



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property, to keep all or part of pet damage deposit or security deposit and to recover filing fee from the tenant for the cost of this application.

The landlord and tenant appeared along with two witnesses for the tenant and they all gave affirmed testimony in turn.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to a monetary Order under section 67 of the *Residential Tenancy Act* for damages or loss.
- Whether the landlord is entitled to a monetary Order under section 38(1)(d) of the *Residential Tenancy Act* to keep all or part of pet damage deposit and/or security deposit.
- Whether the landlord is entitled to a monetary Order under section 72(1) of the *Residential Tenancy Act* to recover the filing fee from the tenant for the cost of this Application.

Background and Evidence

The tenancy began on September 1, 2007 and ended on December 31, 2008. There was no written tenancy agreement. The tenant paid a security deposit of \$370.00 plus a pet deposit of \$200.00 at the beginning of the tenancy. These facts were not in dispute.

Landlord's Testimony

The landlord submitted a photocopy of a Condition Inspection Report containing both the move-in and move out inspection reports. The landlord testified that the move in inspection was completed on August 31, 2007 in the presence of the tenant and that the tenant signed the report agreeing that the report fairly represented the condition of the rental unit. This photocopied report also shows the tenant's signature in the move-out section under the agreement to deductions from the security and/or pet deposit(s) and the words beside this signature "not present" are printed. The landlord testified that the move out inspection was conducted on December 31, 2008.

The landlord testified that the tenant's signature on the move-in portion of the Condition Inspection Report and that this verified the tenant's agreement that the unit was fully clean and in good condition upon moving in. The landlord testified that at the beginning of the tenancy he allowed the tenant a \$200.00 reduction in rent in November 2007 as payment for repairs the tenant had completed on the rental unit, but that the tenant failed to do the repairs.

The landlord testified that the tenant gave notice to move out and this document dated, November 29, 2008 was submitted into evidence indicating that the tenant would be vacating the unit on December 29, 2008. The tenant's letter also discussed viewing arrangements for re-rental and requested the return of the security deposit.

The landlord testified that he later issued a notice to the tenant dated December 27, 2008 advising the tenant what was required in terms of cleaning and preparing the unit to vacate. When asked how this document was served the landlord stated that he

thought it was pasted to the door of the rental unit. However the landlord had difficulty remembering the precise date and time but after some discussion of the matter stated that it was taped to the rental unit door maybe on December 29 or December 30, 2008.. The last paragraph of this notice states *"We propose that the checking out to be done on December 29 or 30, around 5:30 P.M. or even earlier and we might accept any other time or day if you let us in advance, therefore we will consider that."* (shown as written in the original document).

The landlord testified that, in regards to the move-out inspection, the tenant was offered two opportunities as required under the Act, but failed to cooperate. The landlord testified that, instead, the tenant approached the landlord on December 29, 2008 demanding that the landlord inspect the unit without prior notice. According to the landlord, when he stated that he was unable to participate, the tenant then became verbally abusive and proceeded to harass the landlord by loudly banging on the landlord's door, prompting the landlord to call police.

The landlord testified that although the unit was in good condition and clean when the tenant moved in, the tenant left the unit in an unsatisfactory condition when he moved out, including dirty floors behind the appliances and on the balcony, unwashed blinds and windows, one wall painted and not restored to its original color as required, carpeting left soiled and damaged by the tenant's cat and furniture and items abandoned that had to be disposed of. The landlord submitted into evidence two supportive invoices for costs allegedly incurred. The first was a hand-written receipt for carpet cleaning dated December 31, 2008, containing commentary about *"stinking smell of cat's pee"* and showing an amount of \$139.65. The receipt indicates that GST was included, although no GST registration number was listed on this receipt. The landlord also submitted a typed invoice from a named individual with the address shown merely as "Kelowna" for work allegedly completed in the unit. This invoice featured itemized costs for various diverse tasks totaling \$380.00 with no breakdown for the hours, materials or taxes. When questioned, the landlord admitted that he did not know the

exact allocation of charges, nor the precise number of hours of work for which he was billed, or even what the hourly rate of pay had been charged for labour. The landlord testified that the carpet required repairs for damage that the landlord believed was caused by the cat “scratching” the carpet. When questioned how the repair was done the landlord stated that it required a carpet expert. The landlord testified that extra costs were incurred to clean the carpet because “the cat peed on the carpet”

