



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; cleaning costs; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the tenant requested an adjournment. The tenant's reason for this request was that he had forgotten about the hearing and, as a result, did not submit photographic evidence.

Rule 7.9 of the Rules of Procedure provide the following with respect to adjourning a proceeding:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Considering the landlord had waited six months for this hearing and was prepared to proceed; and, that the tenant had up until seven days before the hearing date to submit his evidence, I found the tenant's reason for requesting the adjournment was due to his own negligence.

Accordingly, I denied the tenant's request for adjournment. The tenant was informed that I would consider his oral testimony as evidence in making my decision.

On another note, I noted that the tenant named in this application was different than the name of the tenant on the tenancy agreement. The tenant explained that the landlord had used his legal name on the application and that the tenancy agreement reflects the name he commonly uses. Accordingly, I was satisfied the landlord correctly identified the tenant in filing this application and no amendment was necessary.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage and cleaning costs, as claimed?
2. Is the landlord authorized to retain all or part of the tenant's security deposit?

Background and Evidence

The tenancy commenced July 1, 2014 and ended October 31, 2015. The tenant paid a security deposit of \$412.50 and a FOB deposit of \$50.00. The landlord continues to hold both of these deposits pending the outcome of the proceeding.

The landlord provided as documentary evidence a move-in and move-out condition inspection report. The move-in portion is signed by the tenant but the move-out portion is not. The parties were in agreement that the tenant did participate in a move-out inspection and the move-out inspection report was prepared by the landlord alone. The parties were in agreement that the tenant had given the landlord advance notice that he was ending the tenancy but the parties were in dispute as to whether attempts were made to schedule a move-out inspection with the tenant. The landlord testified that the manager made several attempts to reach the tenant by telephone in an effort to schedule a move-out inspection but that there was no answer on the tenant's telephone so the landlord went ahead without the tenant on October 31, 2015. The tenant testified that he was not contacted by telephone or otherwise by the landlord for a move-out inspection and that he was even a little late in moving out on October 31, 2015.

As for the move-in inspection report, the tenant alleged that the manager at the time, a male, presented him with all the paperwork to sign at the start of the tenancy, including the move-in inspection report but that a move-in inspection was not completed together. The tenant stated that all of his belongings were in storage and that he was desperate to move in so he signed the paperwork, including the move-in inspection report, even though an inspection had not taken place. The property manager responded by stating that to have a tenant sign a move-in inspection report without doing the move-in inspection together goes against the landlord's policy and was of the position the events did not happen as described by the tenant.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Carpet cleaning – amended to actual cost of \$94.50

The landlord submitted that the carpeting was dirty at the end of the tenancy and the landlord paid \$94.50 to have it cleaned. The landlord provided a copy of the carpet cleaning invoice as evidence.

The tenant stated that he cleaned the carpeting himself by renting a rug cleaning machine. The tenant stated he did not have a receipt to support his position.

Carpet repair -- \$210.00

The landlord submitted that a section of carpeting by the entry had been pulled up by the tenant. The landlord had a flooring company come in to replace the vinyl flooring in the unit and re-seam the section of carpeting that the tenant had removed. The landlord provided a copy of the estimate and invoice received from the flooring company. The invoice is for over \$800.00; however, the estimate shows that this includes a \$200.00 minimum charge for the carpet repair. The landlord is seeking to recover the \$200.00 minimum charge from the tenant, plus tax.

The tenant submitted that he removed the section of carpeting, at the seam, by pulling it up and storing it in the closet. The tenant explained that the reason he did so was because the carpeting was mouldy. The tenant submitted that the rental unit was in poor condition at the start of the tenancy, so much so that he was not charged for his first or second month of rent as compensation. The unit's poor condition resulted from a sunken floor under the toilet and a leak that was repaired shortly after the tenancy started. The tenant testified that although the leak and sunken floor was repaired the mould that resulted was not rectified. The tenant also claimed that when the tenancy was near an end the landlord's agent he spoke to had told him that all of the flooring was going to get replaced anyways.

