs of the yard after he spent approximately 11 hours gardening after this tenancy ended.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to show that the carpet in the rental unit did not have an odour at the start of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that the carpets were in "fine" condition at the start of the tenancy. In reaching this conclusion I was further influenced by the testimony of the Tenant, who stated that the carpets had an odour at the start of the tenancy, and by the documentary evidence from the Tenant's mother, who declared that the rental unit had a "funky odor" at the start of the tenancy.

On the basis of the undisputed testimony and the invoice from the carpet company, I accept that the carpets had an odour at the end of the tenancy. As the Landlord has failed to establish that the carpet did not smell at the start of the tenancy, I cannot conclude that the Tenant is responsible for the eliminating the odour.

I find that the Landlord submitted insufficient evidence to show that the carpet was stained on the upper side of the carpet. In reaching this conclusion I was influenced by the absence of evidence that refutes the Tenant's testimony that they were not stained at the end of the tenancy. It is reasonable to conclude that the Tenant's testimony referred to the upper side of the carpet, as she could not reasonably be expected to know whether there were stains on the underside of the carpet.

On the basis of the photographs submitted in evidence, I accept that the carpet that was removed from one of the bedrooms had fluid stains on the underside of the carpet. The photographs do not establish that the carpets had stains on the upper side of the carpet. The invoice from the carpet company does not clarify which side of the carpet was stained.

I find that the Landlord submitted insufficient evidence to show that the underside of the carpet was stained at the start of the tenancy, as there would be no reasonable method of inspecting the underside of the carpet at that time. I find it entirely possible that the underside of the carpet was stained at the start of the tenancy. I therefore cannot conclude that the Tenant is responsible for cleaning or replacing the carpet.

In determining this matter I was influenced, to some degree, by the fact that the Tenant occupied this rental unit for less than ten weeks. In my view the nature of the staining on the rear of the carpet is not typical of the type of staining that would occur when a pet has periodic accidents. In my view, this type of staining could only occur if a pet was urinating and defecating on the carpet on a frequent and regular basis for ten weeks. As there is no evidence to show that the Tenant allowed her pet to urinate and defecate on the carpet on a regular basis, I simply cannot conclude that the damage occurred during the tenancy.

As the Landlord has failed to establish that the carpet was damaged during the tenancy, I dismiss the Landlord's claim for compensation for replacing the carpet.

As I did not conclude that the Tenant damaged the carpet, I dismiss the Landlord's claim for lost revenue arising from his inability to rent the rental unit due to the condition of the carpet.

Residential Tenancy Branch policy guidelines suggest that a tenant who lives in a single-family dwelling is responsible for cutting the grass. This is consistent with the agreement reached by these parties. I find that the Landlord submitted insufficient evidence to establish that the Tenant did not periodically mow the lawn. In reaching this conclusion I was influenced by the Tenant's testimony that she did periodically mow the

lawn and by the absence of a photograph that would establish the lawn had not been mowed for several weeks. I therefore dismiss the Landlord's claim for compensation for mowing the lawn.

Residential Tenancy Branch policy guidelines suggest that a tenant who lives in a single-family dwelling is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. The burden of proving that the Tenant was required to weed the garden rests with the Landlord.

On the basis of the testimony of the Tenant, I find that the Tenant agreed to do some weeding during her tenancy and that she did some weeding during her tenancy. Her testimony that she did some weeding is corroborated by the documentary evidence from the Tenant's mother, who also weeded.

I find that the Landlord has failed to establish that the Tenant agreed to keep the gardens to any particular standard. On the basis of the photographs taken after the Landlord completed 11 hours of gardening, it is clear that the Landlord likes the garden well maintained. It is not clear that this was clearly conveyed to the Tenant or that the Tenant understood how much gardening the Landlord wished her to do.

In determining this matter, I was influenced, in part, by the Landlord's testimony that he was not in town during the month of April. I find that this lends credibility to the Tenant's testimony that the garden was overgrown at the start of the tenancy, given that most people on Vancouver Island do the majority of their gardening after April 01, 2013. I therefore find it highly likely that the garden was not in pristine condition at the start of the tenancy and that the Tenant may not have understood how the Landlord wanted the garden to be kept.

As the Tenant did do some gardening, albeit not up to the standard expected by the Landlord, and it was not established how well the garden should be maintained, I dismiss the Landlord's claim for compensation for weeding.

I find that the Landlord failed to establish that the Tenant agreed to weed-eat the yard. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant agreed to weed-eat or that refutes the Tenant's testimony that she did not agree to weed-eat. I therefore dismiss the Landlord's claim for compensation for weed-eating.

I find that the Landlord's Application for Dispute Resolution has been without merit and I dismiss his application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish a right to the security deposit, I grant the Tenant a monetary Order for \$325.00, which represents a refund of her security deposit. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: September 13, 2013

Residential Tenancy Branch

