



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that on October 25, 2016 her Application for Dispute Resolution, the Notice of Hearing and evidences the Landlord submitted to the Residential Tenancy Branch on November 01, 2016 were sent to the Tenant, via registered mail. The Tenant acknowledged receiving the documents and the evidence was accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of her security deposit, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on October 14, 2016 her Application for Dispute Resolution, the Notice of Hearing and evidence the Tenant submitted to the Residential Tenancy Branch on October 07, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or damages?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 22, 2016;
- the Tenant agreed to pay monthly rent of \$1,375.00 by the 22nd day of each month;
- the Tenant paid a security deposit and pet damage deposit of \$1,375.00;
- a condition inspection report was not completed at the start of the tenancy;
- the Tenant did not provide the Landlord with a forwarding address until she mailed her the Tenant's Application for Dispute Resolution on October 14, 2016.

The Landlord is seeking compensation of \$893.39 for replacing the carpet in the stairs that lead between the rental unit and the Landlord's living area.

The Landlord stated that:

- the carpet on the stairs was approximately 9 years old at the end of the tenancy;
- the carpets were not stained and they did not smell at the start of the tenancy;
- the Tenant's dog frequently urinated and defecated on the stairs;
- the urine soaked through the carpet and into the plywood subfloor;
- the carpets smelled badly;
- she has removed the carpet and sealed the subfloor;
- the carpet has not yet been replaced; and
- her photographs show stains on the front and back of the carpet.

The Tenant stated that:

- she does not know how the carpet on the stairs was stained, as they were stained at the start of the tenancy;
- her dog did urinate and defecate on the stairs on a few occasions;
- the feces and urine could not have caused the carpets to smell as she spot cleaned those areas shortly after it was discovered; and
- the feces and urine could not have caused the carpets to smell as she steam cleaned the carpet at the end of the tenancy.

The Tenant submitted screen shots of text messages exchanged between the Landlord and the Tenant, in which the Landlord makes several references to the Tenant's dog defecating on the carpet. On September 14, 2016 the Landlord sent the Tenant a text in which she informs the basement smells like urine and dog feces and she asks the Tenant to clean. The Tenant does not refute that the unit smells.

The Landlord submitted an invoice that indicates it will cost \$893.39 to replace the carpet on the stairs.

The Landlord is seeking compensation of \$14.12 for replacing 2 light bulbs that burned out during the tenancy. She stated that all of the light bulbs in the kitchen were working when the tenancy began and two were burned out at the end of the tenancy.

The Tenant stated that one of the light bulbs in the kitchen was burned out at the start of the tenancy and one burned out during the tenancy.

The Landlord submitted a receipt for three light bulbs, in the amount of \$15.82.

The Landlord is seeking compensation of \$90.00 for cleaning the rental unit. She stated that she spent three hours cleaning the rental unit after the tenancy ended. The Landlord submitted photographs that she stated represented the cleanliness of the unit at the end of the tenancy.

The Tenant agreed that the photographs submitted fairly represent the cleanliness of the unit at the end of the tenancy. She stated that the rental unit was not clean when the tenancy began.

The Landlord is seeking compensation for unpaid rent for the period between September 22, 2016 and October 01, 2016.

The Landlord and the Tenant agree that the tenancy ended, by mutual consent, on October 01, 2016. The Landlord submitted a copy of the mutual agreement to end the tenancy, which was signed by the parties.

The Tenant stated that she did not pay rent for any period after September 22, 2016 as she vacated the rental unit by September 22, 2016 and she did not think she needed to pay rent because she was no longer in the unit. The Landlord does not dispute that the unit was vacated on September 22, 2016.

The Landlord is seeking compensation for lost revenue for the period between October 01, 2016 and November 01, 2016. She stated that she lost revenue as it took her time to clean and repair the rental unit.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because the Landlord has entered her rental unit without proper authority. In regards to this claim the Tenant stated that:

- on, or about, August 24, 2016 the Landlord opened the door that separates the rental unit from the Landlord's living accommodations;
- she believes she opened the door because she was going to take the Tenant's dog for a walk;
- when the Landlord opened the door a foster dog that was with the Landlord ran into the unit;
- the Landlord went into the unit to retrieve the dog;
- the Landlord had permission to open the adjoin door for the purpose of walking the Tenant's dog; and
- she believes the Landlord should have knocked before walking into the unit to retrieve the dog.

In regards to the claim that she entered the unit without proper authority on, or about, August 24, 2016 the Landlord stated that:

- when she opened the door take the Tenant's dog for a walk a rescue dog that she;
- when the Landlord opened the door her foster dog that ran into the unit;
- the foster dog would not come when she called the dog;
- after calling the dog many times she entered the unit for the purposes of retrieving the dog; and
- she did not realize there was a guest in the unit when she entered to retrieve the dog.

