



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, LL

Tenant's application: MNSD, FF, O

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant attended and was represented by her lawyer. I heard oral testimony from the parties and from the landlord's named witness.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to the return of all or part of the security deposit?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Vancouver. There is no written tenancy agreement. The tenancy began on March 1, 2012. Monthly rent was \$800.00. The tenant paid a security deposit of \$400.00. There was no condition inspection of the rental unit at the commencement of the tenancy. In November, 2012 at the landlord's request, the tenant paid an additional security deposit amount of \$175.00. The rental unit is a three bedroom unit, although initially only two bedrooms were rented to the tenant. It was occupied by as many as six people, including a new baby.

The tenant lived in the rental unit with her family until September 28, 2014 when she moved out after giving notice to the landlord. The landlord said that she inspected the rental unit with the tenant and, according to the landlord, the tenant agreed that she was responsible for damages to the rental unit and told the landlord to keep her security

deposit. The landlord said that the tenant left without providing a forwarding address and it took the landlord two months to locate the tenant. The landlord sent a letter to the tenant dated November 29, 2014 claiming the sum of \$5,208.00 for repairs to the rental unit. The landlord referred to a letter from the tenant dated December 3, 2014 wherein the tenant disagreed with some of the landlord's claims, but acknowledged responsibility for some items, such as stained carpets. The landlord said that in the letter the tenant acknowledged again that the landlord should keep the security deposit,

The landlord claimed that before the tenancy began the rental unit was nice and clean, with no damage, having been recently renovated. The landlord said that there was extensive damage when the tenant moved out and that it was far in excess of normal wear and tear. The landlord claimed the following amounts for repairs:

• Repairs paint, washroom tiles, water faucet repair:	\$2,000.00
• Carpet cleaning:	\$60.00
• Estimate for carpet replacement:	\$2,650.00
• Replace gate lock (paid cash to friend)	\$35.00
• Estimate to replace stairs, wood flooring:	\$350.00
• Sept Hydro bill (50%)	\$33.00
• Gas, Sept Bill (50%)	\$25.00
• Sept Internet Cable bill (50%)	\$55.00

Total Claim: \$5,208.00

The landlord provided photographs said to have been taken before the tenancy began. According to the landlord and her witness, they showed that the rental unit was well cared for; the paint was in excellent condition and the flooring and carpets were in good shape. The landlord submitted that the pictures taken after the tenancy ended showed that there was extensive damage to the rental unit; the carpet was stained and dirty and appeared to be marked by mould stains in a number of areas. The paint was chipped, and extensively marked and soiled and there was some drywall damage. Mould damage due to moisture was evident on window frames. The landlord said that the bathroom walls were damaged by excessive moisture and mould was evident throughout the unit. The landlord and her witness said that the unit was filthy and required extensive cleaning. The landlord said that when the tenancy ended the tenant acknowledged that she was responsible for the cost to repair the rental unit and that she agreed to give up her security deposit. The landlord submitted receipts and invoices for work performed. She changed the carpet throughout the rental unit because it could not be cleaned. She provided an invoice in the amount of \$3,100.00 for the cost to remove and replace all carpet and for cleaning mold, paint and repair. The landlord submitted another handwritten invoice in the amount of \$2,000.00. The invoice referred to charges of \$1,800.00 for paint, \$155.00 for tiles and \$50.00 for plumbing. The landlord

produced a copy of a cancelled cheque dated October 2014 in the amount of \$2,000.00 said to be in payment of the invoice. The landlord's witness, who is in a relationship with the landlord testified that he viewed the rental unit before and after the tenancy. He said that the landlord's pictures accurately showed the condition of the rental unit before the tenancy started. The witness also said he heard the tenant agree that she was responsible for damage and would forfeit her deposit.

The landlord submitted copies of invoices for Hydro, gas and cable charges for periods that included September, 2014. According to the landlord the tenant was responsible for paying 50% of the utilities.