The property manager doubted that the tenant had been given a free month of rent at the start of the tenancy since any rent incentives are given at the end of a tenancy. While the vinyl flooring in the unit was replaced the carpeting was re-seamed as seen by the evidence.

Cleaning and cleaning materials -- \$192.00

The landlord submitted that the rental unit required additional cleaning at the end of the tenancy, as seen on the move-out inspection report. The invoice presented as evidence shows that the landlord was charged for four hours of cleaning at \$40.00 per hour. The landlord was asked whether the hourly rate represented one cleaning person or two. The landlord responded that that is the rate they pay for one cleaning person.

The landlord also submitted that the landlord provided the cleaning supplies to the cleaner so that the hourly rate of \$40.00 is for labour only. To recoup the cost of cleaning supplies the landlord seeks recovery of \$32.00 which is calculated as being 20% of the labour charged for

cleaning. The invoice presented as evidence indicates that the cleaner charged the landlord for supplying cleaning supplies.

The tenant testified that he left the rental unit clean.

Analysis

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. If a tenant fails to meet this obligation the landlord may seek compensation to remedy the tenant's violation of this provision.

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless there is a preponderance of evidence to the contrary.

Section 25 of the Act provides that the landlord and the tenant are to participate in a condition inspection together. It is undisputed that the tenant did not participate in the move-out inspection; however, I was provided conflicting reasons for this which I have considered below.

Under section 17 of the Regulations the landlord is to make the first proposal to the tenant with one or more dates and times for the inspection. There is no specific method required for communicating this to the tenant. Thus, I accept that this obligation may be accomplished verbally and over the telephone. The problem in this case is that the landlord's alleged attempts to reach the tenant by telephone were unsuccessful. In such a circumstance, I would view a failed attempt to reach a tenant by telephone does not meet the requirement to propose a date and time for the inspection. Where a landlord is unable to reach the tenant by telephone, I find it reasonable to expect that the landlord would attempt to use another method of communication such as delivering a written document to the tenant, either: in person, by posting the document on the rental unit door, or mailing the document to the tenant. Having heard the tenant had given the landlord advance notice of his intention to move out I was not provided any reason by the landlord why another method of communicating with the tenant when telephone contact was unsuccessful was not employed. Accordingly, I find the landlord failed to meet its obligation to propose a date and time to the tenant for a move-out inspection. Therefore, I find the move-out inspection report was not completed in a manner that complies with the Regulations and I do not consider it the best evidence as to the condition of the rental unit at the end of the tenancy.

In light of my finding above, I consider the move-out inspection report to be just one piece of evidence and I will consider all evidence in making my determination as to the condition of the rental unit at the end of the tenancy.

As for the move-in inspection report, the tenant alleged that it was signed without the benefit of a move-in inspection. I find it unnecessary to consider this position much weight since the move-in condition is not a significant matter to the landlord's claims, for reasons as explained below.

As to the landlord's specific claims against the tenant, I find as follows:

Carpet cleaning

Residential Tenancy Policy Guideline 1 provides policy statements with respect to cleaning and repairing and maintain a property during the tenancy and at the end of the tenancy. In order to meet the tenant's obligation to leave a rental unit "reasonably clean" the Policy Guideline provides that a tenant is generally held responsible for carpet cleaning where the tenancy is greater than one year in duration. The tenancy in this case was greater than one year.

I accept the invoice presented to me by the landlord establishes that the landlord had the carpets cleaned shortly after the tenancy ended.

While the tenant alleged that he had rented a machine to clean the carpets, I find his submission unlikely considering: the tenant did not have a receipt to support his claim; the tenant was of the belief that the landlord was going to replace the flooring anyways; and, the tenant stated he was late in moving out on October 31, 2015. Therefore, I find it unlikely the tenant was motivated to clean the carpets or had time to clean the carpets at the end of the tenancy and I reject his submission that he did clean the carpets.

