



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act). The landlord filed on January 09, 2014 for Orders as follows:

1. A monetary Order for damages and loss – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on April 01, 2014 for Orders as follows:

1. An Order for the return of security deposit - Section 38
2. A monetary Order for damages and loss – Section 67
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The parties acknowledged exchanging all evidence. The tenant testified they received several pages of late evidence from the landlord in rebuttal to the tenant's recent submission of their application and evidence following. I accepted the late evidence upon satisfaction all parties received it, and the tenant would be given opportunity to respond to it. The parties were provided an opportunity to settle their dispute; however the hearing proceeded on the merits of the respective applications.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began August 01, 2012 and ended by mutual agreement January 01, 2014. At the outset of the tenancy the landlord collected a security deposit in the amount of \$425.00 which the landlord retains in trust.

The landlord provided a copy of the condition inspection reports for the start and end of tenancy. The parties agreed that the *start of tenancy* condition inspection and requisite report was conducted / completed solely by the tenant and given to the landlord - subsequently signed by the landlord. The tenant testified that they were not provided instructions for completing the report, which in the alternative may have caused the tenant to be more inclusive in it.

Both parties attended the *end of tenancy* condition inspection and signed the report but with which the tenant did not agree. The parties did not agree as to the administration of the security deposit – although the parties subsequently agreed the landlord could retain \$30.00 from the security deposit for over holding of the unit.

Landlord's application

The landlord claims the tenant caused damage to the rental unit and left the unit unclean. The landlord provided that they expended in excess of 10 hours of labour at \$12.00 / per hour to clean specific areas of the unit they claim the tenant did not clean. The landlord provided digital photographs of the specific areas, some of which were close-up renderings, and inclusive of windows, blinds, behind the stove, stove top, and walls. The tenant claims they left the unit *reasonably clean* however did not clean windows, carpets, and other areas because of a apparent mould issue in the unit. The landlord's claim is in the aggregate of \$174.00 inclusive of supplies. The tenant provided a series of panoramic photographs of the unit rooms which the landlord claims do not accurately depict the areas in dispute.

The landlord testified the tenant did not clean the carpeting with which the tenant agreed. The landlord's claim for carpet cleaning is \$90.00.

The landlord testified they had to dispose of excess garbage and castoffs left by the tenant, at a claim of \$80.00 for 5 additional bags of garbage and a cooler. The landlord testified they rented a truck for \$60.00 and expended 1.5 hours of labour to re-route garbage to other refuse spots in their control, thus avoiding dump fees. The landlord provided evidence of documentation from the local government respecting the management of refuse and the treatment of excess containers / bags of refuse. The

tenant testified that they left the garbage with the expectation the municipality would soon collect it as their routine. The landlord explained they reside near a bear-inhabited area and cannot allow excess garbage to remain.

The landlord claims the cost of 6 light bulbs in the sum of \$60.00, which were missing from the unit with which the tenant agrees. The landlord claims that at the start of the tenancy the bulbs were “regular bulbs”. The landlord did not provide additional testimony or evidence toward the claimed cost averaging \$10.00 per bulb.

The landlord claims that the tenant damaged / marked the textured ceiling in the living room, purportedly where the Christmas tree would have been placed. The landlord provided photographs of the claimed damage and evidence for the supplies used to remedy the markings for a sum claim of \$110.00. The landlord further highlighted the markings were noted in the end of tenancy condition inspection. The tenant denied they caused the markings on the ceiling.

The landlord claims \$40.00 for repairs of scratches to the walls of the unit. The landlord provided a series of photographs of an abundance of scratches and indentations and receipt for the requisite supplies and highlighted the presence of wall damage was noted in the end of tenancy condition inspection report. The tenant testified that the damage to which the landlord purported was possibly there at the start of the tenancy, or should be considered as reasonable wear and tear for which the tenant is not responsible.

Tenant's application

The tenant claims for the return of their security deposit in the amount of \$425.00 and compensation of \$850.00 equivalent to their rent for December 2013. The tenant claims that all of the landlord's claims should be considered as wear and tear.

The tenant alerted the landlord to a possible presence of mould in the unit in the latter half of November 2013. The landlord and tenant provided evidence that the landlord responded to the tenant's concerns and began remedy of the issues within weeks. The tenants claim the landlord was negligent in their assessment of the concerns, and as a result think they were “misled” and “deceived” into occupying the unit for an additional month: December 2013 - despite concerns of alleged health-related issues for their young child. The tenant claims they would have given notice to end within November, to be effective at the end of December 2013 had they not been misled by the landlord that they would resolve the mould concerns. The tenant claims the compensation is in respect to a loss of / to their health, or a “health loss”. The tenant provided evidence

indicative of the presence of mould in the unit, which led them to vacate. The landlord agreed to the tenant's request of a mutual agreement to end the tenancy January 01, 2014.

