Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNSD MNDC O FF

Preliminary Issues

At the outset of the hearing Landlord (2) stated that she was working a switchboard and would have to put her call on hold if she had to answer a call. I advised that this would be okay as long as she did not interrupt the hearing and I explained that the hearing would continue in her absence. At approximately 20 minutes into the hearing Landlord (2) interrupted the testimony to advise she had to take a call and when she put her call on hold music was played into the hearing. I placed her call on mute so I could continue the hearing uninterrupted.

Interrupting another participant who is providing testimony, to announce she has to take a call, and then having music played into the hearing, is inappropriate and is contrary to the *Residential Tenancy Branch Rules of Procedure.* I recommend the Landlords become familiar with the *Residential Tenancy Branch Rules of Procedure* prior to attending another hearing.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to the Tenants, was not done in accordance with section 89 of the *Act*, as they were delivered to someone who does not reside with the Tenants. That being said the male Tenant appeared at the hearing and confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain a monetary order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective May 1, 2010 that was set to switch to a month to month tenancy after April 30, 2011. Rent was payable on the first of each month in the amount of $850.00. Sometime during the last week of April 2010 the Tenants paid $450.00 as the security deposit and $450.00 as the pet deposit. A move in inspection report was completed sometime after the Tenants had occupied the unit for about a week and the move-out inspection was completed on October 31, 2010. The rental unit has been re-rented as of November 1, 2010.

The Landlords testified that when they conducted the move-out inspection they found the Tenants had not fully cleaned the unit. As they completed the walk through the male Tenant told them that he had cleaned the unit to the best of their abilities and would not be doing any more cleaning. The Landlords offered to complete the cleaning for the Tenants at a charge of $20.00 per hour to which the Tenant agreed.

The Landlords are seeking $110.00 ($80.00 + 30.00) for 5.5 hours of cleaning (4 hours interior and 1.5 hours outside) for time they had to spend cleaning behind the fridge and stove, the bathtub, floors, sweeping the patio, windows and blinds. This work was performed by the Landlords on October 31, 2010.

The tenancy agreement provided for the Tenants to have one dog and during the tenancy they acquired a second dog. The Landlords stated that these dogs caused damage to their grass so they are seeking $570.00 to repair the lawn. The lawn has not been repaired and this amount was claimed based on a telephone estimate acquired by Landlord (1). No evidence was submitted by the Landlords to support their testimony as to the condition of the lawn at the onset or at the end of the tenancy.

The screen on the sliding screen door was replaced inside the original frame by the Tenants and when the door was reinstalled it was put up backwards. The Landlords found out afterward that the handle had been broken off and are seeking to be

reimbursed $6.04 for the cost of the handle they purchased on November 13, 2010 as supported by the invoice provided in their evidence.

Landlord (2) testified that the tenancy agreement states the Tenants are required to have the carpets professionally cleaned. She referred to the carpet cleaning receipt which indicates there was a strong dog odour and oil stain left on the carpet from where the dogs were laying. They were required to have the carpets sanitized to remove the stain and odour so they are seeking reimbursement of $111.99 for the cleaning on November 12, 2010, as supported by their evidence.

The Tenant testified and confirmed there was a discussion on October 31, 2010 where he stated they had cleaned the unit to the best of their ability. He agreed to have the Landlords conduct some additional cleaning at $20.00 per hour but not to the extent they are claiming. He confirmed his wife signed the move-out inspection form but that they were not provided with a copy of the form until they received it in the Landlords' evidence. He pointed out how the move-out form has been altered, written over areas that were previously coded as "G" and now show "DT" and additional comments added after they had finished the walk through and after his wife had signed the form. Comments were changed or added to sections about windows, sliding door, blinds, screens, and more.

He acknowledges that he may have put the screen door on backwards and accepts responsibility for the $6.04 handle, as he may have forgotten to put it back on.

He does not agree to pay for the Landlords' claim for the lawn. This was a brand new house and the sod was placed directly on top of clay. He even called the Landlord in the summer to point out a 2' x 3' dry spot and the lawn was growing un-evening or not at all in several different spots.

The Tenant pointed out that he had paid to have the carpet cleaned and he gave the Landlords a copy of his receipt which they provided in their evidence. He also pointed out that the receipt they had provided was written over by someone with different handwriting.

Landlord (1) confirmed they altered the move-out inspection report after the inspection was completed and the form signed. They did not alter the carpet cleaning receipt though and she does not know why there is the appearance that it was written over. The new tenant complained of the smell coming from the carpet so they had to have it sanitized which the Tenants refused to have done when they had the carpet cleaned.

In closing the Tenant stated that the Landlords made them feel embarrassed and demoralized by the way they were going through every little nook and cranny stating how they did not clean the unit. They did clean the unit to the best of their ability and they treated the rental unit as if it was their own home.

Landlord (1) confirmed the move-out inspection was very awkward and the male Tenant did become upset during the inspection.

Analysis

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

A significant factor in my considerations is the credibility of the evidence before me. I am required to consider the Landlords' evidence not on the basis of whether it "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. The Landlord admitted to altering the move-out inspection report form after the Tenant signed the document; and the Landlords failed to provide the Tenants with a copy of the "unaltered" document within 15 days of its completion as required by the Regulation.

Based on the aforementioned I find the move-out inspection report does not meet the requirements to be used as evidence and it will not be considered in my decision. I did however consider the testimony provided by the parties during the teleconference hearing.

The evidence supports the parties entered into a verbal agreement that the Landlords would perform “some” cleaning at a cost of $20.00 per hour. There is disputed testimony as to how much additional cleaning was required. In the absence of a valid move-out inspection report and in the absence of photographs to prove the condition of the unit, I award the Landlord a nominal amount of **$60.00** for cleaning (3 hrs x $20.00), pursuant to section 67 of the Act.

There is no evidence before me to prove the condition of the yard at the onset or end of the tenancy. In the absence of proof the lawn was repaired and at what cost, I find there to be insufficient evidence to prove the test for damage or loss, as listed above, therefore I dismiss the Landlords’ claim of $570.00, without leave to reapply.

The Tenant acknowledged responsibility for the cost of replacing the handle on the screen door. Therefore I award the Landlords’ their claim of **$6.04.**

After careful consideration of the evidence which included among other things, a copy of the Tenant’s carpet cleaning invoice and a copy of the Landlords’ carpet cleaning invoice, I accept that the Tenant had been informed by the carpet cleaner on October 28, 2010, that “Customer is aware odours may increase when carpets are cleaned and has declined to sanitize”, as noted on his invoice. That being said, the Tenants did not do their due diligence to ensure the carpets were cleaned to a satisfactory level, contrary to Section 37 of the Act. Therefore I approve the Landlords’ claim for **$111.99**.

The Landlords have been partially successful with their application, therefore I award recovery of **$25.00** of the filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit as follows:

Cleaning of the rental unit	$60.00
Screen door handle replacement	6.04
Additional carpet cleaning and sanitizing	111.99
Filing fee	25.00
Subtotal (Monetary Order in favor of the landlord)	**$203.03**
Less Security Deposit of $425.00 plus Pet Deposit $425.0 plus interest of $0.00	- 850.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	**$646.97**

The Landlords are hereby ordered to return the balance of the security and pet deposits of $646.97 to the Tenants.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **$646.97.** The order must be served on the Landlords and is enforceable through the Provincial Court 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: March 18, 2011.

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Residential Tenancy Branch