



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST KOOTENAY RENTALS AND PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 12, 2014 for a fixed term tenancy which expired on October 31, 2014. The tenants vacated the rental unit on that date. Rent for this unit was \$1,900.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$950.00 and pet deposit of \$400.00 on April 15, 2014. These deposits have since been returned to the tenants.

The landlord testified that after the tenants vacated the landlord found that two couches smelt of urine and one of the couches also suffered from scratches. When you sat on the couches the urine smell came back through. The landlord testified that the tenants had a pet Chinchilla; however, the landlord does not know what caused the urine smell. The landlord agreed he has a pet dog but testified that his dog is old and cannot get up on the couches.

The landlord testified that they tried to clean the couches and used Lysol, bleach and a urine smell remover. Nothing could get rid of the smell so the landlord discarded the couches. Two replacement couches were purchased second hand from Seattle. One was a like for like coach and the other was similar but was a sectional. Both couches were purchased for \$300.00 each. The landlord testified that the couches were originally purchased second hand and were approximately 4.5 years old.

The landlord testified that he had to bring both couches back from Seattle and seeks to recover the costs of gas for one of the trips only as the other couch was brought back when the landlord was making the trip for other reasons. The landlord testified that he was also charged duty at the boarder for one of the couches but no duty was charged for the other couch.

The landlord testified that this was a fully furnished unit and after the tenants vacated the landlord found a red stain on one of the beds. This stain was soaked into the top and bottom sheet, the mattress pad and the mattress. The landlord managed to bleach the stain out of the mattress but could not remove the stain from the mattress pad or sheets. The landlord purchased replacement linen for this queen sized bed.

The landlord testified that there was also a urine smell on the leather chair. This was cleaned and a cushion was purchased to mask any other smell if anyone used the chair. The landlord also seeks costs to reproduce evidence such as colour photocopies of documents

The landlord seeks to recover the following costs from the tenants and referred to their documentary evidence showing the advertisements for the couches; the dump fee; receipts to dump the old couches, the receipt for the urine remover; receipts for gas; a photograph of the

price sticker for a queen sized mattress pad; the cost for new linens, the receipt for the chair cushion; and the documentation from customs:

Urine remover	\$7.88
Dump fees	\$9.00
Two couches	\$600.00
Gas costs	\$317.42
Duty paid at customs	\$55.75
Mattress pad	\$28.48
Linens	\$63.21
Evidence costs	\$129.08

The tenants disputed the landlord's claims. The tenant CP gave testimony on behalf of the tenants and testified that when they moved into the unit the landlord's previous agent had already completed a move in condition report without giving the tenants opportunity to attend the inspection. Photographs had also been taken of the property. The tenants refused to sign the inspection report as some aspects of the report were not factual and not all the photographs gave a clear representation of the condition of the unit. CP testified that she asked the landlord's agent to make amendments to the inspection report but the agent told the tenants not to worry about anything. CP testified that she was worried and so documented some of her concerns about the unit on her copy of the report, which the tenants have provided in evidence.

CP testified that the inspection report did not have any details about the condition of the furniture in the unit. There were some scratches on one of the leather couches and one couch and chair had some sagging. At the end of the tenancy the landlord did not complete a move out condition inspection report and only a walk through was conducted with the tenants. During that walk through PO said there was some wear on one of the couches but everything looked great. PO returned the tenants' security and pet deposit by cheque. This cheque was later stopped. The tenants met with the owner/landlord and he said the unit looked the best it had ever looked after tenants had lived there. He also pointed out some dog scratches and the tenant informed him they were there at the start of their tenancy. The security and pet deposit were then returned in November, 2014.

CP testified that when they left the unit there was no smell on any of the furniture. If the furniture had been damaged by the tenants they had adequate insurance to cover any damage. The tenant testified that their pet is a cross between a cat and a rabbit and it is too small to climb on the furniture. It does not urinate in the home and only ran free on the dining room floor and then went back into its housing. CP testified that the couch that already had scratches on it was not used by the tenants. They rearranged the furniture and only used this couch to store blankets. CP testified that they engaged a housekeeper to clean the unit and purchased leather cleaner to clean the couches regularly.

The tenants call their witness LW. LW was the housekeeper for the tenants during their tenancy. LW testified that the landlord's pictures showing scratches on the couches are not a true representation as the couches were not like that when LW did the cleaning at the end of the tenancy. LW testified that there was no urine smell coming from the couches and there was not a stain on the bed. The top bed sheet and comforter had been cleaned by the tenant and LW made the bed up at the end of the tenancy. No one had ever slept in that bed to LW's knowledge and there was no stain on the top sheet or the bottom sheet. LW testified that while she was finishing off the cleaning the landlord's agent PO walked through the unit and said everything looked fine.

