



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, O, 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. 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

The landlord had not checked the box on her application seeking an Order to be permitted to keep the security deposit. The landlord explained that this was an omission on her part but she had shown her intention to apply to keep the security deposit and a utility refund due to the tenant on her monetary order worksheet. I have allowed the landlord to amend her application as it was made clear to the tenant the landlord's intention to apply to keep the security deposit and this utility refund to offset against her

claim for damages. I find by allowing this amendment it would not prejudice the tenant as the landlord had filed her application within 15 days of receiving the tenant's forwarding address by email.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep all or part of the security deposit?
- 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 tenancy started on July 01, 2013 for a fixed term tenancy of one year. The tenancy was renewed each year until June 30, 2016. The tenant vacated the rental unit on July 31, 2016. Rent for this unit in 2016 was \$2,000.00 which increased to \$2,250.00 on July 01, 2016. The tenant paid a security deposit of \$1,000.00 on April 07, 2013. The parties attended the move in and the move out condition inspections of the property at the start and end of the tenancy. The tenant provided a forwarding address by email on August 04, 2016.

The landlord testified that the tenant caused damage to the engineered hardwood flooring in the living room. The flooring was damaged by water from the tenant's plant pots situated in this area. The left hand corner and an area under the window show both white and black water marks which are extensive. The move in condition report shows the flooring was in a good condition at the start of the tenancy.

The landlord testified that there was no external or internal water source which could have caused this damage to the flooring. After the tenant said that it must have come from water leaking into the house the landlord paid for a building inspector to inspect the

property to see if there was any water ingress into the unit from the external walls. The landlord has provided a copy of this report in documentary evidence. The report states that there was a moisture reading around 42%. The interior wall, baseboard in the top floor and interior ceiling in the basement around the affected floor area are dry at the time of the inspection. The inspector also states that the damage may be due to leakage from the floor radiant pipes which require a further check and evaluation by a qualified heating contractor.

The landlord testified that she then engaged a heating contractor to test the radiant heating system. His report has been provided in documentary evidence and shows that there is no leakage or issues with the heating system or radiant pipes in the unit. The landlord testified that there was little rainfall during that period either that could have caused any exterior leaking. The landlord testified that as there is no evidence of any external or internal water leaks then the damage to the floor was caused by the watering of the tenant's plant pots. The tenant had carpets down for floor coverings and these soaked up the water that overflowed from the plant pots and caused the damage.

The landlord testified that the flooring company came to provide a quote to replace the damaged flooring and have shown on this quote that the entire floor will have to be replaced as the extent of the damage is so extensive that they would not be able to just sand and re-stain the damaged areas. The landlord agreed the flooring is 13 years old but testified that her photographic evidence shows it was in a good condition, that it had been very well cared for and had no other damage. The landlord therefore seeks to recover the amount quoted to replace the flooring of \$4,684.10.

The landlord testified that the tenant also caused some staining on the half landing stair carpet. There was a coffee stain and another stain from a plant pot. The tenant was required under the tenancy agreement to have the carpets professionally cleaned and although the tenant did comply with this, these stains did not come out. The landlord obtained a quote to just replace this area of the stair carpet for \$350.00. The landlord referred to her photographic evidence and the quote in documentary evidence. The

landlord also agreed that the carpet was 13 years old but on the quote the carpet company has written that the carpet in the three bedrooms is in great shape and should last up to eight years.

The landlord testified that in accordance with the tenancy agreement the tenant is required to have the gas and electric fire place serviced and cleaned by a professional at the end of the tenancy. The tenant failed to do so and the landlord had to have this work done at a cost of \$250.00. The landlord testified that she does have the receipt for that work but has not provided it in documentary evidence.

The landlord seeks to recover the costs for the building inspection report of \$150.00. The landlord feels that had the tenant not disputed the damage on the flooring the landlord would not have had to prove that the damage did not occur from any other source. The landlord also seeks to recover \$135.00 for the heating inspection report.

The landlord testified that at the end of the tenancy the tenant was due a refund for utilities of \$481.00. The landlord seeks an order to apply this amount along with the security deposit of \$1,000.00 to the landlord's claim for damages. The landlord also seeks to recover her filing fee of \$100.00.

The tenant disputed the landlord's claim that she caused this damage to the living room floor. The tenant testified that her photographic evidence shows the corner of the floor in detail. The tenant disputed that she kept plant pots in these areas and had the water damage been caused by her plant pots there would have been circles on the floor. The tenant testified that she showed her photographs to a flooring expert and was told that this damage could not be caused from water from plant pots as it would form a circle under the plate and radiate out. The tenant testified she also got another expert opinion who said the same thing. The tenant referred to her documentary evidence showing a letter from a flooring company. The writer states that having looked at the pictures he would think that the moisture is not coming from a point source such as a plant pot. It looks like a water source from a perimeter or window. Normally a plant pot source will

show a circular mark (stain) where the plant pot stood and damage radiating out from that point. Here the damage is worse at the perimeter and no point damage is visible where a pot would have stood.

