



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cariboo Garden Apts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on June 02, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The male Tenant acknowledged receipt of these documents.

On June 10, 2015 the Landlord submitted 35 pages of evidence plus two photographs to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were served to the Tenants with the Application for Dispute Resolution on June 02, 2015. The male Tenant stated that he received the Landlord's evidence package, with the exception of the 2 photographs, which he did not receive. The documents the Tenants acknowledged receiving were accepted as evidence for these proceedings.

The photographs, with the Tenants did not acknowledge receiving, were not accepted as evidence for these proceedings. After hearing the issues in dispute I am satisfied that I can adjudicate this matter without considering the photographs submitted by the Landlord, as those photographs are not directly relevant to the claims being made by the Landlord. As I am satisfied that I can adjudicate the matter without viewing the photographs, I did not adjourn the hearing to provide the Landlord with the opportunity to re-serve the photographs.

On June 16, 2015 the Landlord submitted 42 pages of evidence plus one photograph to the Residential Tenancy Branch. The Agent for the Landlord stated that this was a duplicate of the evidence package submitted to the Residential Tenancy Branch on June 10, 2015. Although this package is not an exact duplicate of the first evidence package, given that second package only has one photograph, it is, with the exception of the missing photograph, substantively the same. The "additional" pages are simply Residential Tenancy Branch Fact Sheets that cannot be considered as evidence for these proceedings.

On October 13, 2015 the Tenants submitted 21 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that these documents were served to the Landlord, via

registered mail, on October 14, 2015. The Landlord acknowledged receipt of the Tenants' evidence and it was accepted as evidence for these proceedings.

The male Tenant stated that on October 13, 2015 he also served the Landlord with a CD, which he stated contains recordings of conversations he had with the Landlord. The Agent for the Landlord stated that she received this CD with the in the Tenants' evidence package. The parties were advised that I did not have a copy of the CD.

The male Tenant stated that he believes the CD is highly relevant to the issues in dispute and that he can submit another copy to Service BC before the end of business on November 06, 2015. The parties were advised that I would not render a decision in this matter until I had received the CD or until November 13, 2015, whichever came first. The CD was received on November 09, 2015.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

In the Application for Dispute Resolution the Landlord declares that the Landlord is seeking compensation for unpaid rent and damages relating to unit 301; however in the Monetary Order Worksheet the Landlord indicates the claims relate to unit 301 and 314.

The male Tenant stated that the Tenants are prepared to respond to all of the claims being made by the Landlord at these proceedings, including the claims related to unit 314.

As the Tenants consented to including all the claims at these proceedings, all of the Landlord's claims have been considered.

Preliminary Matter #2

The Agent for the Landlord stated that she did not consent to have any of her conversations with the Tenant recorded and she does not believe the recordings should be considered as evidence.

Section 184(1) of the *Criminal Code* sets out the general rule that it is illegal to willfully intercept a private communication. Section 184(2) of the *Criminal Code* sets out a number of exceptions to this general rule. Section 184(2)(a) stipulates that it is not illegal to intercept a private communication if the person originating the communication or the person receiving the communication consents to the recording. Given that the male Tenant recorded the conversation he was having with the Landlord, I must conclude that he consented to the recording and was, therefore, not prohibited from recording the conversation.

As I cannot conclude that the recorded conversation was illegal and I am unaware of any legislation that prevents me from considering the recorded conversation when adjudicating these claims, I find it reasonable for me to consider the recorded conversation.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit?
Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord and the Tenants agree that:

- the Landlord and the Tenants have a signed tenancy agreement for unit 314, which is in the same residential complex that is the subject of this Application for Dispute Resolution;
- the tenancy in unit 314 began in January of 2014;
- unit 314 is a one bedroom unit;
- a condition inspection report was not completed when the tenancy began in unit 314;
- the Tenants paid a security deposit of \$290.00 and a pet damage deposit of \$150.00 for unit 314;
- the Tenants reported a problem with mould in unit 314;
- as a result of the report of mould the Tenants were permitted to move into unit 301 in early January of 2015;
- unit 301 is a two bedroom unit;
- a condition inspection report was not completed when the Tenants moved out of unit 314;
- a condition inspection report was not completed when the Tenants moved in to unit 301;
- the Landlord and the Tenant did not create a new written tenancy agreement for unit 301;
- the Tenants moved out of unit 301 on March 31, 2015;
- a condition inspection report was completed when the Tenants moved out of unit 301;
- and
- the Tenants provided a forwarding address to the Landlord, in writing, on May 26, 2015;

The Agent for the Landlord stated that the Landlord considered the move to unit 301 to be until such time as unit 314 could be inspected for mould and any necessary repairs completed. She stated that there was initially no discussion about what would happen with the security deposit from unit 314 and there was no tenancy agreement signed, as the move to 301 was not expected to be permanent.

