



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGINA GARDENS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, (MNDC), 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 tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on October 15, 2015. Canada Post tracking numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary issues

The landlord did not apply for a Monetary Order for money owed or compensation for damage or loss with regard to the loss of rent on his application; however, the body of the application has information that pertains to this part of the landlord's claim. I have allowed the landlord to amend their claim for a loss of rent as I do not believe by allowing this amendment it would not jeopardize the tenant's rights as the tenant would have this information in the application and evidence and should therefore be fully aware what the landlord was claiming.

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 deposit?

Background and Evidence

The landlord testified that this month to month tenancy started on February 01, 2010. Rent started at \$900.00 and was increased to \$920.00 in 2015. Rent was due on the 1st of each month. The tenancy ended on September 30, 2015. The tenant paid a security deposit of \$450.00 on February 23, 2010. The parties attended a move in and a move out condition inspection of the unit; however, the tenant refused to sign the move out inspection report. The tenant provided a forwarding address in writing on September 30, 2015.

The landlord referred to three clauses of the tenancy agreement which state:

1. Carpets are professionally cleaned by a track mounted machine before tenancy. Tenant is responsible for cleaning carpets with an approved carpet cleaning company upon vacating suite.

2. Blinds are professionally cleaned at the start of the tenancy and must be done at tenants expense at end of tenancy
3. If the tenant wishes to smoke ion the premises, the tenant takes responsibility for the damage caused, which may include additional cleaning and painting.

The landlord testified that the tenant smoked heavily in her unit and was told not to bother cleaning the carpets at the end of the tenancy as they suffered from smoke damage and the carpets were over 10 years old. The carpets were replaced with laminate flooring and the landlord does not seek to recover costs incurred to replace the carpets due to the age of the carpets.

The landlord testified that the tenant did not have the blinds professionally cleaned but had attempted to clean the blinds herself. This caused damage to the blinds as they are vertical blinds and with washing them the tenant has made them go out of shape. The blinds had to be replaced at a cost of \$730.24. The landlord testified that the blinds were over 10 years old. The landlord referred to photographic evidence showing the damage to the blinds.

The landlord testified that the walls, ceilings and baseboards suffered from heavy smoke damage and staining. The landlord and his wife had to wash the walls, ceilings and baseboards to remove this staining prior to painting. And although the tenant and her daughter had done some cleaning in the unit at the end of the tenancy these areas and areas such as the kitchen cabinets all had to be cleaned by the landlord and his wife. The landlord seeks to recover \$400.00 for their work.

The landlord testified that the unit had to be repainted due to the smoke damage. The landlord referred to the invoice from the painter who has stated that all the walls, ceiling and baseboards required painting with two coats of paint due to heavy smoke damage. The landlord seeks to recover the cost for this work of \$1,455.00. The landlord agreed that the unit had not been painted during the course of this tenancy of five years but

testified that had the tenant not smoked so much in the unit the landlord would only have had to paint the unit with one coat of paint.

The landlord testified that the light fixtures in the dining room, 1 bedroom, the bathroom, the hall and the kitchen could not be successfully cleaned due to the smoke damage. The landlord had to replace five light fixtures and seeks to recover \$200.00 for these items. The landlord has not provided the invoice for these light fixtures in evidence.

The landlord referred to the inspection reports showing the condition of the unit at the start and end of the tenancy.

The landlord testified that it took the landlord nearly the full month of October, 2015 to clean, paint, replace carpets and blinds in order to prepare the unit for re-renting. As the landlord lost the rent for this month the landlord seeks to recover the cost of the lost rent of \$920.00.

The landlord seeks an order to keep the security deposit in partial satisfaction of this claim.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claim, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for costs to replace the blinds; I refer the parties to the Residential Tenancy Policy Guidelines #40 which deals with the useful life of building elements and states, in part, that the useful life of vertical blinds is 10 years. As the landlord testified that the blinds were over 10 years old I must conclude that they had reached the end of their useful life and therefore the landlord must bear the cost of replacing these blinds. This section of their claim is dismissed.

With regard to the landlord's claim to recover \$400.00 for cleaning the smoke damage in the unit; I am satisfied from the evidence before me in the form of the inspection reports and the photographic evidence that the unit was left heavily stained. The tenancy agreement also informed the tenant that additional charges may be made for cleaning and painting if she chooses to smoke in the unit. I find the landlords are therefore entitled to recover the amount of **\$400.00** to compensate them for the work they did in cleaning the unit prior to painting.

With regard to the landlord's claim for painting; I am satisfied that the unit required painting due to the tenant having smoked in the unit. I again refer the parties to #40 of the Policy Guidelines which states the useful life of interior paint is four years. It is therefore likely that the unit would have required painting again as it was not painted during the life of this tenancy and the landlord was not aware when it was last repainted; however, had the tenant not smoked in the unit or choose to wash walls, ceiling and baseboards or given the unit a coat of paint prior to the end of the tenancy to get rid of the smoke damage and smell of smoke, the landlords may not have had to paint the unit with two coats of paint in the normal course of repainting the unit after five years. Consequently, I find the landlord is entitled to recover half the cost incurred to paint the unit to an amount of **\$727.50**.

With regard to the landlords claim for replacement light fixtures; there is insufficient evidence to meet the burden of proof as to what type of light fixtures were in place and why they could not be successfully cleaned. Furthermore, there is insufficient evidence to show that the landlord replaced five light fixtures or the actual cost of any replacement fixtures. The landlord must therefore bear this cost and this section of their claim is dismissed.

With regard to the landlord's claim for a loss of rent for October, 2015; I am satisfied that the tenant did not comply with s. 32 of the *Act* and at the end of the tenancy the unit was not left in a clean and hygienic condition with regard to the smoke damage caused

by the tenant smoking in the unit. I am satisfied that due to this damage the landlord had to replace the carpets and blinds, clean the unit and repaint the unit. This work may not have been necessary had the tenant not smoked in the unit. I am also satisfied that the landlord was unable to re-rent the unit in this condition. I refer the parties to the Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Due to the extent of the damage caused by smoking which was not corrected by the tenant at the end of the tenancy I find the landlord has established a claim to recover a loss of rent for October, 2015 of **\$920.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to keep the security deposit of **\$450.00**. This amount will be offset against the landlord's monetary award.

As the landlord's claim has merit the landlord is also entitled to recover the filing fee of **\$50.00** from the tenant. A Monetary Order has been issued to the landlord for the following amount:

Cleaning	\$400.00
Half of the painting costs	\$727.50
Loss of rent	\$920.00
Subtotal	\$2,047.50
Less security deposit	(-\$450.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,647.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,647.50**. The Order must be served on the respondent. Should the respondent 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: April 27, 2016

Residential Tenancy Branch