In support of the claim that the Landlord entered the unit without proper authority the Tenant stated that:

- she knows the Landlord entered the unit on, or about, September 14, 2016 because the Landlord told her that she discovered the Tenant's dog had damaged the mutual agreement to end tenancy that the Landlord had left in the unit; and
- by this point in the tenancy she had told the Landlord she was no longer permitted to open their adjoining door for the purpose of walking the Tenant's dog.

In regards to the claim that she entered the unit without proper authority on, or about, September 14, 2016 the Landlord stated that:

- she had left a copy of the mutual agreement to end the tenancy under the door that separates her living space from the rental unit;
- when she opened the door to take the Tenant's dog for a walk she discovered that the agreement had been chewed by the Tenant's dog; and
- by this point in the tenancy the Tenant had not told her that she was no longer permitted to open their adjoining door for the purpose of walking the Tenant's dog.

The Tenant stated that she has not submitted evidence to corroborate her testimony that she told the Landlord she was no longer permitted to open their adjoining door for the purpose of walking the Tenant's dog.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because the Landlord restricted her guests from staying at the rental unit. In regards to this claim the Landlord and the Tenant agree that:

- they had on-going discussions regarding the Tenant's boyfriend staying in the rental unit;
- the Landlord told the Tenant that the boyfriend could not live in the rental unit;
- the Landlord told the Tenant that she could have visitors stay for a few days; and
- the Landlord told the Landlord she would not agree to allow the boyfriend to live in the rental unit because the tenancy agreement was for a single person.

The Tenant stated that she agreed to end this tenancy, in large part, because the Landlord made it clear to her that she would not agree to allow her boyfriend to live in the rental unit and was restricting the amount of time her boyfriend could visit the unit.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because the Landlord contacted the police to report concerns with the tenancy.

The Landlord stated that she contacted the police because she was concerned about the actions of the Tenant's boyfriend and she felt threatened by his behaviour. The Tenant agrees that her boyfriend was acting in an aggressive manner when the Tenant and the Landlord were discussing concerns about the tenancy.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because the Landlord called her boyfriend a "steroid monkey" and the Landlord told the Tenant she was a "disgrace". The Landlord stated that she does not specifically recall making these comments but she agrees it is likely she made comments of that nature, as she was very disappointed with the behavior of the Tenant.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpets on the stairs in a reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the carpets.

In considering the claim for the carpet I find that I have insufficient evidence to conclude that all of the stains on the carpet occurred during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that the carpets were not stained or that refutes the Tenant's testimony that the carpets were stained.

In considering the claim for the carpet I find that I have sufficient evidence to conclude that the Tenant's dog defecated and urinated on the carpet on more than one occasion, as that is established by the text messages. I find that this undisputed fact corroborates the Landlord's submission that the carpet on the stairs smelled.

I find that the photographs submitted in evidence by the Landlord further corroborate the Landlord's submission that the carpets smelled. I find that the staining on the back of the carpets is consistent with urine stains and would, in all likelihood, cause the carpets to smell.

I find the fact that the Landlord has removed the carpets and that the stairs are currently uncarpeted further corroborates the Landlord's submission that the carpets smelled. I find it highly unlikely that the Landlord would have removed the carpets if she did not have funds to replace the carpet, unless the carpets smelled.

In considering the claim for the carpet I have placed little weight on the Tenant's submission that she spot cleaned the carpet, as it is unlikely that spot cleaning would effectively remove urine that has soaked into a carpet.

In considering the claim for the carpet I have placed little weight on the Tenant's submission that she steam cleaned the carpet at the end of the tenancy, as it is possible that steam cleaning would not remove urine that has soaked into a subfloor.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet was nine years old at the end of the tenancy. I therefore find that the carpet had depreciated by 90% and that the Landlord is entitled to 10% of the cost of replacing the carpet, which in these circumstances is \$89.34.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not replace all of the light bulbs that burned out during the tenancy. As the Tenant acknowledged that one light bulb burned out during the tenancy, I find that she must compensate the Landlord for replacing that bulb, in the amount of \$5.27.

I find that the Landlord has submitted insufficient evidence to establish that 2 light bulbs burned out during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that all light bulbs were working at the start of the tenancy or that refutes the Tenant's testimony that one bulb was burned out at the start of the tenancy.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant did not leave the rental unit in reasonably clean condition and that the Landlord is entitled to compensation for the time she spent cleaning the unit, in the amount of \$90.00. In adjudicating this claim I was heavily influenced by the photographs submitted in evidence which, in my view, establish that additional cleaning was required.

In adjudicating the claim for cleaning I have placed no weight on the Tenant's submission that the rental unit was not clean at the start of the tenancy, as the Tenant has not made a claim for cleaning the rental unit at the start of the tenancy. A tenant does not have the right to neglect her/his obligations even if a landlord has previously neglected his/her obligation.

On the basis of the undisputed evidence I find that this tenancy ended on October 01, 2016, by mutual consent.

