



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, MNR, MND, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to cancel a Notice to End Tenancy. The application to cancel a Notice to End Tenancy was withdrawn at the hearing, as the rental unit has been vacated.

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 male Landlord stated that the Landlord's Application for Dispute Resolution and documents the Landlord wishes to rely upon as evidence were served to the Tenant, via registered mail, in July of 2012. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant stated that the Tenant's Application for Dispute Resolution and documents the Tenant wishes to rely upon as evidence were served to the Landlord, via registered mail, on October 10, 2013. The Landlord acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The male Landlord stated that additional documents the Landlord wishes to rely upon were left in the Tenant's mail box on October 15, 2013. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these

proceedings. The Tenant stated that she does not need additional time to consider this evidence.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for unpaid rent/lost revenue and damage to the rental unit; is the Tenant entitled to compensation for cleaning the carpet at the start of the tenancy and missing personal property; and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on July 01, 2012; that this was a fixed term tenancy, the fixed term of which ended on June 30, 2013, at which time it became a month-to-month tenancy; that the Tenant was required to pay rent of \$1,150.00 by the first day of each month; that the Tenant paid a security deposit of \$600.00; that the Tenant paid a pet damage deposit of \$100.00; that on June 03, 2013 or June 14, 2014 the Tenant informed the Landlord, via email, that she would be vacating the rental unit at the end of June; and that the Tenant provided a forwarding address, via email, on July 01, 2013.

The male Landlord stated that the rental unit was advertised on two popular internet sites on, or about, June 14, 2013 and that they were able to find a new tenant for August of 2013. The Landlord is seeking compensation for lost revenue from July of 2013.

The Tenant stated that she originally agreed to pay rent for July but upon learning that the Landlord was working in the unit in July she did not think it was fair that she should pay rent. The male Landlord agreed that they did clean the rental unit in July and they replaced the flooring in one room, which they were able to do because they had not found a new tenant.

At the hearing the Landlord withdrew the \$75.00 claim for removing a freezer.

The Landlord is seeking compensation for cleaning the carpet. The male Landlord stated that the carpet needed cleaning at the end of the tenancy; that the Landlord paid \$198.00 to clean the carpet; and that the carpets were professionally cleaned on, or about, August 01, 2013. The Landlord submitted an unsigned letter from a representative of a carpet cleaning company, in which the author declared he cleaned the carpets at this rental unit, which had a "very strong pet odor". The letter does not declare when the carpet was cleaned, nor does it declare how much was paid to clean the carpet.

The Tenant stated that when she moved into the rental unit the carpet had a strong pet odour; that she attempted to clean it with a variety of cleaners; that she had it professionally cleaned at the start of the tenancy; that the cleaning did remove some of

the odor; and that it still smelled at the end of the tenancy. The Tenant is seeking compensation for the cost of cleaning the carpet at the start of the tenancy.

The Tenant submitted two carpet cleaning receipts from the same company, one of which was allegedly for cleaning the carpet at the start of the tenancy and the other for cleaning the carpet at the end of the tenancy. The receipts submitted to the Residential Tenancy Branch are illegible. The male Landlord stated that although it is unclear, he can read the receipts in his possession and he questions the validity of those receipts. He notes the receipts have the same invoice number and that the date on one of the receipts has been altered. He stated that he has attempted to contact this company and he was unable to locate the company.

The Tenant was directed to submit the original copy of the two receipts from the carpet cleaning company. She indicated that she would submit them on October 17, 2013 or October 18, 2013. She acknowledged that the receipts have the same invoice number, which she could not explain, and that the date on one of them has been altered. She stated that the company informed her that the second receipt was inaccurate because the company was having computer problems when the receipt was generated.

A receipt from a carpet cleaning company, dated June 30, 2013, was submitted to the Residential Tenancy Branch on October 23, 2013. This receipt indicates the carpet was cleaned on June 30, 2013. There is a note on the receipt that indicates there is a pet smell; that cleaning will only temporarily improve the smell; and that the smell will return. I note that the invoice number of this receipt was 22.

A receipt from a carpet cleaning company, originally dated July 01, 2004 and manually changed to July 04, 2012, was submitted to the Residential Tenancy Branch on October 23, 2013. This receipt indicates the carpet was cleaned on July 04, 2012. There is a note on the receipt that indicates there is a pet smell; that cleaning will only temporarily improve the smell; that the smell will return; that the carpet is extremely dirty; and that the carpet was previously cleaned with a rental machine. I note that the invoice number of this receipt was also 22.

A copy of an email was submitted to the Residential Tenancy Branch on October 23, 2013 with the two aforementioned receipts. As this email was not submitted in evidence prior to the hearing and the Tenant was not directed or given authorization to submit this document after the hearing had concluded, it was not considered when determining this matter.

