



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord made January 02, 2017 for a Monetary Order under the Residential Tenancy Act (the Act) for loss, to recover the filing fee, and an Order allowing them to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving the evidence of the other consisting of narrative and primarily photographs. The tenant and an agent of the landlord (the landlord) attended the hearing. Prior to concluding the hearing both parties in attendance acknowledged presenting all of the relevant evidence that they wished to present.

The hearing proceeded on the merits of the landlord's original and amended application. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the landlord's application and the issues and findings in this matter are described in this Decision.

At the outset of the tenancy the parties agreed in respect to 2 portions of the landlord's application. The parties agreed that the utilities of \$288.29 claimed were satisfied by the tenant and are not at issue. As well, the parties agreed the tenant owes the landlord \$417.00 in unpaid rent. This amount will be factored into calculations.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began in August 2013. Rent in the amount of \$1846.00 was payable in advance on the fifteenth (15) day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$875.00, which the landlord retains in trust. The tenancy ended December 22, 2016 pursuant to the tenant vacating pursuant to Section 50 of the Act.

The parties agree they conducted a mutual inspection of the unit at the start of the tenancy and mutually completed the Condition Inspection Report (CIR), although not signed by either party. The parties agreed the CIR depicted the state of the tenancy at the start of the tenancy. The parties agree that at the end of the tenancy the landlord did not conduct a mutual inspection and the CIR supports this fact. The landlord's agent testified the landlord and their representatives were at odds over an aspect of the tenancy and an inspection was not achieved. None the less the tenant provided a hand written and mutually signed document that the parties disagreed with one another's assessment of the condition of the unit at the end of the tenancy and the parties grappled / questioned the condition of the walls, tub – silicone, countertop, and carpet staining (spots) on the stairwell landing – *as provided*. The landlord provided an abundance of photo images in support of their claims. The tenant disputes the source and veracity of the landlord's photo images as neither the landlord nor their representatives took any photos of the unit in their presence.

Landlord's claim

The landlord makes the following monetary claims on application. The landlord provided a cursory estimate for all of the proposed renovations of the landlord dated January 06, 2017 by an estimator identified as “Jack”

The landlord claims the tenant damaged the light coloured *granite countertops* during the tenancy, leaving them oil-stained and water stained and generally appearing darker than when the tenancy started. The landlord claims the countertops were already stained at the outset of the tenancy as reflected in the CIR, but that during the tenancy the tenant was responsible for a progressive worsening of staining. The tenant explained about the porous nature of granite countertops and the propensity for staining if the countertops are not periodically sealed. The landlord acknowledged they did not know if the countertops had ever been sealed since installed in 2011. The tenant testified they were always careful not to negatively impact the countertops, however through normal usage the countertops acquired a darker hue due to their porosity. The tenant denied they worsened the already compromised state of the countertops. Both parties provided similar photo images, but with different interpretations and versions of facts. The landlord claims for the full replacement value for countertops as portrayed in an estimate by a “renovation contractor”.

The landlord claims the tenant is responsible for stains left on the light coloured carpeting, primarily in the stairwell and upstairs portions of the unit. The landlord acknowledged the move in CIR identifies some stains of paint marks at the top landing. They also speculated the tenant’s cooking style of “heavy oil frying” similar to their own Asian style of cooking as the source of darker shades in some of the carpeting. The tenant strongly denied the landlord’s assertions about their cooking style as being like the landlord’s stating it as the opposite to the landlord’s assumption. The tenant provided a receipt for carpet cleaning at the end of the tenancy which states that some residual spots remaining as “normal”, and according to the tenant, due to the age and light colour of the carpeting and previous staining and discoloration. The tenant testified they regard the darker shading of the carpeting attributable to normal wear and tear.

The landlord claims for the tenant to subsidize the carpet replacement in the amount of \$2000.00 supporting the landlord's estimate in a greater amount.