In regards the claim for painting, the landlord referred back to his Notice dated December 27, 2008 the *Notice of Final Opportunity to Schedule a Condition Inspection* which included a notation that the unit is to be painted back to its original color of white and stated that the repainting claim is based on the tenant’s failure to follow this instruction. The landlord acknowledged, however, that there was no written term in a tenancy agreement that restricted paint colors.

The landlord is requesting a monetary Order based on the amounts shown on the invoices and the filing fee which amounts to \$569.65 and is asking that this amount be retained from the tenant’s security and pet damage deposits of \$570.00 to reimburse the landlord’s costs.

Tenant’s Testimony

The tenant testified that although the move-in inspection report was signed, he did not attend a move in inspection walk-through. The tenant testified that he signed the report offered by the landlord so that the landlord would release the keys to him and the tenant stated that he made a point of writing a comment noting that he was signing for acceptance of the keys and access to the rental unit only. The tenant testified that the notation he wrote directly above his signature had been removed from the copy of the Move-In Inspection Report that was submitted into evidence by the landlord. The tenant testified that he never received a copy of this document and that subsequent efforts to do the move-in inspection were ignored by the landlord.

The tenant testified that concerning the move-out inspection, he was willing to cooperate with the landlord and in fact had requested a move out inspection before December 29, 2008 alerting the landlord that this was necessary because he was leaving the country for a few months. The tenant had submitted into evidence a copy of his flight information. The tenant testified that, despite his being fully aware of the tenant's circumstances, the landlord refused to agree to an earlier inspection and also would not provide the tenant with a specific time or a block of time for an inspection on December 29. The tenant testified that the landlord expected him to sit in the empty apartment all day waiting for the landlord to attend. The tenant testified that after cleaning the rental unit, he went to the landlord's unit and knocked on the door to request that the landlord complete the move out inspection, but did not threaten or harass the landlord.

The tenant's first witness, testified that she was present at the rental unit during the tenant's move in and also assisted during his move out. The witness testified that when the tenant moved in, the rental unit smelled badly of cigarette smoke, the carpet was dirty, the bathroom door was broken, there was no transition piece between the linoleum and the carpeting and the curtains and blinds were filthy. The witness testified that she assisted the tenant in cleaning the unit at the end of the tenancy, and the windows and floors were cleaned, the carpet was vacuumed, and, the unit was left much cleaner at the end of the tenancy than it was when the tenant first arrived. The witness testified that, although she was not present at the time of the landlord's alleged move-out inspection which was done after the tenant had already moved out, she was present when the landlord refused to provide the tenant with a precise time to do the move-out inspection. The witness testified that the landlord was in the hallway and swore at the tenant. The witness confirmed that the tenant knocked on the landlord's door to try to get the landlord to do a walk-through move-out inspection and testified that the tenant did not harass the landlord in any respect. The landlord interjected that it was the witness who called him to request a "check out inspection" and when he

refused, the tenant started banging on the landlord's door prompting the landlord to call 911.

The tenant's second witness testified that she was present at the rental unit at the time of move in and confirmed the earlier testimony that the unit was very dirty with uncleaned carpets and smelled of cigarette smoke.

The tenant submitted into evidence photographs taken on December 28, 2008, showing the suite after he finished cleaning and removing his possessions and testified out that these verified that the unit was cleaned. The tenant pointed out that all of the photos of the dirty floor submitted by the landlord were taken of the area behind and under the appliances. The tenant conceded that he did not move the fridge and stove to clean. When asked, both parties confirmed that the fridge and stove were not sitting on rollers or castors.

