



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on October 8, 2014 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant and each one gave affirmed testimony. The Tenant testified that she received one registered mail package that consisted of the application for dispute resolution, the hearing documents, and the Landlord's list of items and amounts being claimed.

The Landlord submitted that her documentary evidence was served to the Tenant via registered mail on April 16, 2015 and the tracking information was provided in her oral submission. The Tenant denied receiving the evidence package and argued that no one, other than herself, would be at her home to sign for registered mail. She stated that while she was at work her mother looked after her daughter and that daycare was always provided at her mother's home. The Landlord testified that the evidence package had been delivered which she confirmed on the Canada Post website.

Both parties agreed to have the Canada Post website checked during the hearing. The Canada Post tracking information relating to the Landlord's evidence package indicates that the package was delivered on April 17, 2015 and was signed for by a person with the initials K.W. The name was stated during the hearing and the Tenant confirmed that the person who had signed for the evidence package was her mother.

Based on the above, I find the Landlord's evidence had been served upon the Tenant in accordance with section 88 of the Act. Accordingly, the Landlord's documentary evidence was considered in my decision.

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.

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. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was that the Tenant entered into a written month to month tenancy that began on February 1, 2012. The full rent was listed as \$1,536.00 and the Tenant paid subsidized rent based on her income. On January 3, 2012, the Tenant paid \$765.00 as the security deposit which was based on the full rent. Both parties attended the move in condition inspection and signed the condition report form on February 1, 2012.

The rental unit was described as being a two level townhouse with a back yard. The corporate landlord has owned the property since 1996 and the Landlord has been managing this complex since 2009.

The Landlord testified that in November 2013 she received the Tenant's notice to end tenancy which was to be effective December 31, 2013. The Tenant was issued a document outlining the cleaning expectations for moving out. The Tenant did not pay her December 1, 2013 rent so on December 8, 2013 the Landlord posted a notice of entry to conduct a pre-move-out inspection of the unit on December 12, 2013. When she entered the unit she found the Tenant had vacated the unit, left the keys in the kitchen, and left the unit unclean and with some damage. The Landlord now seeks compensation as follows:

\$503.00	For unpaid rent that was due December 1, 2013
\$302.40	Cleaning costs – the Landlord argued that everything had to be cleaned, all appliances, the bathroom, kitchen, floors, windows, everything as no cleaning had been conducted and garbage was left behind.
\$279.28	Repairs to living room laminate flooring. The Landlord stated that the Tenant removed the carpet in the living room and front hall closet without permission. She installed laminate flooring but did not do the installation correctly so they had to hire someone to fix it before they could re-rent the unit
\$282.08	Cost to install new blinds – the Landlord did not know the age of the blinds which were replaced and she confirmed that some were original and some were newer. The Landlord could not testify which blinds were replaced, the older or new ones.
\$420.00	Paint the upstairs bedroom to return it to a neutral color. The entire unit was painted however only a portion was claimed here.
\$460.91	Miscellaneous repairs as per the invoice provided in evidence and included items such as replacement of vent covers. The Landlord submitted that it was her supervisor's decision as to what to charge back to the Tenant.
\$94.50	Cost to remove the garbage and debris left behind by the Tenant
\$197.16	Repairs to the light fixture in the kitchen and installation of lightbulbs
\$147.00	Carpet cleaning costs as required by the tenancy agreement.

In support of the items claimed above the Landlord submitted six invoices from the same contractor who had performed the work and one invoice from the professional carpet cleaning company. The tenancy agreement, move in condition report form and the Landlord's written statement were also submitted into evidence.

The Tenant did not dispute the fact that she owed the Landlord \$503.00 in rent. She did however, dispute all other items claimed. She submitted that she met with the Landlord to return the keys to the rental unit. She claimed that the Landlord did not ask her to conduct a move out walk through. She argued that she had hired her niece to clean the rental unit at the end of her tenancy. She stated that she should not have to pay for any work done on the rental unit because the carpet had not been changed in 8 years and she did not leave anything behind. The Tenant focused a lot of her testimony arguing that the maintenance person was the Landlord's husband and a lot of the work they were claiming was not required because of anything she had done.

