



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC

Introduction

This hearing convened as a result of Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenant for damage to rental unit, money owed or compensation for loss.

The hearing was conducted by teleconference on August 10 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter—Late Delivery of Landlord's Evidence

Introduced in evidence by the Landlords were seven pages of evidence submitted August 8, 2017. The Tenant confirmed that evidence was not received and the Landlord confirmed he did not provide a copy to the Tenant.

As the Landlords failed to provide the Tenant with copies of the evidence filed August 8, 2017, and failed to deliver this evidence in accordance with *the Residential Tenancy Branch Rules of Procedure*, that evidence is not admissible and was not considered in making this my Decision.

Save and except for the above, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Naming of the Parties

During the hearing the Tenant confirmed the spelling of his name and confirmed that his first and last name had been inverted on the Application for Dispute Resolution.

Similarly the Landlord, V.A., noted that his first and last names were also inverted on the Landlords' Application for Dispute Resolution.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Landlords' Application to accurately note the Tenant's name and the Landlord V.A.'s name.

Issue to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant for damage to the rental unit and for compensation for loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement?

Background and Evidence

The Landlord V.A. testified as follows. He stated that the initial one year fixed term tenancy began on September 1, 2015 and expired on August 31, 2016.

The Landlord testified that on June 22, 2016 the parties agreed to a continuation of the tenancy and entered into a further one year fixed term tenancy from September 1, 2016 to August 31, 2017. The monthly rent pursuant to this second agreement was \$3,350.00.

The Landlord confirmed that he did not provide a copy of the tenancy agreement in evidence.

The Landlord confirmed receipt of the Tenant's evidence submitted July 28, 2017 in which the Tenant indicates the Landlord failed to provide a copy of the tenancy agreement.

The Landlord confirms that they hold the sum of \$1,487.60 as a security deposit.

The Landlord testified the rental property is a strata property. He claimed that when the Tenant signed the tenancy agreement he gave the Tenant a copy of the strata bylaws and had the Tenant sign a Form K. The Landlord stated that the Form K was with the property manager and the strata council. The Landlord stated that he did not have a copy of the Form K.

The Landlord alleged the Tenant was operating an AirBnB contrary to the strata bylaws. He further stated that he was initially fined 70 times at a cost of \$7,800.00; this was the amount initially claimed on his application for strata fines. The Landlord stated that he

challenged the amount charged by the strata and the amount was reduced to \$600.00 for three individual charges for the Tenant operating an AirBnB.

In terms of the Landlords' claim that the Tenant was operating an AirBnB, the Landlord stated that he was relying on the information provided by the strata, who alleged the property had been used as a short term rental a minimum of 70 times. The Landlord stated that when he went to the hearing before the strata council the strata had evidence of the AirBnB, including advertising and pictures and video of the rental unit.

The Landlord testified that the tenancy ended February 28, 2017. He confirmed that the rental unit was re-rented June or July 1, 2017.

The Landlord also claimed \$2,450.00 as compensation for the cost to repaint the rental unit. He stated that when the rental started the rental unit had been freshly painted.

The Landlord stated that the condition inspection report confirmed the rental unit required repainting. He claimed that when the tenancy ended every single wall in the unit had holes in it and submitted that the walls were damaged due to the Tenants operating an AirBnB and the sheer number of people going through the unit. The Landlord confirmed that he took photos, but admitted they did not show the damage to the walls.

The Landlord stated that the evidence provided by the Tenant purporting to confirm the cleaning of the rental was inaccurate. He stated that the condition inspection report indicated that the entire rental unit required cleaning and the Tenant agreed to that. He further stated that the Tenant took a photo of the condition inspection report at the time it was completed. This document was not in evidence before me.

Additionally, the Landlord stated that he called the woman who allegedly cleaned the rental unit on behalf of the Tenant and she was not able to confirm where the cleaning took place. The Landlord submitted that he believed it was likely the Tenant submitted a receipt for another property as he operates several AirBnB's as the subject rental unit was not cleaned at the time the tenancy ended.

The Tenant testified as follows.

The Tenant stated that he did not remember if he received a copy of the bylaws, or sign a Form K.

The Tenant stated that he did not operate an AirBnB short term rental from this property.

The Tenant stated that he did not clean the carpets when he moved out of the rental unit although they were vacuumed. He confirmed that he is agreeable to reimbursing the Landlord for the **\$150.00** cost to clean the carpets.

The Tenant also testified that he paid a professional cleaner to clean the property. He denied the Landlord's allegation that he had erroneously submitted a receipt for cleaning of one of his other's rental properties. He stated that there were basic items in the cabinets of the kitchen (salt/pepper and sugar) that were left and which he threw out when the Landlord pointed it out to him.