The tenant disputed the landlord's claim that the rental unit was newly renovated when the tenancy began. The tenant said that the carpet was stained when she moved in. She blamed the staining due to mould on the carpets and on window frames and sills upon the damp weather and the age of the rental unit. The tenant characterized most of the damage, staining, mould and wear to normal wear and tear. She said it was to be expected, given that the rental unit was occupied by six people who were hygiene conscious and bathed almost every day. At the hearing the tenant was prepared to acknowledge only that she was responsible for the \$60.00 charge for carpet cleaning, but not for any other amounts. The tenant submitted that in the absence of a condition inspection report, the landlord's evidence as to the condition of the rental unit at move-in should not be accepted. The tenant also testified that she no longer agreed that the landlord should be entitled to retain her security deposit and she claimed repayment of the deposit, less the sum of \$60.00 for carpet cleaning. The tenant disputed the validity of the landlord's receipts, her counsel suggested that they may have been concocted and the prices claimed were inflated. The tenant submitted letters and testimonials attesting to her character. In several letters the authors said they had visited the rental unit and said that the condition of the rental unit was "old" and showed: "signs of usual wear and tear".

Analysis

There is no move-in condition inspection report, but I accept that the landlord's "before" photos give a general indication of the condition of the rental unit when the tenancy began. I accept the evidence of the landlord's witness with respect to the photos and I accept his observation that they reflect the condition of the rental unit just before the tenancy started.

The tenant's position is that all of the damage shown in the landlord's photographs taken after the tenancy ended constituted "normal wear and tear". I do not accept the tenant's position on this point and I find that the tenant and her family caused damage to the rental unit that exceeded normal wear and tear. The extensive presence of

mould and staining in the unit is preventable and I do not accept that it amounts to normal wear and tear. The tenant moved into the small two bedroom rental unit in March, 2012, but later in August her family moved in with her and took over a third bedroom. There were six people living in the unit. The fact that the tenant has so many occupants in the small unit does not mean that their occupancy and the damage that was present when they moved out, including mould and moisture damage in the unit constituted normal wear and tear.

I find that the tenant and her family caused significant damage to the rental unit that exceeded normal wear and tear and that it required the replacement of the carpet as well as extensive cleaning repairs and painting performed after the tenant moved out. I accept the landlord's invoices for the repairs as legitimate, but that does not mean that the landlord is entitled to be reimbursed for the full cost of the repairs in the amounts claimed.

Dealing first with the carpet, the landlord is entitled to be reimbursed for the cost of carpet cleaning in the amount claimed, namely: \$60.00. After the carpet was cleaned it was apparent that it needed to be replaced. The landlord has replaced the carpet. The cost to do so was \$2,650.00. The carpet was not new when the tenancy began. The tenant said it had some stains and damage when she moved in; the landlord disputed this, but in the absence of a move-in inspection I accept the tenant's evidence that the carpet was less than perfect. The Residential Tenancy Policy Guideline with respect to the useful life of building elements states that the expected life of carpeting is 10 years. I do not have specifics as to the age of the carpet, but, based on the photographic evidence and the testimony of the parties, I find that the carpet was in reasonable condition when the tenancy began and were it not for the heavy use during the tenancy, the considerable staining and the extensive damage due to moisture and mould, I find that the carpet could have had a continued life of five years after the tenancy ended. I find that the landlord should be reimbursed in the amount of 50% of the cost of carpet replacement, being the sum of \$1,325.00.

With respect to paint throughout the rental unit, I find, based on the landlord's photographic evidence that the painted surfaces in the rental unit were in generally good condition when the tenancy began. The tenancy lasted for two and a half years. There is no doubt that the rental unit needed to be re-painted when the tenancy ended; it was heavily damaged and stained with mould on all the window frames and sills. The Residential Tenancy Policy Guideline estimates the useful life of interior paint at four years. Based on the guideline and having regard to the excessive damage to the painted surfaces, including windows and sills, I find that the landlord is entitled to recover 50% of the \$2,000.00 bill for painting, tiles and plumbing.

The tenant was responsible for payment of a portion of the utilities during the tenancy. I allow the landlord's claim for unpaid utilities for September in the amount of \$113.00 as claimed.

The landlord submitted a revised monetary claim on April 8, 2015. She did not amend her application to add to her monetary claim. The landlord did not submit evidence to support her claim for the cost to replace wood flooring on the stairs and this claim is denied. I do not allow the claim for \$450.00 that was added to the invoice for carpet replacement; the amount was not part of the landlord's application and there was no amendment to claim this additional amount. I do not have evidence to support the claim for \$35.00 to replace a gate lock and this claim is denied.

Conclusion

The total award to the landlord is the sum of \$2,498.00. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$2,548.00. The tenant's application for the return of her security deposit is dismissed without leave to reapply, but the security deposit will be applied in partial satisfaction of the award in favour of the landlord. After deduction of the \$575.00 security deposit there is a net amount due to the landlord of \$1,973.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the 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 29, 2015

Residential Tenancy Branch