CP asked the witness if the witness can remember how bad CP's foot was. The witness testified that CP was limping badly and that is why the witness made the bed up as there was a small ladder you had to climb up and the bed was awkward to make. CP asked the witness if there were any 500 thread count Egyptian cotton bed sheets in the unit. The witness responded no, the linen was not 500 thread count linen. CP asked the witness what she thought was the size of the bed in question. The witness responded that it was a double bed not a queen bed.

The landlord asked the witness why she had to make the bed up if it had never been used. The witness responded that she only had to put on a top sheet and the quilt. It was hard to make because it was a raised bed. PO asked the witness if she can recall the colour of the sheets on that bed. The witness responded that she cannot recall at this time as it was many months ago.

The tenant testified that the landlord has not provided any receipts showing what he paid for the couches. The tenant referred to the landlord's photograph evidence showing the advert for the

couch and asked the landlord if it is the same couch the landlord purchased and as shown in his photographs. The landlord responded that it is the same couch the advert does not show one section of the couch.

CP testified that the landlord's evidence shows the mattress pad purchased was a queen sized pad when it was not a queen sized bed and the landlord has no receipt for the purchase. CP testified that due to her foot injury she could not crawl up on the bed to make it and only washed the sheets as a curtesy to the landlord. JP's daughter did come and stay for a few days but did not sleep in that bed as it was too claustrophobic for her. No one ever slept in the bed and it was only CP and JP living in the unit. The tenants disputed all aspects of the landlord's claim. PO testified that she did not do the move in inspection of the property as there was another property manager dealing with the property when the tenants moved in. PO testified that she was familiar with the property and had been in it prior to the landlord moving out. No other tenants had lived in the property between the landlord moving out and these tenants moving in. PO testified that she does trust that the tenants did take care of the unit and stated that the tenant would have called PO if the tenant had seen a stain on the mattress. PO testified that CP had mentioned to her that JP's daughter had tried the bed out but then moved to another room.

CP testified that JP's daughter never actually slept in the bed. She looked at it and said it would be too claustrophobic to sleep in so slept in the office bed instead.

CP asked the landlord why the customs receipt shows that duty was charged for a mattress of \$134.00 when the landlord said he only purchased a mattress pad for \$28.48. Why does the internet show the flat sheet was an uncompleted purchase? The landlord responded that there must have been a mistake on the customs sheet as he did not bring back a mattress only the mattress pad. The landlord testified he must have been overcharged duty as the mattress pad was only \$28.48 and not \$134.00. The landlord testified that he did purchase a fat sheet. The original sheets were brown and you could not see the stain until you pulled off the sheets.

CP testified that they did their best to look after the landlord's house and the landlord was pleased when he saw the house. The tenants disputed that they should have to pay any gas charges for the landlord as the landlord makes this trip each year. CP testified that on one occasion they had been away from the unit on a trip and when they returned the unit stank of

sewer gas. The tenants ran the taps for 20 minutes and this removed the smell. CP testified that this could be what the landlord could smell and not urine on the couches. CP testified that if the landlord used Lysol or bleach on the couches this could have caused damage to the couches.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind i have considered all aspects of the landlord's claim concerning the alleged damage to the couches. The landlord did not document what condition the couches were in at the start of the tenancy. There is insufficient photographic evidence showing details of the couches in close-up to determine if they suffered from scratches at the start of the tenancy. While I accept a urine smell would be difficult to document, the landlord testified that this was only evident when someone sat on the couches. CP and the tenants' witness have both testified that there was not a urine smell on the couches and the landlords building manager did not provide testimony saying the couches did emit a urine smell. I must therefore conclude that the

landlord has not met the burden of proof that the tenants caused damage to the couches or chair through their actions or neglect and the landlord has not met the test or the burden of proof in this matter. The landlord's claim for urine smell remover, two replacement couches, dump fees for the couches, gas to bring the coaches home, a cushion for the chair and duty paid on one of the couches is therefore dismissed.

With regard to the landlord's claim for replacement linens due to staining; again the landlord has the burden of proof in this matter. The landlord's property manager did not conduct an inspection of the property with the tenants at the start of the tenancy. There is insufficient evidence to show that this staining was not already in place when the tenants took possession of the unit as the landlord's property manager did not provide an itemized list of the furnishings showing their condition at the start of the tenancy. I must therefore conclude there is insufficient evidence to support the landlord's claim that the tenants were responsible for the staining to the linens and mattress and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for copying evidence; there is no provision under the *Act* for monetary compensation for costs incurred to reproduce evidence for a hearing. This section of the landlord's claim is therefore dismissed.

As the landlords claim has little merit I find the landlord is not entitled to recover the filing fee of \$50.00.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: August 06, 2015