The tenant disputed that furnishings or any other personal items were left in the unit. The tenant stated that the landlord's photos did not show any furnishings left and that the only item remaining was a large constructed wooden item on the balcony that predated the tenancy.

The tenant testified that there was no specific provision in the tenancy agreement prohibiting or limiting any colours of paint. The tenant stated that he had a verbal agreement with the landlord to paint the kitchen wall yellow and that there was never any mention of painting it white again until he suddenly received the December 27, 2008 notification listing what was required prior to moving out. The tenant testified and that this notice was received too late for him to arrange to repaint the yellow wall in the kitchen.

The tenant testified that the picture supplied by the landlord, supposedly of damage to the carpet, was in fact showing a seam in the carpet where two pieces of carpet joined. The tenant also testified that his cat did not urinate on the carpet.

The tenant added that during his tenancy, he had circulated a petition for the owners of the rental unit to hire a new manager/landlord and this may account for the landlord's evident hostility.

The landlord attacked the veracity of the tenant's testimony throughout the hearing, repeatedly calling the tenant a liar during the proceedings. Whenever the landlord was required to explain an inconsistency between the landlord's and the tenant's testimony, the landlord responded by alleging that the tenant's testimony consisted of lies.

Analysis – Evidentiary Weight of Inspection Reports

I find serious flaws in the Landlord's evidence regarding both of the condition inspection reports. The move in-portion fails note damage that was testified to by *both* parties and by the witnesses as existing from the very start of the tenancy. I accept the tenant's evidence that, after moving in, he sent a letter to the landlord commenting on the unsatisfactory condition of the rental unit and listing deficiencies. I find that the tenant's version was supported by the landlord's testimony that the tenant was allowed a \$200.00 rent reduction for November 2007 as payment for repairs to the rental unit. I find it unlikely that the landlord would allow a \$200.00 rental reduction for repairs to be completed by the tenant, if the unit was in good repair represented by the move-in inspection report submitted into evidence by the landlord.

In the move-out portion of the report, I note that the landlord has indicated that the unit was "damaged" under almost every single category shown on the form. However, this data is thoroughly refuted by the photographic evidence submitted by the tenant.

Section 23 (5) of the *Act* states that the landlord must give the tenant a copy of the inspection report, in accordance with the regulations section 18(1)(a) promptly and in any event within 7 days after the condition inspection is completed. Under section 21 of the *Residential Tenancy Regulation* the inspection report is evidence of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I note that section 16(1) of the *Residential Tenancy Act* stipulates that in scheduling the inspection the landlord and tenant must attempt in *good faith* to mutually agree on a date and time for a condition inspection. I find that the tenant offered proof that he was leaving the country on December 30, 2008, and I find that the landlord was likely aware at the time that this was the case. I find that this and the landlord's own admission that he declined to do a walk-through on the tenant's final day because he had other things to do, are factors that seem inconsistent with the landlord's accusation that the tenant refused to cooperate.

I accept the tenant's testimony regarding the circumstances relating to the move-in and move out inspections and I find that the tenant has successfully met the onus under section 21 of the regulation by supplying a preponderance of evidence that the inspection reports should be assigned little evidentiary weight for the purpose of assessing damages.

Analysis: Damage Claim

In regards to the landlord's monetary claim of damages to the unit, I note that, in order to support compensation under section 67 of the *Act*, the landlord had the burden of proving the following:

- (1) Proof that the damage or loss existed and proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- (2) Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- (3) Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and

tear. I find that the landlord's photographs verify that the areas behind the stove and refrigerator were not clean. I note that the tenant acknowledged that these appliances were not pulled out to clean behind them and were apparently not clean when the tenant moved in either. I also find that since the refrigerator and stove were not on wheels or rollers, a tenant has no responsibility to move and clean behind these stationary appliances. I find that the portion of the landlord's claim for \$10.00 for cleaning this area must be dismissed.