The Landlord is seeking compensation for replacing the flooring in one bedroom. The male Landlord stated that the carpet needed replacing because there was a strong pet odour; that the carpet was approximately 15 months old; that the carpet was replaced with laminate flooring; and that the Landlord paid \$349.00 to have the carpet replaced. No receipt was submitted to corroborate the amount claimed.

The Tenant agrees that this bedroom had a strong pet odour at the end of the tenancy. She argued that the odor was present at the start of the tenancy and that she should not, therefore, be responsible for eliminating the odor.

The Tenant submitted a photograph (#24) of the carpet in this bedroom, which shows that it is seriously damaged at the entry to the room. The Landlord acknowledged that this photograph accurately reflects the condition of the carpet at the start of the tenancy.

The Landlord submitted a copy of a condition inspection report that was completed on July 03, 2012. The report indicates that the carpet in this bedroom is damaged. It specifically notes that there is exposed underlay, which is consistent with photograph #24. There is no indication on the report that there was a pet smell at the start of the tenancy.

The Tenant submitted a letter from her daughter, in which her daughter stated that she was present when this rental unit was first viewed by the Tenant. The author stated that she noted an "overwhelming urine smell" which persisted throughout the tenancy, in spite of the Tenant's effort to clean the carpet.

The Tenant submitted an undated letter from a friend, in which the friend declared that she helped clean the rental unit at the start of the tenancy and that she noticed a strong pet/urine smell.

The Landlord is seeking compensation for replacing the lock on the rental unit. The Landlord and the Tenant agree that the Tenant used her key to access the rental unit in July of 2013 and that the key(s) to the rental unit was/were returned on July 31, 2013. The Tenant stated that she returned all the key(s) in her possession. The male Landlord stated that the lock was changed on August 01, 2013 as he was not certain that all the keys had been returned and he needed to change the lock for the new tenant.

The Landlord is seeking compensation for repainting the rental unit. The male Landlord stated that no smoking was allowed in the rental; that sometime in December of 2012 he observed the Tenant smoking in the rental unit; that the rental unit smelled strongly of smoke at the end of the tenancy; and that the unit needed to be repainted to eliminate the smell.

The Tenant stated that she never smoked in the rental unit and that it did not smell of smoke at the end of the tenancy.

The Landlord and the Tenant agree that the Landlord sent an email to the Tenant in which the Landlord scheduled a time to complete the condition inspection report on June 30, 2013 and that the Tenant did not respond to this email. The Tenant stated that she was at the rental unit at the scheduled time on June 30, 2013; that the female Landlord was showing the rental unit to a prospective Tenant at the scheduled time; and

that she did not attempt to complete an inspection report at that time. The female Landlord stated that she was not at the rental unit at the time scheduled.

The male Landlord stated that another email was sent to the Tenant on July 03, 2012 in an attempt to schedule a time to complete the condition inspection report and that the Tenant did not respond to that email.

The Landlord submitted a copy of the condition inspection report that was completed at the end of the tenancy, in the absence of the Tenant. The Landlord is not certain when this final inspection report was completed. The female Landlord stated that sometime after that report was completed there was a notation added that indicated there was a significant smell of smoke throughout the house.

The Tenant is seeking compensation for a gas can belonging the Tenant which the Tenant contends the Landlord took from the carport. The Landlord denies the allegation.

The Tenant is seeking compensation for a rake belonging the Tenant which the Tenant contends the Landlord took from the carport. The male Landlord stated that he did accidentally take a rake from the carport that belonged to the Tenant but he returned it shortly after the Tenant informed him of the mistake. The Tenant stated that the rake was not returned.

The Tenant is seeking compensation for the cost of photographs she submitted as evidence for these proceedings.

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 Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on June 30, 2013 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, May 31, 2013. As the Tenant did not give written notice to the Landlord until June 13, 2013 or June 14, 2013, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was August 31, 2013.

I find that the late notice interfered with the Landlord's ability to find a new tenant for July 01, 2013, as there was a delay in advertising the rental unit. I find it largely

irrelevant that the Landlord was cleaning the rental unit and/or replacing the flooring in one room during July, as there is no evidence that the repairs contributed to the Landlord's inability to find a new tenant for July. As the late notice interfered with the Landlord's ability to find a new tenant for July of 2013, I find that the Landlord is entitled to compensation for lost revenue for the month of July, in the amount of \$1,150.00.

I specifically note that the *Act* does not allow a tenant to end a tenancy prematurely simply because they do not like or are frightened of their neighbours.