The male Tenant stated that the Tenants understood the move the unit 301 was permanent and that their security deposit would be transferred to unit 314.

The Agent for the Landlord stated that:

- sometime near the beginning of February of 2015 the Tenants informed the Landlord they wished to remain in unit 301 on a permanent basis;
- after the Tenants indicated they wished to remain in 301 on a permanent basis they had many discussions regarding the security deposit;
- the Tenants were asked to pay for cleaning of unit 314 and to pay a security deposit of \$340.00 for unit 301, less whatever remained from their deposit at 314;
- an agreement regarding the security deposit was never reached;
- rent for unit 301 was not discussed when the move to the unit 301 was first discussed, because the move was supposed to be temporary;
- after the Tenants informed the Landlord they wished to stay in unit 301 on a permanent basis, the Landlord informed the Tenants the rent would be \$680.00;
- two bedroom units in this residential complex typically rented for \$680.00 in 2015;
- the Tenants were first asked to pay \$680.00 sometime in late January of 2015, effective January 01, 2015;
- she had several subsequent conversations with the Tenants about the rent;
- the Landlord sent the Tenants a written request for \$680.00 in rent for unit 301 in a letter dated March 08, 2015; and
- an agreement regarding the rent was never reached.

The male Tenant stated that:

- the Tenants were never asked to pay an additional security deposit after they moved into unit 301 until they received a text message on March 07, 2015;
- the Tenants also received the written request for an additional security deposit, dated March 08, 2015;
- when the Tenants and the Landlord were discussing the option of moving into unit 301 he stated on several occasions that he only wanted to pay \$580.00;
- he assumed, on the basis of those discussions, that the rent would be \$580.00; and
- the Tenants were never asked to pay rent of \$680.00 until they received the written request, dated March 08, 2015.

A copy of the letter dated March 08, 2015 was submitted in evidence by both parties.

The Landlord is seeking \$100.00 in rent for February of 2015 and \$100.00 in rent for March of 2015. The Landlord and the Tenant agree that \$580.00 in rent was paid for each of those months.

The Landlord is seeking compensation, in the amount of \$150.00, to clean the carpet in unit 314.

The Agent for the Landlord stated that:

- the tenancy agreement stipulates that “if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy”;
- that she does not know if the carpet was professionally cleaned when this tenancy began, as she was not representing the Landlord when this tenancy began;
- the carpet was not cleaned by the Tenants when they vacated unit 314;
- a cleaning lady who works for the Landlord shampooed the carpet after the Tenants vacated unit 314; and
- the Landlord did not submit a receipt/invoice for the cost of cleaning the carpet.

The male Tenant stated that:

- the tenancy agreement stipulates that “if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy”;
- the carpet in unit 314 was not professionally cleaned at the start of the tenancy;
- the Tenants did not shampoo the carpet in unit 314 when they moved out of unit 314; and
- the carpet in unit 314 was clean when they removed out “except for a couple of things on the floor”.

The Landlord is seeking compensation, in the amount of \$150.00, to clean the carpet in unit 301.

The Agent for the Landlord stated that:

- the carpet in unit 301 was cleaned by the male Tenant when the Tenants moved into unit 301;
- she considers this a professional cleaning as the male Tenant was acting as an employee of the Landlord when he cleaned the carpet;
- the carpet was not cleaned by the Tenants when they vacated unit 301;
- when she completed the condition inspection report the male Tenant was vacuuming the carpet and he assured her he was going to shampoo the carpet;
- she noted on the condition inspection report that the rental unit was in good condition on the understanding that the Tenants would shampoo the carpet;
- a cleaning lady who works for the Landlord shampooed the carpet after the Tenants vacated unit 301; and
- the Landlord did not submit a receipt/invoice for the cost of cleaning the carpet.

