



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kokomo Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, 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 and to recover the fee for filing this Application for Dispute Resolution.

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 Agent for the Landlord stated that on December 26, 2013 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were personally served to the Landlord's wife on April 01, 2014. The Landlord acknowledged receipt of the Tenant's evidence on April 02, 2014 and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit under a separate tenancy agreement on August 01, 2012, at which time a condition inspection report was completed. A copy of this inspection report was not submitted as evidence.

The Landlord and the Tenant agree that one of the parties named on the first tenancy agreement moved out so the parties signed another tenancy agreement, which was

submitted as evidence by the Landlord. This agreement shows the new tenancy began on December 01, 2012.

The Landlord and the Tenant agree that the Landlord created a new condition inspection report which was signed by the Tenant on December 12, 2012, a copy of which was submitted in evidence. The Agent for the Landlord stated that the new condition inspection report duplicated the information contained on the first condition inspection report. The Tenant stated that some of the damage noted on the first condition inspection report was not recorded on the second condition inspection report but she signed it after the Agent for the Landlord informed her that he did not consider some of the original entries to be "damage".

The Landlord and the Tenant agree that a condition inspection report was not completed when this tenancy ended on July 31, 2013.

The Landlord is seeking compensation, in the amount of \$84.00, for cleaning the carpet. The Landlord stated that the carpet required cleaning at the end of the tenancy. The Landlord submitted photographs of the rental unit which were allegedly taken on July 31, 2013, which show the carpet is stained in several areas.

The Tenant stated that she steam cleaned the carpets with a steam cleaner owned by her mother. She stated that the photographs submitted in evidence by the Landlord do not properly reflect the condition of the carpets at the end of the tenancy, as the carpet was not stained.

The Tenant submitted a letter from her co-tenant in which he declared that the carpets were cleaned with a carpet cleaner at the end of the tenancy. The Tenant submitted a letter from a third party in which the third party declared that she observed the Tenant clean the carpets at the end of the tenancy with a "professional rug cleaner" and that the carpets were in "immaculate condition" at the end of the tenancy.

The Landlord submitted a copy of the addendum to the tenancy agreement in which the Tenant agreed to have the carpets professionally cleaned at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$97.65, for cleaning the blinds. The Landlord stated that the blinds required cleaning at the end of the tenancy. The Landlord submitted photographs of the rental unit which were allegedly taken on July 31, 2013, which show the blinds is dirty.

The Tenant acknowledged that she did not clean the blinds however she stated that she does not recall the dirt on the blinds that can be seen in the photograph.

The Landlord submitted a copy of an invoice that shows the Landlord was charged \$181.65 for cleaning the carpets and the blinds.

The Landlord is seeking compensation, in the amount of \$50.40, for repairing a screen door. The Agent for the Landlord stated that there was a large tear in the screen door at the end of the tenancy, which he noticed when he removed the door so the Tenant could clean the door track. The Tenant contends that the screen was not torn at the end of the tenancy. The Landlord submitted a photograph of the damaged screen door and a receipt to show that the Landlord was charged \$50.40 to repair the door.

The Landlord is seeking compensation, in the amount of \$67.50, for cleaning the rental unit. The Agent for the Landlord stated that the rental unit needed additional cleaning at the end of the tenancy. The Landlord submitted several photographs of the rental unit which the Landlord contends shows the unit needed additional cleaning. The Landlord submitted an invoice to show the Landlord was charged for 2.5 hours of labour for cleaning the rental unit, at an hourly rate of \$25.00.

The Tenant stated that the rental unit was left in reasonably clean condition at the end of the tenancy and that it was cleaner at the end of the tenancy than it had been at the start of the tenancy. She agreed that the photographs submitted in evidence fairly represent the condition of the rental unit at the end of the tenancy, with the exception of the carpets. The Tenant submitted letters from a co-tenant and a third party in which they declare that they helped to clean the unit at the end of the tenancy and that it was clean at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$32.50, for repairing damaged walls. The Agent for the Landlord stated that several walls were damaged during the tenancy. The Landlord submitted several photographs of damage to the walls. He stated that none of these photographs depict the damage to the kitchen wall that is noted on the condition inspection report and that none of the photographs show damage that was in existence prior to the start of the tenancy. The Landlord submitted an invoice to show the Landlord was charged for 1.5 hours of labour for repairing the wall damage, at an hourly rate of \$25.00.

The Tenant stated that two of the photographs show damage to the wall in the kitchen that was noted on the condition inspection report that she signed on December 12, 2012. She stated that most of the damage to the walls was in existence prior to the start of the tenancy and that the Agent for the Landlord did not note it on the condition inspection report because he did not consider it "damage".

