



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This was an application by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order for damage and loss respecting the rental unit and to retain the security deposit in partial satisfaction of any monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The tenant acknowledged receiving the evidence of the landlord inclusive of document evidence and 1 DVD with photo images (IMG/JPEG). Both parties were given opportunity to provide testimonial evidence in response. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant evidence in this matter is that the tenancy originally started January 15, 2013 and ended May 31, 2014 at the end of the fixed term lease upon the tenant giving the landlord a notice to end. The landlord currently holds the security and pet damage deposits in trust – in the sum amount of \$1850.00. I have benefit of a tenancy agreement document signed by both parties at the start of the tenancy. The parties agreed in their tenancy agreement that the pets of the tenancy were 2 small birds.

I have benefit of a copy of a *move in* and *move out* Condition Inspection Report (CIR) dated before the tenancy took effect on January 13, 2013, and again on May 28, 2014 when the tenancy ended - signed by both parties on the last page and each including their address particulars: the tenant's forwarding address and the landlord's address at the end of the tenancy. The parties disagree on the veracity or truthfulness of the *move out* portion of the CIR. The tenant claims that although all parties were in presence of one another at the time of the move out inspection, the landlord announced that all was well with the unit and that the tenant would receive their deposits back. The male tenant claims that the landlord obtained his 2 signatures on the *End of Tenancy* portions of the CIR (1. and 4.), approximately 6 weeks before the end of the tenancy and the mutual move out inspection; and, later completed the comments section of the form to support their claims on application. The tenant testified the landlord falsified the document. The tenants testified that they first received a copy of the CIR when they received the landlord's Notice of Hearing and evidence on June 24, 2014 and were surprised of the landlord's application. The landlord denied they falsified the document and points to the date and time of the move out inspection on the CIR. The landlord also indicated that most of the photos provided into evidence have a date stamp of May 28, 2014. The landlord also claimed they provided a video file of the inspection - which is absent from their hearing submission, and that of the tenant's.

The landlord claims an amount for repairing the walls of the unit and re-painting them. The landlord further claims an amount for replacement of all the carpeting in the unit. and the landlord also claims an amount for loss of revenue as a result of the alleged damage. The landlord did not itemize their claim. They did not replace the carpeting but provided an estimate. They claim they painted the walls at a total cost of \$2200.00, for labour and all materials - but have not provided receipts or when the work occurred. However, they provided several estimates for painting.

The landlord claims the tenant's damaged the walls by leaving the walls with small holes and some scrapes; and, damaged the carpeting by leaving it with staining suggesting the carpets had been spot-cleaned with a bleaching agent at some point, and with small residues of nail polish and mascara. The landlord testified that they had the carpets cleaned after the move out inspection at which time the purported bleached areas of the carpet were revealed. The landlord did not provide a receipt for professional carpet cleaning. The landlord did provide photographs of small holes in the walls, and photographs of small scrapes and small dents in the wall which they claim were beyond reasonable wear and tear. The landlord also provided photographs of the

purported staining of the carpet. The tenant denied they left the walls damaged other than some small nail holes for hanging light items on the walls, and denied they spot-cleaned the carpets with any bleaching solution, nor left nail polish and mascara residues. They submit the landlord has exaggerated their claim. The tenant testified that they disagreed with the landlord's claim and assessment of damages in its entirety.

Analysis

The landlord relies on their evidence the tenant caused the alleged damage. The tenant relies on their argument that they did not cause the damage.

I am troubled by information that the landlord may not have conducted the *move out* inspection in accordance with the Act or Regulations, I am equally concerned about the tenant's evidence respecting the Condition Inspection Report: that they signed the document with 2 signatures - 6 weeks before the inspection – clearly without concern over the potential consequences of doing so. I do not find the tenant's account for this action credible. None the less, the landlord, as applicant, bears the burden of proof for their claims and I must look to them to support their application.

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

When a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement, with allowance for depreciation or wear and tear - whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or extravagant. **Sections 23, 24 and 25** of the *Act* deal with condition inspections at the *start* of the tenancy. **Sections 35, 36 and 37** of the *Act* deal with condition inspections at the *end* of the tenancy.

Part 3 of the Residential Tenancy Regulation deals with Condition Inspections and when complied with are designed to lend reliable information to condition inspections - to assist parties in administering the security or pet damage deposits held in trust at the end of a tenancy.

Section 21 of Part 3 of the Residential Tenancy Regulation states as follows.

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.

All of the above information may be accessed at www.gov.bc.ca/landlordtenant.

On the preponderance of evidence and on balance of probabilities, I find the landlord has provided evidence they conducted the condition inspections in accordance with the requirements of the *Act* and Regulations. Therefore, I accept the inspection reports as evidence of the condition of the rental unit on the date of the inspections, and I find the tenant does not have a preponderance to the contrary. I accept the landlord's claim that portions of the walls of the unit at the end of the tenancy were indicative of excessive wear and tear and, on balance of probabilities, required some remedial work and repainting. I do not accept that all walls suffered excessive wear and tear, or damage. I find that small holes and some drywall abrasions are reasonable wear and tear, for which the tenant is not responsible. On review of the landlord's estimates for repairing and repainting all walls of the unit and the landlord's *unsupported* claim they ultimately paid \$2200.00 to repair and repaint the entire unit, I grant the landlord a nominal limited amount for actual *damage* to the walls of **\$750.00**.

In the absence of a receipt for *professional carpet cleaning* of the carpets after the end of the tenancy, I do not accept the landlord's claim that their cleaning the carpets revealed they had been compromised by way of bleaching agents. The carpets may well have shown staining or discoloration but the landlord has not provided sufficient evidence the tenants conduct or their actions were responsible for the alleged damage to the carpets. As a result **I dismiss** the landlord's claim for carpet replacement. None the less, I find the landlord's evidence supports that the carpets were not left reasonably clean at the end of the tenancy. As a result, I grant the landlord an amount commensurate to the cost of a professional carpet cleaning in the limited amount of **\$300.00**.

I find the landlord received the tenant's Notice to End in accordance with the Act and has not proven they had secured a new tenant; therefore, revenue - for June 01, 2014. As a result, I find the landlord did not incur a loss in revenue and their request for loss resulting from having to paint the walls does not meet the above test for loss and I **dismiss** this portion of their claim.

As the landlord has been partly successful in their application, they are entitled to recover their filing fee. The deposits held in trust by the landlord will be off-set from the award made herein.

Calculation for Monetary Order

Wall repairs and re-painting	\$750.00
Loss respecting carpets	\$300.00
Filing Fee for the cost of this application	50.00
Monetary award to landlord	\$1150.00
<i>Less Security Deposit</i>	<i>-925.00</i>
<i>Less Pet damage Deposit</i>	<i>-925.00</i>
Monetary Order to tenant	\$700.00

Conclusion

The landlord's claim has been partly granted with an accompanying award totalling \$1150.00, with the balance of their claims **dismissed**, without leave to reapply.

I Order the landlord may retain \$1150.00 of the tenant's deposits and must return the balance of \$700.00 to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act [*service of documents*] or give the deposit balance personally to the tenant.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$700.00**. *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: October 21, 2014

Residential Tenancy Branch

