



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND; MNR; MNDC; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking a monetary award for unpaid rent, damages to the rental unit, and compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with the Notice of Hearing documents, by registered mail sent September 14, 2016. It was also determined that the landlord served the Tenant with his documentary evidence, by registered mail sent on March 2, 2017.

The Tenant provided the Residential Tenancy Branch with documentary evidence, by fax, on March 6, 2017. The Tenant did not serve the Landlord with these documents, and therefore I invited the Tenant's agent to provide oral testimony with respect to the contents. The Tenant's documentary evidence was not considered, as the Landlord was not served.

The Landlord's Application included a request for compensation because the Tenant ended the tenancy early, contrary to the lease agreement between the parties. However, during the Hearing, the Landlord stated that he wanted to withdraw this portion of his Application as he was able to re-rent the rental unit and did not suffer any loss of revenue.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary award for the cost of cleaning the rental unit at the end of the tenancy, including carpet and drape cleaning?
- May the Landlord apply all or a portion of the security deposit towards any such monetary award?

Background and Evidence

This tenancy began on April 1, 2016. The tenancy agreement is a 6 month lease, ending on September 30, 2016. Monthly rent was \$1,150.00, due on the 1st day of each month. The Tenant paid a security deposit in the amount of \$575.00 on March 8, 2016.

The Tenant gave notice to end the tenancy effective August 31, 2017.

The Landlord's agent testified that the Tenant did not clean the stove, fridge, kitchen cupboards and bathtub before vacating the rental unit. He stated that the Tenant did not vacuum or shampoo the carpets or dry-clean the drapes, contrary to clause 11 of the tenancy agreement addendum. The Landlord seeks a monetary award, calculated as follows:

Cost of steam cleaning the carpets:	\$120.00 (as per
Application, Details of Dispute)	
Cost of general cleaning:	<u>\$100.00</u>
TOTAL	\$220.00

The Tenant's agent submitted that the Act requires a tenant to leave the rental unit "reasonably clean" at the end of a tenancy and that the Tenant did so. He stated that the condition report indicates that the walls were "good", but the cleaning bill includes a charge for cleaning the walls. The Tenant's agent agreed that the bathtub could have been cleaner. He submitted that the Residential Tenancy Branch's Policy Guidelines provide that carpets are not required to be steam cleaned if a tenancy is for less than one year. He also stated that the drapes had been cleaned and left in a closet, along with the receipt.

Analysis

With respect to carpet cleaning, Residential Tenancy Branch Policy Guideline 1 provides, in part:

"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."

However, clause 11 of the tenancy agreement addendum, which was signed by both parties, states:

"The Tenant undertakes at his/her own expense, to have the supplied drapes dry-cleaned within the last month of tenancy, and to have the carpets professionally steam cleaned immediately, prior to vacating the Premises. Receipts must be submitted for this cleaning or you will be charged."

Policy Guideline 8 with respect to unconscionable terms (Sec 6(3) of the Act) provides the following information:

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

The Tenant agreed to the term and therefore cannot be unfairly surprised. In this case, I do not find that clause 11 of the tenancy agreement addendum is unconscionable. I do not find that the term is oppressive or grossly unfair.

The Landlord provided a copy of an invoice for the cost of steam cleaning the carpets, in the amount of \$126.00 (including GST), but did not apply to recover the cost of cleaning the drapes.

I find that the Landlord is entitled to recover the cost of **\$120.00** (as claimed in its Application for Dispute Resolution) with respect to steam cleaning the carpets.

The Landlord also provided a copy of a signed letter dated August 31, 2016, from another tenant in the rental property. This letter states, in part, "The Kitchen floor, cupboard, shelves, stove and fridge were not clean. The bathroom floor, tub and counters were also not clean, and none of the carpets were vacuumed or cleaned."

The condition inspection report indicates that the kitchen stove, fridge, countertops and sink, and the bathtub, toilet, cabinets and mirror were all "poor".

I find, on the balance of probabilities, that the rental unit was not left "reasonably clean" at the end of the tenancy.

The invoice for general cleaning of the rental unit shows an hourly rate of \$25.00, and a total of 4 hours was spent cleaning the rental unit. I find the hourly rate to be reasonable. The invoice includes a charge for "walls not washed down in the living room"; however the condition inspection report indicates that the walls in the living room were "good". The invoice does not break down the amount of time spent washing the walls; however, pursuant to the provisions of

Section 67 of the Act, I allow this portion of the Landlord's claim with respect to general cleaning, in the amount of **\$75.00**.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct its monetary award in the total amount of **\$195.00** from the security deposit.

The Landlord's Application had merit and I find that it is entitled to recover the cost of the **\$100.00** filing fee from the Tenant.

The Landlord is entitled to a monetary award in the total amount of **\$295.00**. The Landlord may deduct its monetary award from the **\$575.00** security deposit.

I ORDER that the balance of the security deposit, in the amount of **\$280.00**, be returned to the Tenant forthwith.

Conclusion

I hereby provide the Tenant with a Monetary Order for service upon the Landlord in the amount of **\$280.00**, representing the balance of the security deposit after deduction of the Landlord's monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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: March 30, 2017

Residential Tenancy Branch