



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, AAT, MNR, MND, FF

Introduction

This matter dealt with an application by a tenant for various items: an Order to Cancel a Notice to End a tenancy for Cause, compensation for harassment, moving expenses, access to her unit, and the return of the security deposit. The landlord claimed for a Monetary Order for unpaid rent for April, compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the tenant's security deposit in partial payment of those amounts. Both the landlord and tenant attended the conference call hearing.

Preliminary Matters:

The tenant moved out of the unit and therefore no longer required that the Notice to End the Tenancy be cancelled. The tenant had not supplied particulars of her claim or sufficient evidence of the loss and accordingly withdrew her claim for everything except the return of her security deposit.

Issues(s) to be Decided

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

Is the tenant entitled to recovery of the security deposit?

Background and Evidence

Based on the evidence of the landlord I find that this month-to-month tenancy started on June 1, 2013 and ended on April 4 or 12, 2015 when the tenant moved out. Pursuant to the tenancy agreement, rent was \$ 650.00 per month payable in advance on the 1st day of each month. The tenant paid a security deposit of \$ 250.00 at the beginning of the

tenancy.

The landlord testified that she served a Notice to End the Tenancy for Cause on March 24, 2015 with an effective date of April 30, 2015. The landlord testified that because the tenant was verbally abusive to the landlord, a bicycle was missing, damage to a gate the landlord called the police to attend. The Police attended again on April 4, 2015 as the tenant's boyfriend and another friend prevented the landlord from inspecting the unit. The landlord testified she accordingly did not inspect the unit until after the tenant vacated. At that time she discovered damage to the unit of which she took pictures to document. She also supplied pictures of the items before they were damaged. Based on her inspection, the photos and her evidence, the landlord claimed for compensation for the following items:

Rent:

The tenant moved out on April 12, 2015 the date she completely removed her belongings and returned her keys. She did not pay any rent for the month of April nor did she give notice to the landlord of her intention to move on that date. Although pursuant to the tenancy agreement, rent was payable on the 1st of every month the landlord permitted the tenant to pay on the 15th as she was never on time. The landlord is claiming for loss of rent amounting to \$ 650.00.

Coffee Table:

The landlord testified that she permitted the tenant to use her coffee table. At the end of the tenancy it was covered in nail polish and children's stickers. The landlord claims the table is ruined was purchased over ten years ago along with an end table for \$ 900.00. She estimates the table is worth \$ 450.00 but has not shopped for a new one nor tried to repair it.

Cleaning of Refrigerator and Stove:

The landlord produced photos indicating that about half of the refrigerator and the entire stove top were not cleaned. The landlord's friend who is a professional cleaner estimated it would cost \$ 50.00 to complete this cleaning.

Laminate Flooring:

The landlord produced photos showing the flooring which was one year old when the tenant moved in, was bubbled up and partially stained with nail polish when she moved out. The landlord also produced a photo of the flooring before the tenant moved in depicting it as undamaged. The landlord thought that the tenant's dog and her family's three other dogs must have urinated on the floor. The landlord estimated that her husband could replace it for \$ 750.00.

Kitchen Cart:

The landlord produced a photo of a granite topped kitchen cart illustrating that the landlord claimed was covered in nail polish stains. The landlord claimed that she was told that nail polish could not be removed from the granite without ruining the seal. The landlord claimed \$ 200.00 for the replacement of the cart which was new at the commencement of the tenancy.

Hole in wall and nail polish on wall:

The landlord produced photos of a hole behind a door and nail polish on the walls. She claimed her husband could fix this for \$ 50.00

Fridge Chipped:

The landlord claimed the 2 year old fridge door was chipped, and interior so dirty that it needed replacement. She claimed \$ 450.00 for that cost. She had not cleaned the fridge yet.

Entry Door and hole in wall:

The landlord produced a picture of the outside of the exterior door showing many dents in it as well as a hole in the interior wall presumably from the door handle. The landlord claimed for the cost of the door only at \$ 500.00 which she priced at Home Depot.

Gate Repair:

The landlord testified that when the tenant's boyfriend and other friends were moving her possessions out on she heard the gate bang repeatedly. Upon inspection the next day the landlord observed that he gate was broken. She included a picture of it and claimed that her husband could repair it for \$ 50.00.

Cleaning:

The landlord claimed the suite had not been cleaned properly and she claimed for \$ 30.00 per hour x 4.6 hours totalling \$ 140.00.

The tenant testified that she moved out because the landlord made it difficult for her to live there. The landlord suddenly was upset that her sister stayed over 3-5 nights a week, her mother and other sister along with their three dogs only stayed once or so. The tenant did not feel safe in the unit as she alleged the landlord called the police for no reason. She moved out on April 4, 2014 without notice and removed all of her

possessions by April 12, 2015. She denies owing any rent for April as rent was not due until the 15th and she was gone by April 12, 2015.

The tenant claimed the landlord gave her the table and therefore she wasn't responsible for it.

The tenant claimed it was not possible to clean the fridge as it was too hard to pull out. She admitted the stove was dirty.

The tenant claimed that the flooring bucked by itself throughout the tenancy. She denied that it had any nail polish on it.