In regards to the landlord's claim relating to the stove, I find that the tenant's photographs show a clean stove and that the close-up photos submitted by the landlord appear to be showing rust and wear to the porcelain surface inside the oven under the heating coil which is typical of an older-model used stove, rather than actual grime.

I note that the landlord failed to submit any photos of the alleged items or furnishings purportedly abandoned by the tenant and for which the landlord has requested compensation of \$50.00 for removal costs. The landlord's photos illustrate a partially constructed wooden item remaining on the balcony which had apparently been there for the entire duration of the tenancy. I find that this would indicate that the balcony area was not in a pristine state when the tenancy commenced. The landlord also failed to provide any invoices for dumping fees from the landfill site for disposal of the alleged items and when questioned merely stated that the abandoned furniture was put outside. I find that the landlord has failed to meet the test for damages in regards to the alleged expenditure and that this portion of the landlord's application must therefore be dismissed.

In regards to the landlord's claim for the cleaning of the windows and blinds, I find that insufficient evidence was presented verifying that these areas were clean at the time that the tenant moved into the unit. In fact the tenant's September 5, 2008 letter to the landlord specifically referred to the soiled condition of the window coverings upon moving in. In addition, there was witness testimony supporting the tenant's claim that the unit was fully cleaned prior to vacating and, as mentioned, the tenant's photos to

verify this. I find that this portion of the landlord's application must be dismissed as the landlord has not met all of the elements in the test for damages and loss to prove the claim.

In regards to the charges for painting the kitchen wall, I find that the landlord had not established that a term restricting the paint colours was in the tenancy agreement. I find that the landlord was not entitled to unilaterally impose additional terms and restrictions on the tenancy that were not contained in the original tenancy agreement and that the landlord's efforts to do so by issuing a list of expectations at the end of the tenancy is ineffectual. As the landlord has not established that the tenant was in violation of the Act or the tenancy agreement, this fails to meet the criteria under element one of the test for damages. I find that the portion of the landlord's application requesting \$110.00 compensation to repaint the wall, is without merit and must be dismissed.

In regards to the portion of the landlord's application requesting reimbursement for alleged damage to the carpet purportedly inflicted by the tenant's cat, I find that the tenant's testimony believable. The photographic evidence of the "damage" does appear to be that of a seam in the carpet as pointed out by the tenant, with the two abutting edges fraying, as often occurs when carpeting is not properly installed. One of the tenant's witnesses had testified that the carpeting was poorly secured where it transitioned to linoleum which would also cause fraying.. It is difficult to imagine how the lateral groove shown in the looped pile could possibly have been created by a cat. I find that the landlord has not succeeded in meeting all elements in the test for damages in regards to this claim and it must be dismissed.

In regards to the landlord's invoice for carpet cleaning, I find that there was significant support to indicate that the carpets were not cleaned when the tenant took possession, as evidenced by the tenant's letter of September 5, 2009 to the landlord commenting on the unhygienic state of the carpets. In addition there was witness testimony attesting to the existence of bad odours in the carpet when the tenant moved in. Accordingly I

reject the landlord's claim for \$139.65 and find that this portion of the landlord's application must be dismissed.

Based on the testimony and the evidence discussed above, I find that the landlord has not sufficiently met the burden of proof to the extent required to support the landlord's claim for damages against the tenant. Therefore I find that the landlord is not entitled to retain the tenant's security deposit or any portion thereof.

Conclusion

Given the above, I find that the tenant is entitled to a complete refund of the security deposit of \$370.00 and the pet deposit of \$200.00, plus interest of \$11.45 for the total amount of \$581.45.

I hereby issue a Monetary Order in favor of the Tenant in the amount of \$581.45 pursuant to section 38(10)(c) of the *Act*. The landlord must be served with the monetary order and should the landlord fail to comply with the order, the order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I hereby dismiss the landlord's application for a monetary order, in its entirety, without leave to reapply.

March 2009
Date of Decision

Dispute Resolution Officer