



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

I have allowed the landlord to amend their application to include a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement as the landlord did not check the box on the application but has provided details of this section of the application in the details of dispute and therefore the tenant would have sufficient knowledge that the landlord was seeking further monetary claims.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence of photographs after the hearing had concluded as the ones submitted were faxed to the Arbitrator and did not come through clearly. The parties confirmed receipt of evidence. 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.

Preliminary Issues

Service of the tenant's evidence -The landlord raised concerns about the service of the tenant's evidence and that it was not served 10 days prior to the hearing as the tenant posted it to the landlord's door on July 05, 2016 and the landlord received it on July 06, 2016. The landlord agreed he had time to review the tenant's evidence. The landlord was offered the opportunity to adjourn the hearing if he required more time to review the tenant's evidence. The landlord declined this opportunity. Pursuant to rule 3.15 of the Rules of Procedure the tenant's evidence, as the respondent, must be served seven days before the hearing. Therefore pursuant to Rule 3.17 of the Rules of procedure I find that the tenant's evidence was received on the seventh day and in accepting the tenant's evidence it will not unfairly prejudice the landlord.

The matter of the security deposit - Res judicata is a doctrine that prevents rehearing of claims and/or issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case. Consequently, I declined to hear the matters regarding the landlord's claim to keep the security deposit; as at a previous hearing on December 02, 2015 the tenant was awarded double the security deposit. To rehear those issues now would constitute Res Judicata, as defined above. This section of the landlord's claim is therefore dismissed.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on December 31, 2014 and ended on June 02, 2015. Rent for this unit was \$1,100.00 per month due on the last day of each month in advance.

The landlord testified that the tenant gave written notice to end the tenancy and said she would vacate at the end of May, 2015. Therefore the tenant should have vacated the rental unit on May 31, 2015 by 1.00 p.m. The tenant did not vacate until June 02, 2015. The landlord testified that the tenant informed the landlord that she could not move out until June 02, 2015. The landlord met the tenant at the unit and the tenant was still filling boxes. The landlord testified that he had found a new tenant who was due to move into the unit. This new tenant was due to take possession on June 01, 2015; however, as the tenant had still not vacated the unit and had overhired at the unit by two days the new tenant had to find other accommodation and the landlord had to re-advertise the unit for rent and it was re-rented for June 15, 2015. The landlord seeks to recover a loss of rent for 15 days of \$550.00.

The landlord testified that the tenant failed to leave the unit in a reasonable clean condition. When the landlord went to look at the unit while the tenant was still moving out he found the bathroom was disgusting yet the tenant said the unit was cleaner than when she moved in. As the tenant was eight and a half months pregnant the landlord did not want to argue with her and thought she might go back after she had removed her belongings and clean the unit. The landlord agreed that he did not complete a condition inspection report at the start or end of the tenancy but referred to the photos he took prior to the tenancy and at the end of the tenancy. The landlord testified that the tenant said she had not cleaned the oven because the chemicals affected her and it took two cans of oven cleaner to clean the oven.

The landlord testified that he spent a total of 29 hours over four days cleaning the unit. The landlord testified that he did this work himself. All areas of the unit had to be cleaned including the walls, the cabinets, the carpets, the kitchen, particularly the oven and the bathroom. Items had been left in kitchen cabinets and clothing had been left in a closet. The landlord also found what he thinks was drug paraphernalia and the tenant had left a pile of boxes and garbage outside including a baby buggy. The landlord testified that he called a cleaning company to get an estimate for this level of work and was quoted \$35.00 an hour. The landlord seeks to recover \$20.00 an hour for his time and labour to a total amount of \$580.00. The landlord seeks to recover the cost of cleaning supplies purchased to clean the

oven and unit at \$57.50 for all purpose cleaner, two cans of oven cleaner and carpet cleaner.

The landlord testified that the tenant had caused damage to the toilet seat and it was not the same toilet seat that was in place at the start of the tenancy. The landlord had to buy a new toilet seat and fit this. The landlord seeks to recover the cost for the toilet seat of \$27.95. The landlord testified that he also had to remove garbage from the garage and take this to the landfill fill. The landlord seeks to recover two hours labour costs for this work including the fitting of the new toilet seat at \$17.00 per hour to a total amount of \$34.00. The landlord also seeks to recover landfill fees of \$16.50. The landlord testified that he had to make two trips to the landfill to dispose of garbage and had to borrow a truck. The landlord seeks to recover the cost of the gas put in the truck of \$53.00.

The tenant disputed the landlord's claim. The tenant testified that she was scheduled to move out on May 31, 2015 but the movers she had hired could not get there until June 01, 2015. The tenant testified that she informed the landlord by email and he did not say this would be a problem. The letter from the new tenant states he was moving in on May 31, 2015. The tenant agreed she did not vacate until June 02, 2015 but disputed the landlord's claim for a loss of rent.

The landlord testified that the unit was listed on May 27, 2015 and it was re-rented to the new tenant on May 29, 2015. The landlord referred to the letter provided in evidence from that tenant. The landlord testified that he did not inform the tenant that she could stay until June 01, 2015.

