



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on August 29, 2006 and ended on April 30, 2009. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy. The Landlord prepared a move in condition inspection report on August 29, 2006 which was signed by the Tenant. The Report shows that the rental unit had no condition issues save that some minor repairs were necessary and were later completed. The Tenant said the Landlord did not give her a copy of the Report until prior to this hearing. The Tenant also claimed that there were changes to it which the Landlord denied. The Parties did a move out inspection on April 30, 2009. The Tenant said the Landlord did not give her an opportunity to sign it and the Landlord said the Tenant refused to sign it.

The Landlord said the carpets and linoleum in the rental unit were new at the beginning of the tenancy but that the Tenant damaged them and they had to be replaced. In particular, the Landlord claimed that all of the bedroom carpets had nail polish, gum and stains that could not be removed. The Landlord also claimed that the carpeting in the upstairs hallway was torn around 4 doorways by the Tenant's cat. The Landlord further claimed that the carpet in the living room was damaged. The Landlord said the carpeting could not be salvaged. The Landlord claimed that there was a 1 foot x 1 foot piece of linoleum removed in the hallway by the downstairs bathroom. The Landlord also claimed that the linoleum in the rest of the rental unit was stained and had burn marks and had to be replaced.

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In support, the Landlord also provided photographs of the rental unit some time between April 30, 2009 and May 6, 2009. However, the Landlord provided the Tenant with only a black and white copy of those photos (ie. a negative sheet) which were significantly smaller. The Landlord also provided a copy of an estimate for the replacement flooring (which was not broken down as to the cost per foot for each kind of flooring) but claimed that the flooring had been replaced at the same cost.

The Tenant admitted that there was a nail polish stain in the carpet of one bedroom and a gum spot in the carpet of another bedroom but denied that there was any damage to the master bedroom carpet. The Tenant also admitted that inside the door jams of the smaller two bedrooms, the carpet had been ripped by her cat. The Tenant denied that there was any damage to the carpet in the upstairs hallway or to the living room carpet. The Tenant admitted that there was a damaged section of the linoleum in the downstairs hallway by the bathroom but argued that it could be repaired. The Tenant denied that there was any damage to the linoleum in any other part of the rental unit.

The Landlord also said that the Tenant left a number of belongings and various items behind in the rental unit that had to be disposed of at a cost of \$364.45. The Tenant did not dispute that she left various items in the rental unit but argued that it was not enough to warrant two truck loads as indicated in the invoice for the removal. The Tenant also argued that the invoice did not list what items were removed.

Analysis

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear.

I find that the color photographs submitted by the Landlord as evidence at the hearing are of limited evidentiary value because it was impossible for the Tenant to respond to them. In particular, the Tenant only received significantly smaller (ie. 2.5 x 3 cm) black and white copies of those photographs in which the alleged damages cannot be seen.

I find that there were damages to the carpets in two of the bedrooms that was caused by the Tenant (or persons permitted by the Tenant on the rental property) and is not reasonable wear and tear. I also find that because the carpeting is torn at the doorway, it likely could not be repaired and had to be replaced. Consequently, I find that the Landlord is entitled to recover the cost of new carpeting for those two rooms which I assess at **\$300.00**. However, I am not satisfied that the carpeting in the master bedroom could not be salvaged given that there was insufficient evidence that it was torn. Consequently, I find that the Landlord is only entitled to compensation for the reduced value of the stained carpeting in that room which I assess at **\$75.00**. Given the Tenant's argument that all rips around doorways were inside the bedrooms, I find that

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there is insufficient evidence of damage to hallway carpet outside the bedrooms and no evidence (or indication in the Report) of damage to the living room carpets. Consequently, those parts of the Landlord's claim are dismissed.

I find that there is sufficient evidence that the Tenant (or persons permitted by the Tenant on the rental property) damaged the linoleum in the hallway by the downstairs bathroom and that the damage is not the result of wear and tear. Given that this is a high traffic area, I find that it is unlikely that only the damaged section could be repaired and find instead that a much larger section would have to be replaced. Consequently, I award the Landlord **\$150.00** for the cost of the linoleum in this area.

I find that there is insufficient evidence that the linoleum in other parts of the rental unit were damaged by burn marks or gum as alleged by the Landlord and note that nothing is indicated on the Report to that effect. The Report says only that the linoleum in other areas needed to be cleaned. The Landlord argued that it was cheaper to replace the linoleum than to clean it, however no evidence to corroborate that allegation was provided. Consequently, that part of the Landlord's claim is dismissed.

Although the garbage removal invoice did not itemize the articles that were disposed of, I find that it was not unreasonable that 2 truck loads had to be removed. The Tenant admitted that all of the belongings left behind in the rental unit were hers and that it included 6 bed mattresses, a futon and frame, a love seat and chair as well as items left in a storage area, closets and kitchen items. Consequently, I find that the Landlord is entitled to recover the amount of **\$364.45** for the disposal of items left in the rental unit.

As the Landlord has been partially successful in this matter, it is entitled to recover one-half of the filing fee (or **\$25.00**) for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Carpet damages:	\$375.00
Linoleum damage:	\$150.00
Disposal fees:	\$364.45
Filing fee:	<u>\$50.00</u>
Subtotal:	\$939.45
Less: Security deposit:	(\$400.00)
Accrued interest:	<u>(\$12.81)</u>
Balance owing:	\$526.64



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Conclusion

A monetary order in the amount of **\$526.64** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 21, 2009.

Dispute Resolution Officer