



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenant TP and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security and pet deposit?

Background and Evidence

The parties agreed that this fixed term tenancy started on October 01, 2014 and ended on June 30, 2015. Rent for this unit was \$1,500.00 per month due on the 1st of each month. The tenants paid a security deposit of \$750.00 and a pet deposit of \$250.00 on August 28, 2013. The parties agreed they attended a move in condition inspection and the report was given to the tenants. At

the end of the tenancy the landlord conducted a move out inspection but no report was completed. The tenants provided their forwarding address to the landlord in writing by personal service on July 08 2015.

The landlord testified that at the end of the tenancy the tenants did clean the carpets but after the carpets had dried the stains came back through. The landlord testified that there was no staining on the carpet at the start of the tenancy. The landlord had to have the carpets cleaned again twice to try to remove the stains but most of the staining could not be removed. The landlord seeks to recover \$147.00 for carpet cleaning and has provided the invoice in documentary evidence.

The landlord testified that the tenants failed to leave the rental unit reasonably clean. The landlord engaged the services of a cleaner who cleaned the upstairs of the home and the landlord cleaned the basement herself. The landlord seeks to recover the costs incurred for the cleaner of \$175.00 and has provided an invoice in documentary evidence. The landlord testified that she is not charging the tenants for her labour to clean the basement.

The landlord testified that the tenants were required to care for the landscaping. They were allowed to have one cat; however, during the tenancy they brought in another cat and then also had a roommate who had a third cat. There was a large amount of cat feces in the flower beds which has altered the PH balance of the soil and caused the plants to die. The tenants were asked twice to remove cat feces but failed to do so. The landlord testified that she spent \$200.00 on new plants and seeks to recover this from the tenants. A copy of the receipts for plants has been included in documentary evidence. The landlord does not seek to recover costs for her labour to plant them.

The landlord testified that the heating vent in the basement ceiling was missing at the end of the tenancy. This vent was never found and the landlord spent \$7.39 to replace it. The landlord seeks to recover this from the tenants and has provided the receipt in documentary evidence.

The landlord testified that the interior of the fridge had some damage. The door bin was taped up and one of the crisper bins was left cracked. Both of these items had to be replaced and the landlord seeks to recover \$60.00 for the door bin and \$45.00 for the crisper bin. A copy of the

receipt has been provided in documentary evidence. Both bins were in good condition at the start of the tenancy. The landlord testified that the exterior of the fridge was also scratched; however, the landlord is not making a claim for this.

The landlord testified that she left a TV wall mount on the wall in the unit. The tenants replaced this with one of their own and when the landlord re-installed hers at the end of the tenancy she found some parts were missing. The entire wall mount had to be replaced and the landlord seeks to recover the cost for this of \$223.99. A copy of the receipt has been provided in documentary evidence.

The landlord testified that the tenants replaced the landlord's washer and dryer with their own appliances. When the tenants moved out the landlord put her appliances back she discovered that there had been a leak. There was a stain on the laundry room floor which the tenant denied knowing anything about. The tenants' machine must have been leaking for some time to cause staining like this on the linoleum flooring and the landlord was not notified of the leak. The landlord engaged a plumber to repair the leak and replace the kitchen faucets on the basement kitchen sink. This also had a pin hole leak which splashed on the back splash when the faucet was turned on. The landlord seeks to recover the cost for the plumber of \$179.55 and has provided a copy of the invoice in documentary evidence.

The landlord testified that she spent \$26.96 making photocopies of evidence for this hearing. The landlord seeks to recover this from the tenants.

The landlord testified that she had left a desk in the garage at the start of the tenancy. This desk was missing at the end of the tenancy. There were also a set of curtains missing from a bedroom and a mirror was missing that was used to cover the breaker panel. The landlord called the police and has provided a police file number. The landlord testified that the tenant acknowledged that she properly had the mirror in her packing; she said someone had given her the desk; and did not remember the drapes at the window. The landlord seeks to recover \$100.00 for the desk, \$20.00 for the curtains and \$20.00 for the mirror.