Analysis

After hearing the statements of both parties regarding the condition of the carpet at the end of the tenancy and after viewing the photographs of the carpet, I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act (Act)* when she failed to leave the carpets in reasonably clean condition at the end of the tenancy.

Although I accept the testimony of the Tenant that she cleaned the carpet with her mother's steam cleaner, I simply find that the cleaning was inadequate. Although she

and a witness contend the carpets were clean when the tenancy ended, I find that the discrepancy between their testimony and the condition of the carpets depicted in the photographs may be due to the possibility that the carpets were not fully dry when they vacated the unit, and the stains were simply not visible as a result of the dampness.

In determining this matter I was influenced to some degree by the addendum to the tenancy agreement, which required the Tenant to have the carpets professionally cleaned at the end of the tenancy. Landlords often include this term in a tenancy agreement as industrial cleaners typically clean the carpets more thoroughly than rented or personal cleaners. As the Tenant agreed to have the carpets professionally cleaned at the end of the tenancy, I find that she was obligated to have the carpets cleaned by a professional cleaning company.

On the basis of the testimony of the Agent for the Landlord and the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the Act when she failed to leave the blinds in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was influenced by the Tenant's acknowledgement that she did not clean the blinds at the end of the tenancy.

For all of the aforementioned reasons, I find that the Landlord is entitled to compensation, in the amount of \$181.65, for cleaning the carpet and the blinds.

I find that the Tenant failed to comply with section 37(2) of the Act when she failed to repair the screen door. I favoured the testimony of the Landlord, who stated the door was damaged prior to the end of the testimony, over the testimony of the Tenant, who stated that the door was not damaged at the end of the testimony. In reaching this conclusion I was influenced by the photograph of the screen door, which corroborates the testimony of the Landlord.

In determining this matter I was guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Landlord to simply be more probable. To accept the version of events provided by the Tenant I would have to conclude that the screen was somehow damaged by the Landlord after the tenancy ended. I find, on the balance of probabilities, that it is simply more likely that the screen was damaged during the tenancy. This conclusion was based on the

fact that there is typically less activity in a vacant house and therefore it is less likely that the door would have been damaged by the Landlord. I therefore find that the Landlord is entitled to compensation, in the amount of \$50.40 for repairing the screen door.

I find that the Tenant failed to comply with section 37(2) of the Act when she failed to leave the rental unit in reasonably clean condition at the end of the tenancy. This decision was based entirely on the photographs that were submitted in evidence, which the Tenant agreed was a fair representation of the condition of the rental unit at the end of the tenancy, with the exception of the carpet. In my view, these photographs show that additional cleaning was required and I therefore find that the Landlord is entitled to \$62.50 for cleaning.

The term “reasonably clean” is a highly subjective term. I have therefore placed little weight on the Tenant’s testimony that the rental unit was clean or the written declaration of the witnesses who contend it was clean. While the rental unit may have been sufficiently clean in the opinion of those individuals, I believe that most people would conclude that the bathroom, the bathroom fan, and at least one cupboard required additional cleaning.

In determining this matter I have placed little weight on the Tenant’s testimony that the rental unit was cleaner at the end of the tenancy than it was at the start of the tenancy, as that does not negate the Tenant’s obligation to leave the rental unit in reasonably clean condition. In the event the Tenant believed the rental unit required additional cleaning at the start of the tenancy, the appropriate response would have been to advise the Landlord of those concerns at the start of the tenancy and to ask the Landlord to clean the unit and/or compensate the Tenant for cleaning the unit.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is 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. As the condition inspection report that was completed at the start of the tenancy indicates that the walls are in good condition, with the exception of one area in the kitchen, I find that the walls were largely undamaged at the start of the tenancy.

In reaching this conclusion I placed little weight on the Tenant’s testimony that the walls were damaged at the start of the tenancy but the damage was simply not recorded on the condition inspection report, as there is no objective evidence, such as photographs, to corroborate that claim.

In reaching this conclusion I placed little weight on the written declarations of people who know the Tenant, who contend that the walls in the unit were not in good repair at the start of the tenancy. I simply do not find written declarations from arguably biased parties to be sufficient to refute the information on the condition inspection report.

On the basis of the photographs submitted in evidence, I find that the walls were damaged during the tenancy and that the damage exceeds "normal wear and tear". I therefore find that the Landlord is entitled to \$37.50 for repairing the walls.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$382.05, which is comprised of \$332.05 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$382.05. 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: April 09, 2014

Residential Tenancy Branch