In response to the Landlords' claim for painting costs, the Tenant stated that he did not damage the rental unit and the few holes were merely normal wear and tear. He confirmed that paintings were put up on the walls, but it was his understanding that he was allowed to do so. The Tenant confirmed that he intended to call two witnesses to confirm the condition of the rental unit when he moved out as he claimed they would confirm the walls were not damaged and did not require repainting. Despite his general response that the rental unit did not require painting, he confirmed he was agreeable to contributing **\$500.00** towards the cost of painting.

The Tenant stated that the move out condition inspection report did not include any comments regarding painting or damage to the rental unit, despite the Landlord's contrary claims.

The Tenant's friend, A.R., also testified on behalf of the Tenant as follows.

He confirmed that he was at the rental property on the date the tenancy ended and could confirm the condition of the rental unit and the walls as "very good". He also stated that the walls were not scuffed and there were only a few nail holes for a few paintings which he described as normal wear and tear. He stated there was nothing out of the ordinary when the tenancy ended.

A.R. stated that he was at the rental unit when the cleaner hired by the Tenant was cleaning on February 26, 2017.

A.R. stated that he was at the rental unit when the Landlord and his father showed up at the rental unit at the time the Tenant was moving his items out. He stated that there were some items that had been left, such as some dishes and pans. A.R. stated that he had a brief conversation with the Landlord. A.R. stated that there was a moment in time

when the Landlord pointed out something on the floor and indicated that the Tenant had caused damage to it. The Tenant stated that he had spoken to the Landlord's sister who confirmed that in fact the damage had been done by a previous tenant.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlords have the burden of proof to prove their claim.

Based on the evidence before me, I am unable to find that the Tenant damaged the walls such that they required repair and repainting. The photos submitted by the Landlords do not indicate damage over normal wear and tear. I therefore find the Landlords have failed to prove their claim for related damages. As noted the Tenant agreed to contribute **\$500.00** towards the cost of repair and repainting of the walls; while I would not have found the Tenant liable for such an expense, I award the Landlords this compensation on the basis of the Tenant's agreement.

The Landlords submitted that the rental unit required cleaning and garbage removal. The Tenant and his witness testified that the rental unit was clean at the end of the tenancy. While it is always difficult to reconcile conflicting testimony, the Landlords bear the burden of proving their claim on a balance of probabilities. Without corroborating evidence, I find the Landlords have failed to prove their claim for the cost of cleaning the rental unit. However, the Tenant agreed to compensate the Landlords for the cost of the cleaning in the amount of **\$150.00**; and, I therefore award the Landlords this sum.

The Landlord failed to make any submissions related to the broken lock, although \$75.00 was noted as requested on his Monetary Orders Worksheet. As he failed to provide any testimony or evidence in this regard I dismiss this claim.

The Landlord stated that they were originally fined \$7,200.00 from the strata due to their belief that the Tenant was operating an AirBnB in the rental unit. He confirmed that he disputed this amount and it was reduced to \$600.00. The Tenant denied operating an AirBnB out of the rental unit. The Landlords failed to submit any documentation to support his claim that the Tenant was operating this business. I am unable to reconcile the parties' conflicting testimony and therefore am unable to find the Landlords have proven this portion of their; their claim for related compensation is therefore denied.

I also note that section 146 of the *Strata Property Act* provides that a Landlord must provide the bylaws and rules as well as a Form K to the Tenant; for greater clarity the relevant portions of that section provide as follows:

Landlord to give bylaws, rules and Notice of Tenant's Responsibilities to tenant

146 (1) Before a landlord rents all or part of a residential strata lot, the landlord must give the prospective tenant

- (a) the current bylaws and rules, and
- (b) a Notice of Tenant's Responsibilities in the prescribed form.

The Landlord failed to provide any evidence to support his claim that he provided the bylaws and rules to the Tenant as required. He also did not provide these bylaws and rules in evidence. Accordingly, even if I had found the Landlords met the burden of proving the Tenant operated an AirBnB, I would not have awarded the Landlords compensation for the fines, unless I was also satisfied the s informed the Tenant of the short term rental prohibition as required.

Conclusion

The Landlords are awarded the sum of **\$650.00** representing \$500.00 towards the cost of painting the rental unit and \$150.00 for the cost of carpet cleaning. The Landlords may retain this sum from the Tenant's \$1,487.60 security deposit, and must return the balance of \$837.60 to the Tenant.

In furtherance of my Order, the Tenant is granted a Monetary Order in the amount of **\$837.60**. This Order must be served on the Landlords and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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: August 18, 2017

Residential Tenancy Branch