The landlord claims for repainting in the amount of \$500.00 from their estimate of \$5000.00 for horizontal surfaces and \$2700.00 for all ceilings, citing photo images depicting faint residual markings on some walls which the landlord attributes to the tenant's children. The tenant did not deny the appearance of some markings, however provided evidence that beyond reasonable wear and tear Residential Policy Guidelines states interior painted surfaces having a useful life of 4 years. The landlord acknowledged the walls were last painted in 2011. They explained the tenant should be at least responsible for 1/10 the overall cost to repaint the walls of the unit.

The landlord claims the tenant left the unit unclean and provided photo images to support their version, with which the tenant strongly disagreed and provided photo images in contrast to the landlord. The landlord claims they paid \$500.00 for professional cleaning however did not provide a receipt.

The landlord claims they paid \$100.00 to dispose of some of the tenant's cast offs after they vacated. The landlord did not dispute that some of their photo images were of items belonging to the landlord. The tenant acknowledged leaving behind a flattened camping tent outdoors as it was covered by snow and not visible at the time they vacated in the third week of December. The landlord did not provide a receipt for their claimed expenditure.

Analysis

The parties may access resources and a copy of referenced publications at < www.bc.ca/landlordtenant >

The landlord, as applicant, bears the burden of proving their monetary claims.

I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: deterioration or destruction in excess of reasonable wear and tear.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the damage or loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary value or amount of the

loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

In respect to the landlord's claim for replacement of the kitchen granite countertops, I accept the evidence of both parties that the countertops were compromised before the tenancy started and additionally deteriorated during the 3.5 years of the tenancy. However, I find I prefer the evidence of the tenant that the damage purported by the landlord is not the sole or direct result of the tenant's actions or conduct. I also find it was available to the landlord to mitigate their loss at the outset of the countertop install and during the life of the countertop to periodically attend to its protection, however did not. I accept the tenant's version that any additional deterioration of the countertop surfaces was the result of reasonable wear and tear. Therefore, I **dismiss** this portion of the landlord's claim.

I find the landlord has provided evidence consistent with the challenges of maintaining light coloured carpeting in its original condition despite care or regular cleaning. I accept the parties' evidence the carpeting was partly compromised at the start of the tenancy. The landlord has not proven the tenant's cooking practices as the root of the carpeting discoloration, or that the claimed discoloration is fatal to the carpet's structural condition. But, moreover, the landlord did not provide sufficient evidence the tenant as solely or directly responsible for deterioration beyond reasonable wear and tear. As a result, I **dismiss** this portion of the landlord's claim for new carpeting.

I accept the tenant's evidence supporting that even if I were to accept the landlord's claim the tenant should be liable for 1/10 the cost to repaint the rental unit that **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Finishes > Painting** states the useful life of interior painting as 4 years. As a result I find the mitigated or depreciated value of the 5 year old paint of the rental unit as \$0.00. Therefore, I must **dismiss** the landlord's claim for painting.

I find the landlord has not provided evidence they paid for professional cleaning of the rental unit or for disposal of items belonging to the tenant. As a result I **dismiss** these portions of the landlord's claims.

I find the parties agreed the tenant owes the landlord unpaid rent in the amount of **\$417.00**. I therefore grant the landlord this amount.

I find that **Residential Tenancy Policy Guideline 17 – Security Deposit and Set Off**, in relevant part states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is as follows:

parties' agreed claim of unpaid rent	\$417.00
landlord's filing fee	\$100.00
total of landlord's monetary award	\$517.00
<i>less tenant's deposit in trust</i>	<i>- \$875.00</i>
Monetary Order for tenant	(\$358.00)

Conclusion

The landlord's application in part has been granted, and the balance dismissed.

I Order that the landlord may retain \$517.00 from the tenant's deposit in full satisfaction of all claims, and return to the tenant \$358.00.

I grant the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$358.00**. If the landlord does not return this amount this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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 27, 2017

Residential Tenancy Branch