Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 11, 2014, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant testified that he had received an e-mail from the Landlord with a link to access the Landlord's evidence on-line. He was able to print the documents and view the videos and photos that were placed on line. He indicated that he did not receive the same number of documents as were served to the *Residential Tenancy Branch.*

Upon review of the Landlord's evidence submission the Landlord testified that she had not included three documents in the Tenant's on-line package of evidence. Specifically, she had not included the condition inspection report form, the tenancy agreement; or the e-mail stream that is marked as evidence "F". She argued that all three documents were sent to the Tenant previously, prior to her filing her application for dispute resolution.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that for evidence to be considered in support of an application for dispute resolution, it must be served upon the *Residential Tenancy Branch* and the other party, as evidence, prior to

the hearing. Considering evidence that has not been served on the other party, as evidence, would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenant has not received copies of the three documents sent by the Landlord, as evidence, as noted above, I find that those three documents cannot be considered as the Landlord's evidence.

The Landlord stated that she had not received the Tenant's evidence package. The Tenant affirmed that he had sent his evidence by registered mail on May 16, 2014, to the address provided on the Landlord's application for dispute resolution and he provided the tracking number in his oral submission. The Landlord acknowledged that she had received the notice card but had not yet picked up the package.

Based on the Tenant's oral submission I find that his evidence was served upon the Landlord in accordance with section 88 of the Act and Rule # 4.1 of the *Residential Tenancy Branch Rules of Procedure.* Accordingly, I accepted and considered all of the Tenant's documentary evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a 5 month fixed term tenancy that commenced in April 2011 which switched to a month to month tenancy. Rent was payable on the first of each month in the amount of $1,450.00 and in early April 2011 the Tenant paid $725.00 as the security deposit. The parties conducted a move in inspection and signed the condition inspection report form on Aril 7, 2011.

The Tenant confirmed that he sent the Landlord an e-mail on January 4, 2014 to end his tenancy effective January 31, 2014. The Landlord did not provide the Tenant with two opportunities to conduct the move out inspection and did not issue a final written notice of inspection. The move out condition inspection report form was completed by the

Landlord on February 6, 2014, in the absence of the Tenant. The Landlord provided the Tenant with a copy of the report shortly after February 6, 2014.

The Landlord submitted evidence that the Tenant gave her permission to enter the unit on January 30 and 31st, 2014, to re-caulk around the bathtub. She stated that when she entered the morning of January 31, 2014 she began to do a cursory inspection to assess the level of cleaning when she found a kitchen cupboard that still had the Tenant's possessions. She e-mailed him and requested that he return to pick up his remaining possessions. She stated that he arrived around 10:00 a.m. that morning at which time she began to point out some of the cleaning and repair deficiencies. It was during that conversation that their communication began to break down and the Tenant told her he was busy and he was finished cleaning.

The Landlord confirmed that by the time the Tenant had returned to the rental unit the morning of January 31st, she had already begun the cleaning. The Landlord argued that her photos and videos clearly show that the unit was not properly cleaned as there were stains on the walls, the oven and stove were not cleaned, and there was dirt and dust on the floors and baseboards. She also pointed out that the Tenant had not repaired the damage caused by his wall mounted television. She confirmed that the Tenant had be given her permission to mount his television but that he was required to repair the wall when he removed the television, which he did not do.

The Landlord pointed out that she had another tenant scheduled to move in which caused her concern when she saw the condition the unit was left in. As it turned out the new tenant was delayed in moving in until February 3, 2014. She did not charge her new tenant rent for February 1st or 2nd because of the delay.

The Landlord argued that the Tenant had cleaned the carpets with a rented cleaner and as of January 31st the carpets were still wet. She noted that as the carpets began to dry she started seeing stains in the carpets. She arranged to have a professional carpet cleaner re-clean the carpet which was completed on February 1, 2014.

The Landlord submitted a Monetary Order Worksheet claiming $778.69 comprised of: $100.00 for two days lost rent; $262.50 for professional carpet cleaning; $46.19 for the cost of touch up paint; $250.00 for ten hours of cleaning; and $120.00 for four hours labour for painting and repairs.