The male Tenant stated that:

- he shampooed the carpet in unit 301, as an employee of the Landlord, sometime in December of 2014;
- he vacuumed the carpet at the end of the tenancy;
- he was unable to shampoo the carpet in unit 301 because the new occupants were trying to move property into the unit;
- the new occupants were moving property into the rental unit at approximately 1:00 on March 31, 2015; and
- he believed he had the right to possess the rental unit until April 01, 2015.

The Landlord is seeking compensation, in the amount of \$75.00, to repair the front door in unit 301.

The Agent for the Landlord stated that:

- the Tenants' cat scratched the back of the front door to unit 301;
- the door was not scratched when the Tenants moved into unit 301, as the former occupant did not have a pet;
- she did not notice to scratches when she inspected the rental unit on March 31, 2015, as the door was open; and
- an employee of the Landlord spent approximately five hours repairing the door.

The male Tenant stated that:

- the door was scratched at the start of the tenancy;
- the Tenants' cat did not scratch the door; and
- the previous occupants of the rental unit periodically had a dog in the rental unit, which may have scratched the door.

The Landlord is seeking compensation, in the amount of \$60.00, to cleaning unit 314.

The Landlord stated that unit 314 was not properly cleaned after it was vacated; a cleaning lady who works for the Landlord cleaned unit 314 after the Tenants vacated it; and that in one of the conversations the Tenants recorded the male Tenant acknowledged that he had not cleaned the unit because he thought he was moving back.

The male Tenant stated that unit 314 was cleaned after they moved out of the unit and that any references he made to cleaning unit 314 in the taped conversations related to the carpet.

The Landlord is seeking compensation, in the amount of \$420.00, for the cost of a mould inspection.

The Agent for the Landlord stated that:

- after the Tenants reported concerns about mould in the rental unit, the Landlord authorized the male Tenant, acting as an employee for the Landlord, to contact provincial agencies to determine which agency was responsible for inspecting residence for the presence of mould;
- the male Tenant, as an employee of the Landlord, was given authority to have the appropriate provincial agency examine the rental unit to determine if any mould present is a danger to health;
- acting outside of the authority granted to him as an employee, the male Tenant hired a private person to inspect the rental unit for mould; and
- the Landlord was billed \$420.00 for the inspection.

The male Tenant stated that:

- he contacted the provincial agency responsible for health in the area where the unit is located;
- that provincial agency identified a contractor that could inspect the rental unit for mould; and
- acting as an employee of the Landlord he hired the contractor who had been recommended by the provincial health agency.

The Tenant contends that the letter from the Landlord, dated March 08, 2015, confirms that he was acting on the authority of the Landlord when he hired the contractor. He basis this submission on the sentence that reads: "Because I was going away for Christmas, you were given permission to continue this search and to contact the District, Interior Health etc. to determine the responsible party for building health inspections and to have them conduct an inspection of the mold and determine if it is a danger to health.". The Agent for the Landlord stated that this sentence confirmed that the Tenant was given authority to have a provincial agency inspect the rental unit, but it did not suggest the Tenant had authority to hire a private agency.

Analysis

The *Residential Tenancy Act (Act)* defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2)(k) of the *Act*.

[Emphasis added]

On the basis of the undisputed evidence, I find that the Tenants did not agree to pay rent of \$680.00 for the right to possess unit 301. As the Tenants did not agree to pay rent of \$680.00, I find that they were not obligated to pay rent of \$680.00, even if rental units of this size rent for \$680.00 in this residential complex.

Given that the Landlord is asking the Tenants to pay rent of \$680.00 in the letter dated March 08, 2015, I am satisfied the Tenant had not agreed to pay \$680.00 in rent by that date.

I find the audio recording confirms the Tenants had not agreed to pay rent of \$680.00 by the time they paid their rent for February and March of 2015.

In the absence of evidence to establish that the Tenants agreed to pay rent of more than \$580.00 for a rental unit in this residential complex, I cannot conclude that they were obligated to pay more than \$580.00 in monthly rent. As the Tenants did pay monthly rent of \$580.00 in February and March of 2015, I find that they have paid all the rent they are legally obligated to pay for those months. I therefore dismiss the Landlord's claim for unpaid rent from February and March of 2015.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy.