The tenant disputed that she had any carpet rugs under her plant pots which became soaked in water. Any rugs were in other areas of the room and were never wet from soaked up water. The tenant testified that the building inspector report makes no comment on whether this damage was caused by plant pots. He only noted that the interior wall and basement ceiling were dry at that time. The tenant called the building inspector and was told that the damage may have been caused by the radiant heating and that any water leaking into the house would not have been visible in the summer months. The building inspector did not inspect the top area of the wall only the lower area. The landlord did not open up the wall to see if there was a water source.

The tenant disputed the landlord's claim for replacement carpet. The tenant testified that the landlord's photographs only show a faint stain and as the carpets were 13 years old then the landlord must expect some wear and tear. The tenant testified that she did send an email to the landlord offering to go back and re-clean that area of the carpet but the landlord did not respond. The tenant refers to the Policy Guidelines which state that the useful life of a carpet is only 10 years.

The tenant disputed the landlord's claim for the fireplace servicing and cleaning. The tenant testified that when she spoke to someone from a fireplace company they stated that this is normally done by the landlord. The tenant testified that in any event she did get a quote to do the work for \$129.00 after she had moved out and sent an email to the landlord but received no response.

The landlord argued that the building inspector did look at the top and bottom of the wall. If there had been any external water leak it would have run to the bottom of the wall and that is why the landlord took a photograph of this area. Therefore as no external leaking was found it was not necessary to open up the wall.

The landlord argued that the tenant was required to clean the inside of the fireplace as the dust builds up and that this cleaning is part of the servicing of the fire place. During the move out inspection the tenant said she would get back to the landlord about the carpet stains and the fireplace. The landlord did receive emails from the tenant and did respond asking the tenant to consolidate the visits as the landlord was very busy. The tenant did not get back to her again and one email from the tenant asked the landlord to have no more communication with her.

The parties were given the opportunity to cross examine the other party but both parties declined this opportunity.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

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 have considered each section of the landlord's claim for damages.

Living room flooring – as the landlord has the burden of proof in this matter to show that this damage was caused by the tenant during the tenancy I have reviewed the evidence before me and find each party has evidence to show that there is extensive damage to the flooring in at least two areas with white and black staining conclusive with some sort of water staining. The landlord's evidence shows that the building inspector found there was no external water ingress found at that time. Even though this report was carried out in August when there was little rain fall I find it likely that there would be some evidence of an external or internal issue within the building envelope that would have caused this water damage if in fact it had been caused by some other leakage. The inspector also recommended that the landlord checked the radiant heating to see if this was a possibility. The landlord had the heating system checked and no water source was found from that. Therefore, I find on a balance of possibilities that the flooring in the living room was damaged by some action or neglect of the tenant.

I will take into consideration the age of the floor of 13 years and the fact that a wooden floor has a useful life of 20 years according to the Useful Life of Building Elements as shown in #40 of the Residential Tenancy Policy Guidelines. Consequently, I must limit the landlord's claim to recover costs to replace the flooring for its remaining useful life of seven years to an amount of **\$1,639.43**.

Stair carpet – I find the carpet on the half landing of the staircase is stained in two areas. The tenant did not dispute that this staining was caused during the tenancy; however, in accordance with the Residential Tenancy Policy Guidelines #40 the useful life of carpet is 10 years and although the carpet company has documented that the three bedroom carpets would have another five to eight years of useful life there is insufficient evidence to show that the stair carpet would also have a longer useful life as

generally a stair carpet suffers more wear. As I must take into account the depreciation of a carpet of 13 years on a stairway I find the landlord's claim to recover \$350.00 is dismissed due to the age of the carpet.

Fireplace servicing – I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance on landlords and tenants responsibilities to the rental unit. This guideline has guidance on the landlord's responsibility for servicing of furnaces; however, for fireplaces the only guidance relates to the landlord's responsibility for cleaning and maintaining the fireplace chimney at appropriate intervals and states the tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it. There is no direct mention in these guidelines about gas or electric fire places and the servicing or cleaning of these. Therefore, I am guided by the tenancy agreement between the parties which has a clause that requires the tenant to clean and service the fireplace at the end of the tenancy if it has been used by the tenant. Consequently, as the tenant did not do this work prior to vacating the unit I find in favour of the landlord's claim to recover the costs incurred; however, the landlord must provide documentary evidence showing the actual costs for this work in order to meet the above test. The landlord provided verbal testimony that this cost was \$250.00 and the tenant provided a written quote for \$129.00. Consequently without further evidence from the landlord as to the actual cost for the work I must limit the landlord's claim to **\$129.00**.

Building inspectors and heating inspector's reports -. I find there is no provision under the *Act* for the landlord to recover amounts paid for the production of evidence to prove or disprove an argument between the parties. I therefore dismiss these sections of the landlord's claim.

Security deposit and utilities – The landlord continues to hold in trust the security deposit of \$1,000.00 and a utility refund of \$481.00. As the landlord's application has some merit I find the landlord may retain the following amounts from the security deposit pursuant to s. 38(4)(b) of the *Act* and may retain the utility refund held by the landlord. I

also find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Flooring	\$1,639.43
Fire place	\$129.00
Subtotal	\$1,768.43
Plus filing fee	\$100.00
Total amount due to the landlord	\$1,868.43
Less security deposit and utility refund	(1,481.00)
Total amount of Monetary Order due to the landlord	\$387.43

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 **\$387.43**. The Order must be served on the tenant. Should the tenant 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: February 15, 2017

Residential Tenancy Branch