The tenant disputed the landlord's claim. The tenant testified that they did hire a carpet cleaning machine and cleaned the carpets. The tenant testified that she did not notice any stains on the

carpets they did not use the basement level very much but as the landlord had a day care there previously, the staining could have been from that.

The tenant testified that they had six people helping them clean the house for six to seven hours at the end of the tenancy. When they did the walkthrough inspection with the landlord she said it all looked good but did find a little bit of dirt on door ledges. The tenant testified that the unit was left reasonable clean and they could have missed a couple of minor areas as she did not go and check everyone's cleaning. The tenant testified that they left the unit on good terms with the landlord but now the landlord wants to charge the tenants an excessive amount of \$175.00 for cleaning.

The tenant testified that when they moved into the unit they agreed to take care of the plants and did so while the landlord was out of town. The landlord came occasionally and did some gardening when she was in town. The landlord found some cat feces in the flower beds but as the neighbourhood is full of cats that come into the yard how can the landlord now say this feces is from the tenants' cat. The tenant testified that their cat only uses a litter box and the landlord acknowledged this. The tenant testified that prior to being evicted from the unit all the plants were fine. The landlord did pull some plants out. The tenant testified that they were only cat sitting for her son's cat for a short time and that cat also used a litter box. There was another cat staying with them for three months. This cat also used the litter box and the landlord was fully aware of the cat and did not say anything.

The tenant testified that she did not notice a heating vent and as she hardly used the basement and did not know one was missing and denied taking one from the unit.

The tenant testified that within a month of moving into the unit the door bin on the fridge started to come off. The tenants put duct tape on it to hold it in place and the landlord was made aware of this. The tenant testified that she has no knowledge that the crisper bin was cracked and this could have occurred after they moved out.

The tenant testified that the landlord was asked to take down her wall mount for the TV as the tenants wanted to use their own wall mount. The landlord said the tenants could remove her

wall mount and to leave it in the storage room. The tenant testified that all the parts for the landlord's wall mount were there.

The tenant testified that she did not notice any leaking in the laundry room and never noticed any discolouration of the floor. When they moved their washer out nothing was leaking and everything was left tightened up for the landlord. The tenant testified that she does not know anything about a tap leaking in the downstairs sink and if there was a leak it would have been there prior to them moving in as that sink was not used during their tenancy.

The tenant disputed the landlord's claim that they took a desk from the unit. The tenant testified that the unit was rented unfurnished and when the landlord tried to have the tenants charged with theft the tenants told the police that there was not a desk there and the tenants did not have a desk. The tenant testified that she does remember curtains being up but has no idea what happened to them. They could have been packed inadvertently but the tenants have not come across them yet. The tenant testified that she remembers the mirror and this did get packed inadvertently and was later broken before it could be returned to the landlord. The tenant disputed the cost claimed for the mirror.

The landlord disputed the tenant's testimony and testified that the pine desk and pink countertop were left at the unit when the tenants moved in and the other tenant TG was told about it. The mirror was not a cheap mirror. The landlord testified that she has no memory that the tenant told her about problems with the fridge door bin or she would have addressed it. The tenants did not ask the landlord to remove her wall mount they did that themselves. With regard to the second cat the tenants brought this in and the landlord told them they had to get permission for additional pets and for the tenants' son's girlfriend to live there. The landlord agreed she did pull some plants out because the tenants had not weeded for years.

The tenant disputed the landlord's testimony and testified that they did do weeding and the landlord used to comment how great the yard looked. The landlord offered to water the yard while the tenants were away and the garden was left immaculate. The tenant testified that no move out report was completed so how do the tenants know what the landlord is saying is true when the landlord said the unit was good at the end of the move out inspection.

