



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 508554 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. One of the named tenants also attended, representing the other named tenant, and also gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2012 and ended on February 28, 2015. Rent in the amount of \$650.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants had given written notice to the landlord on February 2, 2015 to vacate the rental unit effective February 28, 2015 and consented to the landlord keeping the security deposit for half a month's rent which was still owed to the landlord. The tenants moved out by February 18, 2015 except for a few items, but had changed the locks without telling the landlord and returned the landlord's lock a few days after February 18, 2015.

A move-in and a move-out condition inspection report was completed by the parties, and the tenants provided a forwarding address in writing on the move-out condition inspection report, which was completed on February 18, 2015. A copy has been provided.

The landlord has provided numerous photographs of the rental unit and stated that they were taken on February 18, 2015 and again of the carpet around the end of February. Numerous damages are noted on the inspection report at the end of the tenancy, and the landlord claims \$4,996.42 as follows:

- \$1,044.50 for painting, repairing walls and carpet cleaning. A contractor was hired and provided an invoice for 3 hours at \$25.00 for doing all of that work. The tenants had cut out a piece of the drywall in the kitchen near the telephone. The tenants told the landlord's agents that Telus did it, but the landlord disagrees that they would leave it like that. Also a piece of drywall is cut out of a wall in a bedroom about 1 foot by 8 inches; the one in the kitchen was a little smaller. The invoice includes \$287.50 for 11.5 hours to repair and paint the ceilings and remaining walls. The landlord's agent testified that the ceilings in every room had to be repaired because the tenant drilled holes about the size of a loonie, and 9 large plant hooks remained while 2 of the holes were left without hooks. The tenants used big wood screws or something to hang things on the walls and told the landlord she was entitled to do that as long as she paid rent and that nail holes were normal wear and tear. The place looks awful.
- \$3,625.92 for carpet replacement; the carpet was 2 months old at the beginning of the tenancy and now it's trashed. The rental unit is a 900 square foot apartment, and the tenant left paint marks in one room and put duct tape on the living room carpet in the center of the room, and the sun melted the glue into the carpet. The tape line glue is over a 14 foot piece. An estimate from a flooring company has also been provided showing a total cost of \$3,424.92. The landlord cleaned the carpet but was not successful removing the glue and then hired a professional carpet cleaner who did everything they could but could not remove it.
- \$50.00 for damage to the linoleum in the bathroom. The tenant left black paint spots on it which appears to have been wiped up but not enough and smeared. The landlord has not yet replaced it, but it will have to be replaced sooner than it would have been if the tenant hadn't caused the damage. The amount claimed is an estimate.
- \$75.00 for replacing the hinges and pins in the front door and storage locker. The tenants took the brass pins out of the storage locker to take the door off and lost the pins. The hinges had to be replaced.
- \$200.00 for carpet cleaning and damage to the fridge.

The landlord also claims an additional \$492.80 for paint, primer and drywall mud but no receipts or invoices have been provided.

The landlord also testified that the tenant used big screws and nails in walls and doors. The outside paint was expensive, and the tenant screwed frog decorations to the door using several screws. The rental unit was damaged everywhere.

The tenant testified that the photographs of the landlord mostly illustrate work done by the tenant who was trying to fill holes and marks from the previous tenant. The tenant further testified that she cleaned the rental unit at the end of the tenancy.

Although the tenant is willing to pay for damages to the smaller bedroom, the tenant disagrees to pay for damages caused by Telus who left some of the holes. The tenant was trying to fill it all when the landlord said, "That's enough." The tenant asked the landlord for color numbers but the landlord said she would prefer to have a professional painter and didn't believe the tenant would do it to the landlord's standards. The tenant told the landlord she would do the repairs and have the carpet cleaned, but the landlord intimidated the tenant to do the move-out condition inspection report before the end of the tenancy and before the tenants had a chance to finish the work.

The tenant testified that the landlord changed the locks to the rental unit on February 18, 2015.

In rebuttal the landlord's agent testified that the tenant never asked for paint colors and denies that the locks were changed by the landlord.

Analysis

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have reviewed the photographs provided by the landlord, and there is notably some significant damage. I have also reviewed the move-in and move-out condition inspection reports. The regulations to the *Act* specify that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The tenant agreed by way of her signature that the report fairly represented the condition at the beginning of the tenancy as well as at the end of the tenancy, and agreed that the landlord retaining the \$325.00 security deposit for half a month's rent. The tenant testified that she was intimidated by the landlord into signing the report, but I don't accept that, and I find no reason to conclude that the reports are not evidence of the condition of the rental unit at the beginning and end of the tenancy.

The tenant testified that the landlord changed the locks to the rental unit on February 18, 2015, however the landlord's agent disputed that testimony, and there is no evidence to support it.

In the circumstances, I find that the landlord has established all of the elements in the test for damages for \$1,044.50 for painting, repairing walls and carpet cleaning and \$3,426.92 for carpet replacement.

There is no evidence to support the amounts of \$492.80 for paint, primer and drywall mud, or \$50.00 for damage to the linoleum in the bathroom, or \$75.00 for replacing the hinges and pins in the front door and storage locker, or \$200.00 for carpet cleaning and damage to the fridge. I find all of those claims are ball-park figures only and the landlord has failed to establish element 3 in the test for damages.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,521.42.

This order is final and binding and may be enforced.

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 20, 2015

Residential Tenancy Branch