The tenant claimed the kitchen cart was spotless when she moved out and the landlord took the pictures before she cleaned up.

The tenant claimed she cleaned all the polish off the walls, was unaware of the gouge on the wall and that the landlord must have taken pictures before she moved out.

The tenant was unaware of any chips on the fridge.

The tenant testified that she never looked at or noticed the condition of the exterior door and that the hole in the inside wall was caused because there was no door stopper.

The tenant claimed that she was unaware of the broken gate until she herself noticed it.

The tenant claimed she spent two hours cleaning the unit and had pictures illustrating what she cleaned.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is 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 tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing. The standard of proof required on this application is "on the balance of probabilities." The landlord must prove that her theory of how the tenant is responsible for the loss is more probable than not.

Rent:

Although the tenant was served with a one month Notice to End the Tenancy effective on April 30, 2015, she was still required to pay the rent for April before moving out. The Notice did not give the tenant permission to move out without paying the rent. Furthermore her rent for each month was contractually due by the 1st of every month although the landlord permitted her to pay on the 15th. Although the tenant moved out on April 12, she was bound to pay the rent no later than April 15, 2015. Accordingly I allow the landlord's claim for \$ 650.00 representing the loss of rent for April 2015.

Coffee Table:

I accept the landlord's evidence that she did not give the table to the tenant. The tenant's explanation does not make any sense. Why would a landlord give a tenant a piece of furniture and then the tenant leave it behind? However that table is at least 10 years old and the landlord admitted not estimating its replacement cost or whether a repair was possible. Accordingly I award the landlord the sum of \$ 150.00 as a reasonable sum for either the depreciated value or cost of repair.

Cleaning of Refrigerator and Stove:

The tenant seemed to have many friends who helped her move and one would think that someone could help her move the fridge so that she could clean the interior. Based on the pictures and the tenant's admission I find the landlord has proven a claim for \$ 50.00 to complete this cleaning.

Laminate Flooring:

I accept the landlord's evidence based on the photographs that the flooring was not damaged when the tenant moved in and that they were damaged after the tenant moved out. However the landlord has the onus to prove that the tenant caused the damage (which was mostly the bubbling up of the flooring). Here the landlord offered a theory as to how the damage may have occurred. It is conjecture and therefore I am not satisfied that it was more probable than not that the tenant caused the damage. I have dismissed that claim.

Kitchen Cart:

The landlord admitted not attempting to repair the cart yet testified as to what a person told her about granite generally. Accordingly I am not convinced the cart is not repairable. I have dismissed the claim for the cost of replacement.

Hole in wall and nail polish on wall:

I accept the landlord's evidence and the photos which I find were taken at the end of the tenancy that this damage was caused by the tenant. I award the landlord the \$ 50.00 claimed.

Fridge Chipped:

The landlord has not proven that the fridge needs to be replaced nor that it's value is depreciated by the chip. I have dismissed that claim.

Entry Door and hole in wall:

There was no evidence from the landlord that the tenant damaged the door. The landlord was unable to even offer an explanation as to how it got damaged. I accept the tenant's explanation that the hole in the wall occurred because there was not a door stop and therefore that damage is more akin to wear and tear. Accordingly I must dismiss that claim.

Gate Repair:

I accept the landlord's evidence as credible, that she heard the gate being abused at the time the tenant's friend's were moving out her belongings. I allow her estimate of the cost to repair the gate at \$ 50.00.

Cleaning:

I accept the landlord's evidence that more cleaning needed to be done however I find the landlord's estimate and hourly amount excessive. I allow a claim for \$ 20.00 per hour for 4 hours totalling \$ 80.00.

I find that the landlord has proven a claim totalling \$ 1,030.00. As the landlord has been successful in this matter, I find pursuant to s. 72 of the Act that she also entitled to recover the \$50.00 filing fee for this proceeding. I order the landlord pursuant to s. 38(4) of the Act to retain the tenant's security deposit inclusive of interest amounting to \$ 250.00 in partial payment of the rent arrears. The landlord will receive a Monetary Order for the balance owing.

Calculation of Monetary Award

Rental Arrears (April)	\$ 650.00
Coffee table repair or depreciation)	\$ 150.00
Refrigerator and Stove cleaning	\$ 50.00
Wall gouge and repair	\$ 50.00

Gate repair	\$ 50.00
House cleaning	\$ 80.00
Filing Fees for the cost of this application	\$ 50.00
Less Security Deposit and interest	-\$ 250.00
Total Monetary Award	\$ 830.00

Conclusion

In summary I ordered that the tenant pay to the landlord the sum of \$ 1,030.00 in respect of this claim plus the sum of \$ 50.00 in respect of the filing fee for a total of \$ 1,080.00. I order that the landlord retain the security deposit amounting to \$ 250.00 inclusive of interest. I grant the landlord a Monetary Order in the amount of **\$ 830.00** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, 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 made by the landlord. I have dismissed with leave to reapply all claims made by the tenant except I have dismissed the applications for the return of the security deposit, access to the unit and disputing the Notice to End the Tenancy. The tenant shall not recover her filing fee.

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 11, 2015

Residential Tenancy Branch