I find that the Tenant submitted insufficient evidence to establish that the carpet in the rental unit smelled of pet/urine at the start of the tenancy. I favour the testimony of the male Landlord, who stated this odour was not present at the start of the tenancy, over the testimony of the Tenant, who stated this odour was present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed on July 03, 2012, as there is no indication that an odour was present on that date.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is completed and signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In determining this matter I have considered the letters written by the Tenant's daughter and her friend, in which they both noted there was a urine smell in the rental unit at the start of the tenancy. I note that the condition inspection report that was completed is relatively detailed and it outlines several repairs to be completed at the start, or during, the tenancy. In my view if there were an overwhelming urine smell in the unit at the start of the tenancy, I find it likely that this would have been noted on the report. I also note that the letters are written by a friend and relative of the Tenant who cannot be considered unbiased witnesses. I therefore find that the letters are not sufficient to cause me to disregard the information on the condition inspection report.

In determining this matter I have considered the carpet cleaning receipts. I find that there are reasonable grounds to question the authenticity of the receipts. Firstly, the receipts have the same invoice number. While it is possible that this company issues receipts with identical invoice numbers, it is a highly unusual business practice and it is equally possible that the duplicate invoice numbers indicate that the receipt(s) have been altered or manipulated. Secondly the "work date" of one of the receipts has been manually altered. Although it is possible that this was simply a computer error, it is also possible that the receipt was manipulated/fabricated and that this error was noted after the receipt was produced. Given the flaws with these receipts, I find they cannot be relied upon to discount the information on the condition inspection report.

On the basis of the undisputed evidence, I find that the carpets in the rental unit smelled of pet urine at the end of the tenancy. As the condition inspection report does not indicate the carpets smelled at the start of the tenancy, I find that the Tenant was

obligated to remove the odour from the carpets at the end of the tenancy. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to take steps to remove the pet odour from the carpet and I therefore find that the Landlord is entitled to compensation for removing the odour.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the damaged carpet in one bedroom. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that \$349.00 was paid to replace the carpet. On this basis, I dismiss the claim for \$349.00.

I also find that the Landlord failed to establish the true cost of cleaning the carpets. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's statement that \$198.00 was paid to clean the carpet. On this basis, I dismiss the claim for \$198.00.

As the Tenant has failed to establish that the carpet needed cleaning at the start of the tenancy, I also dismiss the Tenant's claim for cleaning the carpet at the start of the tenancy.

Section 37(2)(b) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must 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. As the keys to the rental unit were returned to the Landlord before the Landlord changed the locks and there is no evidence that the Tenant retained any keys, I dismiss the Landlord's claim for compensation for changing the locks, as I cannot conclude that it was necessary.

I specifically note that section 25(1) of the *Act* stipulates that if requested by a tenant at the start of a new tenancy, a landlord must rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit and that the landlord must pay all costs associated to that change.

I find that the Landlord submitted insufficient evidence to show that the rental unit smelled of smoke at the end of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed by the Landlord, in the absence of the Tenant. As the Landlord did not note the smell of smoke when the report was completed, I find it likely that there was not a noticeable smell of smoke in the unit. Had the unit smelled of smoke I find it highly likely that it would have been noted on the detailed report, given that the pet smell was noted. I find that the notation about the smell of smoke that was added after the report was completed should not be considered, as it was added to the report after the rental unit was inspected.

In determining this matter I was further influenced by the email from the Landlord to the Tenant, dated July 05, 2013, in which the Landlord noted the "house was clean". In my view, the Landlord would have mentioned the smell of smoke at this time if it was a problem. As the Landlord has failed to establish that the unit smelled of smoke, I dismiss the claim for painting the rental unit.

I find that the Tenant submitted insufficient evidence to show that the Landlord took a gas can from the carport of the rental unit that belonged to the Tenant. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's version of events or that refutes the Landlord's version of events. I therefore dismiss the Tenant's claim for compensation for the cost of a gas can. In reaching this conclusion I was also influenced by the fact that the can was stored in a carport and it is entirely possible that a third party took the can.

I find that the Tenant submitted insufficient evidence to show that the Landlord did not return the rake that he accidentally took from the carport. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's version of events or that refutes the Landlord's version of events. I therefore dismiss the Tenant's claim for compensation for the cost of the rake. In reaching this conclusion I was also influenced by the fact that the rake was stored in a carport and it is entirely possible that a third party took the rake after it was returned by the Landlord.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for the cost of photographs submitted as evidence.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion:

The Landlord has established a monetary claim, in the amount of \$1,200.00, which is comprised of \$1,150.00 in lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(1) of the *Act*, I authorize the Landlord to retain the \$700.00 security deposit/pet damage deposit in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$500.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: October 28, 2013

Residential Tenancy Branch