The tenant testified that she does not feel that she had left the unit unreasonable clean. The tenant asked the landlord when he took his 'before' photographs. The landlord responded that these photos were taken at the end of October 2014 before the tenant moved in. No one else was in the house prior to her moving in and the only work done on the house was the fitting of a new gas furnace. The tenant referred to the landlord's photos showing green trees and flowering bushes and stated that the photos could not have been taken in

October. The landlord responded that October, 2014 was a warm month and everything was still green.

The tenant disputed that she damaged the toilet seat. The tenant testified that when her son sat on the seat it broke and therefore this should be considered to be normal wear and tear. The tenant did not dispute that she had left things behind in the unit. The tenant testified that she was nearly nine month pregnant and was moving things out on her own. She did accidental overlook some items but she informed the landlord, apologised and said the landlord could dispose of them.

The tenant agreed they did not clean the carpets but as she only lived in the unit for six months she should not be required to clean them as she did not stain them. The tenant agreed that she did not clean the oven but thought her friend had cleaned it. The tenant disputed the landlord's claim for cleaning products and gas for the truck and the dump fees. The tenant testified that if the landlord had said the garbage was an issue the tenant could have dealt with it later. The tenant testified that she believes only one trip to the dump would have been necessary.

The tenant testified that there are no condition inspection reports and the landlord's pictures are not dated. The tenant testified that the landlord's evidence is contradictory when he said he had people to view the unit and now he had someone to rent it for June 01, 2015.

The landlord referred to the email conversation between the tenant and landlord in which the tenant says she has one or two loads in the car and will call the landlord when she returns to clean. On June 02, 2015 the tenant emails to say [VD] is still moving stuff out. One email says the movers were coming on June 01 and the tenant should have been out on that date if she could not have moved out on May 31, 2015.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for a loss of rent for June of \$550.00; in

accordance with the *Act* a tenant is required to vacate a rental unit by 1.00 p.m. on the last day of the month for which notice has been given. The tenant's notice clearly indicates that she will vacate at the end of May, 2015; however, the tenant failed to do so until June 02, 2015. The tenant would therefore be responsible to pay rent for over holding at the rental unit. The landlord testified that a new tenant was due to take possession of the rental unit on June 01, 2015 and was unable to do so as the tenant had not vacated. In normal circumstances the tenant would only be responsible for two days extra rent for over holding; however, as the tenant prevented the new tenant from moving in on June 01, 2015 and that tenant had to find alternative accommodation then I am satisfied that the landlord suffered a loss of rent for the first 15 days of June to an amount of \$550.00 through the tenants actions. As this could have been avoided, had the tenant moved out as required then I find the landlords has established a claim to recover this loss of rent of **\$550.00**.

With regard to the landlord's claim for cleaning the unit, I have considered the landlord's before and after photos and the photos provided by the tenant showing the unit at the end of the tenancy. The landlords before photos show that the rental unit was provided to the tenant in a clean condition, yet at the end of the tenancy the tenant left many areas unclean. From these photos it is not clear that the landlord had to spend 29 hours cleaning the unit as the tenant's photos also show many areas were left reasonably clean. 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 tenant failed to meet the "reasonable" standard of cleanliness required for all areas claimed. I therefore limit the landlord's claim to 15 hours of cleaning at \$20.00 per hour to a total amount of **\$300.00**.

With regard to the landlord's claim for cleaning supplies, I am satisfied that the landlord had to purchase some cleaning supplies; however, I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance as to the tenant's responsibility for carpet cleaning at the end of a tenancy and states, in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally,

at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Consequently, I am not persuaded that the tenant left the carpets unreasonably stained and therefore the landlord's claim for carpet cleaning supplies of \$27.50 is dismissed. The landlord is entitled to recover **\$30.00** for other cleaning supplies.

With regard to the landlord's claim for garbage clearing and disposal; I am satisfied from the evidence before me that the tenant left a great deal of garbage and personal items both inside and outside the unit which had to be removed to the landfill site. Consequently, I find the landlord's claim for two trips to the landfill site of \$53.00, garbage removal labour costs of \$34.00, and landfill dump fees of \$16.50 are reasonable expenditure and the landlord will receive the amount of **\$103.50**.

With regard to the landlord's claim for a new toilet seat, I am satisfied from the evidence before me that the toilet seat was intact at the start of the tenancy and appeared to be in a good condition at that time. The tenant claims that the toilet seat became broken when her son sat on it and therefore this should be regarded as normal wear and tear. I am not persuaded by the tenant's arguments that this can be considered normal wear and tear and that the seat was not broken through the tenants or her son's actions or neglect.

Consequently, I am satisfied that the landlord is entitled to recover the replacement costs of **\$27.95**.

As the landlord's amended claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order pursuant to s. 67 of the *Act* has been issued to the landlord for the following amount:

Loss of rental income for June	\$550.00
Cleaning	\$300.00
Cleaning supplies	\$30.00

Costs associated with garbage removal	\$103.50
Toilet seat	\$27.95
Filing fee	\$100.00
Total amount due to the landlord	\$1,111.45

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 **\$1,111.45**. 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: July 19, 2016

Residential Tenancy Branch