The landlord seeks an Order permitting the landlord to keep the security and pet deposit to offset against the landlord's monetary claim. The tenant orally requested to recover the security and pet deposits.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damages; 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 find the landlord has sufficient evidence to show there was staining on the carpet at the end of the tenancy; however, the landlord has not shown that this staining was not in place at the start of the tenancy as the landlord omitted to provide a copy of the move in condition inspection report. The tenants' photographic evidence shows the tenants were cleaning the carpet at the end of the tenancy. As tenants are required to steam clean or shampoo carpets after a tenancy of one year or if they had pets; I find the tenants complied with this. Without further evidence to show the condition of the carpets at the start of the tenancy; I find the landlord has not met the burden of proof in this matter and her claim for carpet cleaning is dismissed.

With regard to the landlord's claim for cleaning; under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for new plants due to cat feces altering the PH balance of the soil. When there are many cats living in a residential area the landlord would have to provide evidence that it was these tenants' cats who defecated in the flower beds. Cats are notorious for defecating in areas not their own. Without sufficient evidence to show the tenants' cats defecated and caused this damage to the landlord's plants I must find the landlord has not met the burden of proof and this section of her claim is dismissed.

With regard to the missing heating vent; I am satisfied from the evidence before me that the heating vent is missing. I therefore find the landlord is entitled to recover the cost to replace this vent of **\$7.39**.

With regard to the damage to the interior of the fridge; there is insufficient evidence to show the condition of the fridge at the start of the tenancy. The tenant argued that the door bin popped out within a month of their tenancy and she has no idea about any damage to the crisper bin. The landlord must show that the tenants are responsible for this damage and that it did not occur after their tenancy. Without sufficient evidence such as a move in and move out condition inspection report, I find the landlord has not met the burden of proof in this matter and her claim for a door bin and crispier drawer are dismissed.

With regard to the landlord's claim for the TV wall mount. The tenant agreed they did remove the landlord's wall mount. As such the tenants are responsible to ensure all parts are kept safe until the end of their tenancy. I am satisfied on a balance of probabilities that parts of the wall mount were missing and the wall mount had to be replaced. I therefore find in favor of the landlord's claim to recover the cost of **\$223.99**.

With regard to the plumbing issues; the landlord must show on a balance of probabilities that the tenants caused some kind of water leak in the laundry room that was not reported to the landlord. The landlord must also show that the faucet was damaged by the tenants. There is insufficient evidence to show the tenants were aware of a water leak and the staining on the linoleum does not support the landlord's claim that this was caused by a water leak.

Furthermore, the landlord has insufficient evidence to show the tenants damaged the faucet through their actions or neglect. Consequently, the landlord has not met the burden of proof in this matter and her claim for plumbing costs is dismissed.

With regard to the landlord's claim for photocopying; there is no provision under the *Act* for costs to be awarded to a party for the preparation of evidence used at a hearing. This section of the landlord's claim is dismissed.

With regard to the landlord's claim that the tenants stole a desk; there is insufficient evidence to show there was a desk left at the unit at the start of the tenancy or that the tenants removed a desk. This section of the landlord's claim is dismissed.

The tenant agreed that she may have inadvertently packed a pair of curtains as she does recall them in the unit. As the tenant has not yet found those curtains I find the landlords claim of **\$20.00** is reasonable and I find in favor of the landlord's claim. The tenant also agreed the mirror was inadvertently removed from the rental unit and was later broken. I therefore award the sum of **\$20.00** to the landlord for the mirror.

As the landlord's claim for damages has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

With regard to the security and pet deposit; the landlord failed to comply with s. 35(3) of the *Act* by completing a move out condition inspection report with the tenants at the end of the tenancy. S. 36(2)(c) of the *Act* states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently I find the landlord is not entitled to claim against the security or pet deposit.; however, as the landlord's claim has some merit I find s. 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security or pet deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$321.38** from the tenants' security deposit to compensate the landlord for the damages.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may keep the amount of **\$321.38** from the security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of the security and pet deposit must be returned to the tenants.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$678.62** pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: December 03, 2015

Residential Tenancy Branch