The Tenant argued that the rental unit walls were all a dark grey when she moved into the unit so she should not have to pay to change the walls to a neutral color. She confirmed that her sister had painted her daughter's bedroom a purple color during her tenancy. She argued that she should not have to pay to have any work done on the laminate flooring because she had to install it because her daughter had allergies. The Tenant confirmed she removed the carpet from the living room and argued that there was no carpet in the closet to remove as it was concrete flooring from the start of her tenancy. She argued that the previous tenant was removed by a bailiff and the rental unit was destroyed when she moved in. She confirmed signing the move in condition report form and argued that it was signed before she moved into the unit.

In closing the Landlord stated that the maintenance person was not her husband; rather, he was a contractor hired by the corporate landlord. She clarified that she manages several units and with the passage of time she could not remember every specific detail in this case.

Analysis

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.
- 7(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.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

It was undisputed that the Tenant owed the Landlord \$503.00 in unpaid rent. Accordingly, I award the Landlord compensation for unpaid rent of **\$503.00**.

Section 21 of the Regulations provides that 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.

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I favored the Landlord's evidence who stated the Tenant vacated the rental unit early leaving the keys in the kitchen and leaving the rental unit dirty and with some damage. I favored the Landlord's evidence over the Tenant's because it was forthright, credible, and supported by documentary evidence. Furthermore, the Landlord's willingness to admit that she could not remember every detail due to the passage of time, lends credibility to all of the Landlord's evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, 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 is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanations regarding the receipt of evidence, how the keys were returned, and the condition the rental unit was left in to be improbable. The Tenant contradicted her own testimony throughout the hearing, first saying her mother was never at her home to accept evidence, then to confirm it was her mother who signed for the evidence, causing her testimony to be questionable. Furthermore, the Tenant submitted that she should not have to pay to repair anything in the rental unit and then later confirmed her sister had painted her daughter's bedroom and she had removed the living room carpet, without permission, and she installed laminate flooring. In the presence of the Tenant's contradictory submissions, I find the Landlord's submissions, which were supported by evidence, to be plausible given the circumstances presented to me during the hearing.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit: unclean, with debris, and damaged at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

As per the foregoing I find the Landlord has met the burden of proof and I award them costs for repairs, cleaning, and garbage removal, for: \$302.40 cleaning; \$279.28 repairs to properly install the living room laminate flooring; \$94.50 to remove the garbage and debris; and \$147.00 for carpet cleaning; for a total award of **\$823.18**.

The remaining items claimed were dismissed, without leave to reapply for the following reasons:

The claim of \$282.08 to replace blinds was dismissed as the Landlord was not able to provide evidence as to the age of the blinds which were replaced and therefore, it is possible that the blinds which were replaced had surpassed their useful life.

The claim of \$420.00 to repaint the upstairs bedroom was dismissed, without leave to reapply, as the move in condition inspection report form indicated that the bedroom was pink at move in.

The items listed on the invoice for \$460.91 as being for miscellaneous repairs could all be considered maintenance required to be performed by a landlord. Furthermore, there was no evidence as to the age of the items being repaired or maintained that were listed on this invoice. Therefore, they were dismissed, without leave to reapply.

The move in condition report form indicated that there was no cover on the kitchen light fixture and there was no evidence as to the age of the kitchen light fixture that was replaced. Therefore, the claim of \$197.16 for the light fixture is dismissed without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent	\$ 503.00
Cleaning, debris removal, and repairs	823.18
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,376.18
LESS: Security Deposit \$765.00 + Interest 0.00	- 765.00
Offset amount due to the Landlord	<u>\$ 611.18</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$611.18**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it 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 15, 2015

Residential Tenancy Branch