Section 26 of the *Act* requires tenants to pay rent when it is due. As there is no dispute that rent was due on the 22nd day of each month, I find that on September 22, 2016 the Tenant was obligated to pay rent for the period between September 22, 2016 and October 01, 2016. I find that she was obligated to pay rent even if she opted to vacate the rental unit prior to the end date of the tenancy.

Daily rent for this tenancy in September was \$45.83. I therefore find that rent for the 10 days between September 22, 2016 and October 01, 2016 was \$458.33. As the Landlord has only applied for \$367.00 in rent for this period, I find that she is entitled to the full amount of her claim.

I find that the cleaning and repairs needed at the end of the tenancy could have been completed, with reasonable diligence, within a few days. As the rental unit was vacated on September 22, 2016 I find that the Landlord had ample time to prepare the rental unit for an incoming tenant. I therefore dismiss the claim for lost revenue.

Section 29(1)(f) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement unless an emergency exists and the entry is necessary to protect life or property. On the basis of the undisputed evidence I find that the Landlord entered the rental unit on, or about, August 24, 2016, after a dog in her care inadvertently entered the unit and

would not exit the unit. Given the potential damage an unattended pet could cause in an unfamiliar location, I find that the Landlord had the right to enter the unit for the purpose of retrieving the dog, after clearly announcing her presence, pursuant to section 29(1)(f) of the *Act*.

As I have concluded that the Landlord had the right to enter the rental unit on, or about, August 24, 2016, I find that the Tenant is not entitled to any compensation for this entry.

On the basis of the undisputed evidence I find that the Landlord and the Tenant had a clear understanding that the Landlord could open the door between the rental unit and the Landlord's living space for the purposes of taking the Tenant's dog for a walk.

I find that the Tenant has submitted insufficient evidence to show that she revoked her permission to open the door between the rental unit and the Landlord's living space for the purposes of taking the Tenant's dog for a walk. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that it was revoked or that refutes the Landlord's submission that it was not revoked.

As I have concluded that there is insufficient evidence to show that the Tenant revoked her permission to open the door between the rental unit and the Landlord's living space for the purposes of taking the Tenant's dog for a walk, I find that the Tenant is not entitled to compensation because the Landlord opened the door on, or about, September 14, 2016.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 30(1) of the *Act* stipulates that a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property, or a person permitted on the residential property by that tenant. There is nothing in the *Act* that gives a landlord authority to prevent a tenant from having a roommate or a guest.

I find that the Landlord breached section 30(1) of the *Act* when she attempted to place limits on the duration of the Tenant's boyfriend's visits. In doing so, I find that the Landlord breached the Tenant's right to the quiet enjoyment of the rental unit. I find that this was a fairly significant breach, given that it contributed to the Tenant's decision to mutually agree to end the tenancy. I find that the Tenant is entitled to \$200.00 for this breach.

In awarding compensation for loss of quiet enjoyment I note that the Tenant was not compelled to mutually agree to end the tenancy as a result of the Landlord's declaration that the boyfriend could not reside in the unit. I find that the Tenant could have contacted the Residential Tenancy Branch to determine if the Landlord had the right to prevent her boyfriend from living in the rental unit, at which time she would likely have learned that the Landlord did not have the right to prevent the boyfriend from living or staying in the unit.

A landlord has every right to contact the police if the landlord is concerned about the behavior of a tenant or a guest of the tenant. I find that the Tenant has failed to establish that the Landlord contact the police with the intent of disturbing or harassing the Tenant. Rather, I find that the Landlord contacted the police because she had concerns about the behavior of the Tenant's

boyfriend. In the absence of evidence to show that the Landlord contacted the police for a malicious or vindictive reason, I find that the Tenant is not entitled to compensation as a result of police involvement.

It is readily apparent from the testimony provided at the hearing and the text messages submitted in evidence that the relationship between the Landlord and the Tenant significantly deteriorated during the tenancy. On the basis of the undisputed evidence I find that the Landlord called the Tenant's boyfriend a "steroid monkey" and the Landlord told the Tenant she was a "disgrace". While I find that these comments were inappropriate, I find that the Landlord did not routinely make such comments and I cannot conclude that they significantly breached the Tenant's right to the quiet enjoyment. I therefore do not find that the Tenant is entitled to compensation as a result of these comments.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing an Application for Dispute Resolution. I find that the Tenant's application also has merit and that she is entitled to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$651.61, which includes \$89.34 for replacing the carpet, \$5.27 for replacing a light bulb, \$90.00 for cleaning, \$367.00 in rent, and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

The Tenant has established a monetary claim, in the amount of \$300.00, which includes \$200.00 in compensation for a breach of her right to the quiet enjoyment of the rental unit and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

After offsetting these two awards I find that the Tenant owes the Landlord \$351.61. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep \$351.61 from the Tenant's security/pet damage deposit of \$1,375.00, in full satisfaction of the monetary claim.

The Landlord must return the remaining \$1,023.39 of the Tenant's security/pet damage deposit and I grant the Tenant a monetary Order for that amount. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: April 12, 2017

Residential Tenancy Branch