Analysis

The Act, Regulations and Policy Guidelines may be viewed at www.rto.gov.bc.ca.

I have reviewed all evidence in this dispute. It must be noted that each party bears the burden of proving their claims on a balance of probabilities. On preponderance of all the evidence submitted, inclusive of testimonial evidence of the parties, I find as follows:

Landlord's claim

I grant the landlord **\$30.00** as agreed by the parties, for over holding of the unit.

It must be noted that if a claim is made by the landlord for damage to property the landlord is required to provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are solely the result of the conduct or neglect of the tenant.

Section 37 of the Act states as follows:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) 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.

The Act stipulates that a rental unit must be left *reasonably clean* at the end of the tenancy. In respect to the landlord's claim for cleaning I find I prefer the landlord's evidence that the rental unit required additional cleaning to a *reasonable* standard. I find the landlord provided sufficient evidence respecting the majority of this claim. However, I find the Residential Policy Guidelines state that a tenant is not responsible for cleaning behind a stove or refrigerator unless they are on rollers, and I have no evidence to confirm this is the case in this matter. As a result I deduct the landlord's claim for cleaning behind the stove and refrigerator by 1 hour from the overall time

claimed for cleaning the kitchen. As a result, I grant the landlord a set amount of **\$162.00** for all cleaning.

I accept the tenant's testimony that the carpets were not cleaned at the end of the tenancy. Residential Policy Guidelines state that the tenant is generally responsible for cleaning / steam cleaning the carpets after occupancy of one year. As a result, I grant the landlord the cost of carpet cleaning in the amount of **\$90.00**.

Residential Policy Guidelines state that a tenant is responsible for disposing of all their garbage and refuse at the end of a tenancy. I accept the landlord's evidence respecting their cost for removing all excess refuse left by the tenant. As a result I grant the landlord their claim of **\$80.00**.

I accept the landlord's claim that they were required to replace 6 light bulbs which were present at the start of the tenancy. However, I find the landlord's testimony respecting this claim lacked clarity. The landlord was unable to provide sufficient evidence that the replacement light bulbs were of no greater value to the original bulbs. None the less, as I am satisfied the landlord should be compensated for light bulbs; I grant the landlord nominal compensation for 6 bulbs in the set amount of **\$30.00**.

Section 23 of the Act, in relevant parts, states as follows;

Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.

Sections 14 and 21 of the Residential Tenancy Regulations state as follows;

Rental unit to be empty

- 14** The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

I find that the *start of tenancy* condition inspection was not completed in accordance with the Act or Regulation as both require that the condition inspection be conducted by both parties, and completed by the landlord. While I may accept the landlord's evidence indicating an array of damages to the ceiling and walls, in the absence of a *start of tenancy* condition inspection and report completed in accordance with the Act and Regulations I find the respective condition inspection report is not valid evidence of the state of repairs and condition of the rental unit on the date of the *start of tenancy* inspection. As a result, I find that the landlord cannot rely on the *end of tenancy* condition inspection report in contrast with the *start of tenancy* report to indicate what damage may have occurred during this tenancy. Effectively, the landlord has not presented evidence that the tenants are solely responsible for the claimed damage to the unit and as further result I must **dismiss** the landlord's claim for this portion of their application, without leave to reapply.

As the landlord was partially successful in their application they are entitled to recover their filing fee of **\$50.00** for an award in the sum of **\$442.00**.

Tenant's claim

I find that the tenant identified a problem in the unit and alerted the landlord to it and the landlord responded to remedy the matter within 3 weeks. I find that the tenants determined they had reason to end the tenancy by giving legal Notice in November, for the end of December 2013. Effectively, the parties reached agreement to end the tenancy *as if* the tenant had given legal Notice in November as originally intended. While I find that the tenants acted on cause to end the tenancy, the tenant has not provided sufficient evidence that solely the conditions within the rental unit resulted in a loss of / to their health. More relevantly, the tenant has not provided evidence that occupying the rental unit for the period of December 2013 resulted in a financial loss for the tenant. As a result, I **dismiss** the tenant's claim for compensation.

As I have already determined the landlord's award exceeds the amount of the tenant's security deposit I effectively **dismiss** the tenant's claim in its entirety, without leave to reapply. The result of all the above is as follows;

Landlord's award	\$442.00
Less tenant's security deposit	-\$425.00
Total Monetary Award to landlord	\$17.00

Conclusion

I Order that the landlord may retain the security deposit of \$425.00 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$17.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 15, 2014

Residential Tenancy Branch