The Tenant disputed all of the items being claimed by the Landlord. He confirmed that he spoke briefly with the Landlord on January 31st but argued that the only thing she commented about was the stove. At no time did she mention her concerns about the

cleaning in the rest of the rental unit being a problem. She did however state that she did not expect to see it cleaned to her standards. Their conversation did not break down that day. Rather, it was on the first of February that their communications broke down.

The Tenant argued that on February 1st, the date the Landlord started to point out her concerns about the cleaning, the Landlord had already cleaned the entire unit, repainted, and had the carpets re-cleaned. He confirmed that there were two stains on the walls, wine and orange juice, but argued that he was of the opinion that they were considered normal wear and tear after a three year tenancy. He also confirmed that the carpet in the main traffic areas appeared darker than the other carpets but he could not say that that was the result of staining.

The Tenant pointed out that the Landlord had not met her obligations of providing him with two opportunities to inspect the unit and that she cleaned the unit before a formal inspection or before discussing her concerns with him. He stated that he felt he met the requirements of the Act by leaving the unit “reasonably clean” by his standards, which may not have been up to the Landlord’s standards. That said, he was never given the opportunity to correct anything because she came in and had done it all before the inspection.

The Tenant pointed to his documentary evidence to support his testimony that the Landlord acknowledged that she had made the personal choice to work on the unit and have the carpets cleaned again. He argued that it was her choice so he should not have to pay for the cost of those choices. He also noted that when he returned on February 1st, the new tenant had already moved a lot of her possessions into the kitchen.

The Tenant noted that he had started to repair the wall where he had mounted his television and that he had intended to finish the job but when the communication broke down he forgot about it and it was repaired by the time he came back to the unit.

In closing the Tenant confirmed that there were a few cleaning items missed but they were not brought to his attention. He feels the repairs were required based on normal wear and tear and all items claimed by the Landlord were brought on by her own actions.

The Landlord clarified that her claim for painting was for certain areas to cover staining and not to paint the entire unit. She admits her short comings but noted that she had accepted the Tenant’s late notice to end his tenancy. She also confirmed that she and the Tenant inspected the unit after she had already completed the cleaning, repairs, and had the carpets re-cleaned.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant was required to provide written notice to the Landlord no later than December 31, 2013, if he wished to end his tenancy effective January 31, 2014. The Tenant provided Notice to end his tenancy by e-mail on January 4, 2014 to be effective January 31, 2014. That being said, the Landlord accepted the short notice and re-rented the unit effective February 1, 2014.

Section 35 of the Act stipulates that a landlord must provide the tenant with two opportunities to conduct a final move out inspection. If a landlord fails to provide the opportunity to inspect the unit then Section 36 of the Act stipulates that the landlord's claim against the security deposit for damage to the property is extinguished. Sections 35 and 36 of the Act have been copied to the end of this decision.

While I appreciate that a landlord may feel the pressure of time constraints during the transition of tenants moving in and out, the Act provides for scheduling of inspections and completion of inspection reports so that tenants can be notified and given an opportunity to correct any cleaning or repair shortfalls, in accordance with section 32 of the Act.

In this case, the Tenant had legal possession of the rental unit until January 31, 2014 at 1:00 p.m. The Landlord was granted permission to enter the unit prior to 1:00 p.m. on January 31, 2014 for the purpose of re-caulking around the bathtub. However, the Landlord took it upon herself to conduct an inspection and begin cleaning and repairing the unit in the Tenant's absence. The Landlord did not pre-arrange an inspection date and time with the Tenant, until February 1, 2014, at which time the Landlord had already completed all cleaning, repairs, and had professional carpet cleaning done.

Accordingly, I find the Landlord breached the Act by beginning to clean and repair the rental unit before she had legal possession and without the Tenant's prior consent to pay her for her work. Furthermore, I find that the Landlord breached section 35 of the Act by failing to schedule a move out inspection and therefore, she extinguished her right to claim against the security deposit for damages. Accordingly, I dismiss the Landlord's claim in its entirety.

The Landlord has not been successful with her application; therefore I decline to award recovery of the filing fee and I hereby order the Landlord to return the Tenant's security plus interest in the amount of $725.00 ($725.00 + $0.00 interest), forthwith.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **$725.00.** This Order is legally binding and must be served upon the Landlord in the event she does not return his security deposit forthwith, as ordered above. In the event that the Landlord does not comply once the Monetary Order has been served. The Order 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: May 30, 2014

Residential Tenancy Branch

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.