



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the tenants' security deposit in satisfaction of those amounts. The tenants brought a cross application for the return of double their security deposit. Both parties attended the teleconference hearing.

Issues(s) to be Decided

Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?

Are the tenants entitled to recovery of any of their security deposit?

Background and Evidence

The parties admitted service of each other's applications.

Based upon the evidence of CK the landlord, I find that this month-to-month tenancy started on July 31, 2013 and ended on January 30, 2015 when the tenants moved out. Rent was \$ 1,635.20 per month payable in advance on the 1st day of each month. The tenants paid a security deposit of \$ 800.00 on July 5, 2013.

CK testified that pursuant to the addendum to the tenancy agreement the tenants agreed that:

At the end of the tenancy, the tenants will arrange for the property to be cleaned to the satisfaction of the landlord.

The landlord testified that the tenants moved out and that the unit was not cleaned to

“her satisfaction” in particular that the kitchen, bathroom and gas fireplace needed extra cleaning costing \$ 327.60.

CK testified that the tenants repainted the living room portion of the unit with paint of a different sheen and quality. The living room represented 70% of the living area. The landlord produced a letter from her painter in support of the claim. The landlord also claimed the tenants smoked and therefore the whole unit needed to be repainted. She admitted not ever detecting this herself or on the day of the inspection but relied upon a letter from her realtor. The landlord claimed \$ 714.62 for that part of her claim.

The landlord testified that the tenants stained the ten year old carpet notably in the bedroom with a two by three foot stain which according to her cleaners and carpet installers was not cleanable. CK claimed \$ 742.50 for the cost of the carpet replacement.

The tenants claimed that as the landlord only claimed initially for \$ 650.00 and did not return the excess of \$ 150.00 from their security deposit that they are entitled to double that amount or \$ 300.00 pursuant to section 38 of the Act.

The tenant RE testified that the tenants hired a professional cleaner for three hours who cleaned the whole unit. While RE acknowledged that some areas of the unit may have needed extra cleaning as indicated on the move out report, the landlord's claim is excessive. RE testified that the fireplace was left in the same condition it was when they moved in and that the tenants did not even know how to disassemble it to clean it.

RE testified that the tenants used the paint left in the storage area of the unit that they thought was touch up paint to cover marks on and holes in the wall. The tenants denied smoking in the unit. The paint condition was not noted in the move out report and the tenants submit that they are not responsible for that claim at all.

The tenants admit staining the carpet in one location but claim it is an old carpet and that because this is wear and tear they should not pay anything for the replacement.

Analysis

The Residential Tenancy Act provides the tenants must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenants have access. The tenants must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenants or a person permitted on the residential property by the tenants and are liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenants are required to maintain the standards set out in the Act. The tenants are not required to make repairs for reasonable wear and tear.

I find that the landlord's clause in the addendum "*At the end of the tenancy, the tenants will arrange for the property to be cleaned to the satisfaction of the landlord*" is contrary to section 32 and 37 of the Act which state:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain **reasonable** health, **cleanliness** and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Leaving the rental unit at the end of a tenancy

37 (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

I find that the landlord's aforementioned clause from the addendum is contrary to sections 32 and 37 of the Act and therefore void and unenforceable pursuant to section 5 of the Act.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of **no effect**.

I find that the landlord's claim for cleaning to be excessive and beyond what can be characterized as "reasonable." As the tenants admitted that the kitchen and bathroom required some extra cleaning I allow the landlord to recover \$ 100.00 for what I estimate to be that portion of her claim.

I accept the landlord's and her painter's evidence that the living room was repainted with paint of a different sheen and that only that portion required repainting. I reject the

landlord's hearsay evidence that the tenants smoked as speculative. I find that the portion which needed repainting was likely no more than forty percent of the unit. I find that in accordance with Policy Guideline 40 the life expectancy of interior paint is four years. The tenancy was one and a half years long. Accordingly I allow 40% of the cost of painting totalling \$ 285.00 of which I allow 70% for depreciation of the paint totalling \$ 200.00.

Policy Guideline 40 of the Residential Tenancy Act allows ten years for the life expectancy of an interior carpet. The landlord has obtained the maximum life from her carpet and accordingly I have not allowed any portion of her claim for the cost of replacement because of the stain caused by the tenants.

The relevant portions of Section 38 of the Act states as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

(6) If a landlord does not comply with subsection (1), the landlord

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this matter the evidence before me was that the landlord received the forwarding address for the tenants on January 30, 2015 and brought this initial application on February 13, 2015. The landlord claimed for the sum of \$ 650.00 and then amended that to claim \$ 850.00 on April 13, 2015. I find that the landlord had initially made "a claim against the security deposit" within the time permitted by the Act. I reject the

tenants' submission that such a claim must be exact as typically a landlord may not know the exact amount at the time of making such a claim and any such interpretation of the Act to require this would be unduly harsh and illogical. Accordingly as I find that the landlord made her claim against the tenants' security deposit, albeit not all of it, in the time required by section 38 of the Act, that the landlord has complied with the Act. I have dismissed the tenants' claim for doubling any portion of the security deposit not specifically claimed against by the landlord.

I find that the landlord has proven a claim totalling \$ 300.00. As the neither the landlord nor the tenant were entirely successful in this matter I decline to make an order as to any of their respective filing fees. Each party shall bear their own costs. I order the landlord pursuant to s. 38(4) of the Act to retain \$ 300.00 from the tenants' security deposit inclusive of interest and return the balance of \$ 500.00 to the tenants . The tenants will receive a Monetary Order for the balance owing.

Conclusion

In summary awarded the landlord the sum of \$ 300.00 in respect of her claim. I order that the landlord retain that sum from the security deposit and return the balance to the tenants. I grant the tenants a Monetary Order in the amount of **\$ 500.00** and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims by the parties. Neither party will recover any of their filing fees.

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 20, 2015

Residential Tenancy Branch