I find the tenant's submission that the carpeting was mouldy at the start of the tenancy is not overly relevant to his obligation to clean the carpeting at the end of the tenancy. Where a rental unit is not reasonably clean at the start of the tenancy I find it reasonable to expect that the tenant would raise the issue with the landlord at that time in order to have the situation rectified. In this case, the tenant asserted that he did raise the issue with the landlord and he was compensated at that time by receiving a free month of rent. As such, I consider the issue of dirty carpeting at the start of the tenancy to have been resolved between the parties at the time and the tenant's obligation to leave the carpeting reasonably clean at the end of the tenancy remained.

In light of the above, I grant the landlord's request to recover carpeting cleaning costs of \$94.50 from the tenant.

Carpet repair

The tenant acknowledged that he removed a section of carpeting and I accept the landlord's invoice and estimate as evidence that the carpet section was reinstalled at a cost of \$200.00 plus tax. I am unaware of any provision in the Act that permits a tenant to remove a fixture of

the property such as carpeting without the landlord's consent to do so, or the authorization of an Arbitrator. If the tenant was of the position that the carpeting was so mouldy that it required removal I find it reasonable that the tenant would seek permission to do this from the landlord or have this work be done by the landlord and if the landlord refused the tenant's remedy would be to seek a repair order from an Arbitrator. In this case, the tenant did not have authorization to remove a section of carpeting and I find his actions constitute damage. Therefore, I grant the landlord's request to recover the cost of re-seaming the carpeting from the tenant in the amount of \$210.00.

Cleaning and cleaning supplies

The parties provided disputed evidence as to the cleanliness of the rental unit at the end of the tenancy. For reasons already given, I do not consider the move-out inspection report as the best evidence as to the condition of the unit at the end of the tenancy. Having been provided disputed submissions, I turned to other evidence provided to me. The landlord did not provide any photographs. Rather, the only other evidence is an invoice from the cleaner.

Upon review of the cleaner's invoice I find that there are significant discrepancies between the invoice and the landlord's submissions. For instance: the unit number identified on the invoice is for a different unit than the rental unit. Further, the cleaner charged the landlord for cleaning supplies; yet, the landlord had testified that cleaning supplies were provided to the cleaner by the landlord. Nor, does the cleaner provide a detailed description of the work performed despite charging an exceptionally high rate of \$40.00 per hour. For all of these reasons, I reject the cleaning invoice as evidence as to the state of cleanliness of the rental unit at the end of the tenancy.

While I find it reasonably likely there was some additional cleaning required at the end of the tenancy given the tenant's late departure from this unit, I find the landlord has not met its burden to satisfy me as to the amount of work required to bring the unit to a "reasonably clean" condition or the cost incurred to do so. Therefore, I deny the landlord's request for \$192.00 in cleaning costs.

Filing fee and Monetary Order

In light of the landlord's partial success in this application, I award the landlord recovery of one-half of the filing fee, or \$50.00.

I authorize the landlord to make the following deductions from the security deposit and I order the landlord to return of the balance of the deposits to the tenant without delay, as calculated below:

Security deposit		\$412.50
FOB deposit		<u>50.00</u>
Total deposits		\$462.50
Less authorized deductions –		
Carpet cleaning	\$ 94.50	
Carpet repair	210.00	
Filing fee (one-half)	50.00	<u>(354.50)</u>
Amount due to tenant		\$108.00

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, the tenant is provided a Monetary Order in the amount of \$108.00 to ensure payment is made.

Conclusion

The landlord has been authorized to deduct \$354.50 from the tenant's security deposit and the landlord is ordered to return the balance of \$108.00 to the tenant without delay. The tenant is provided a Monetary Order in the amount of \$108.00 to ensure payment is made.

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: June 21, 2016

Residential Tenancy Branch