On the basis of the evidence before me, I find that the Tenants did not leave the carpet in unit 314 reasonably clean. In reaching this conclusion I was heavily influenced by the Tenant's acknowledgment that the carpet required some cleaning at the end of the tenancy, which the male Tenant confirms in the audio recording that was submitted in evidence. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they did not clean the carpet in unit 314 when they vacated.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the carpet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's claim that they paid \$150.00 to clean the carpet. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlord has not established the cost of cleaning the carpet, I dismiss the Landlord's claim for cleaning the carpet in unit 314.

In adjudicating the claim for cleaning the carpet in unit 314 I have placed no weight on the term in the tenancy agreement that requires the Tenants to pay for professional carpet cleaning at the end of the tenancy if the carpets were new or professionally cleaned at the start of the tenancy, as there is no evidence that the carpets were new or professionally cleaned when the Tenants moved into unit 314.

I find that the Landlord submitted insufficient evidence to establish that the Tenants did not leave the carpet in unit 301 reasonably clean. In the absence of evidence such as photographs of the carpet that demonstrate the carpet needed cleaning, I cannot conclude that cleaning was required. In reaching this conclusion I was heavily influenced by the fact the Tenants only occupied this rental unit for three months and carpets are not typically in need of cleaning after such a short period. I therefore dismiss the Landlord's claim for cleaning the carpet in unit 301.

In adjudicating the claim for cleaning the carpet in unit 301 I have placed no weight on the tenancy agreement that was submitted in evidence. This written tenancy agreement relates to unit 314, the terms of which are not automatically transferred to another unit in the residential complex. I therefore find that the Tenants were not obligated to professionally clean the carpet in unit 301 in the absence of proof of need for cleaning.

If I were to accept the Landlord's submission that the parties did not enter into a new tenancy agreement for unit 301 and they were simply occupying it on a temporary basis, I could not conclude that the terms of their tenancy agreement for unit 314 applies to unit 301. Similarly, if the Landlord had provided the Tenants with temporary shelter in a hotel, the terms of their tenancy agreement would not apply to the hotel, with the exception of the amount of rent that is due.

If I were to accept the Tenants' submission that the Tenants moved into the rental unit on a permanent basis, then I would find that the parties had entered into an oral tenancy agreement for unit 301. This oral tenancy agreement would not be bound by all of the terms in their written agreement for the previous tenancy.

I find that the Landlord submitted insufficient evidence to establish that the Tenants damaged the door in unit 301. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's submission that the door was undamaged when the Tenants moved into unit 301 or that refutes the Tenants' submission that the door was damaged when they moved into unit 301. As the Landlord has failed to establish that the door was not damaged at the start of the tenancy, I cannot conclude that the Tenants damaged the door. I therefore dismiss the Landlord's claim for repairing the door.

I find that the Landlord submitted insufficient evidence to establish that unit 314 was not left in reasonable clean condition after it was vacated. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report or photographs, that corroborates the Landlord's claim that it needed cleaning or that refutes the Tenants' submission that it did not require cleaning. As the Landlord has failed to establish that unit 314 was not left in reasonably clean condition, I dismiss the Landlord's claim for cleaning.

I find the audio recording does not shed any light on the claim for cleaning, as the Tenant does not acknowledge the unit required cleaning.

I have been granted authority to resolve disputes between landlords and tenants that relate to their tenancy. I do not have authority over employment contracts, even if the parties to the employment contract are also a landlord and a tenant. I find that the dispute regarding the Tenant hiring a contractor to inspect the rental unit for mould, while acting as an employee of the Landlord, is an employment issue that is not within my jurisdiction. As I do not have jurisdiction over employment matters, I decline to consider the Landlord's claim to recover \$420.00 for a mould inspection.

I find that the Landlord's application is without merit and I dismiss the Landlord's claim to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed to establish that the Landlord has the right to retain any portion of the security deposit/pet damage deposit, I find that the both deposits must be returned to the Tenants. I therefore grant the Tenants a monetary order for \$440.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, 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: November 09, 2015

Residential Tenancy Branch

