



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or part of the pet damage deposit or security deposit; and to recover the filing fee for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 4, 2011, the tenant did not attend. The landlord's agent provided verbal testimony that the tenant was served at the forwarding address provided by the tenant, as well as testimony of such mailing including the registration number of the registered mail.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?
Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 1, 2010 and was to expire on September 30, 2010. The tenancy ended on September 15, 2010.

Rent in the amount of \$1,650.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. On March 15, 2010 the landlord collected a security deposit from the tenant in the amount of \$825.00, and there was no pet damage deposit collected.

The landlord's agent further testified that the tenant gave notice to end the tenancy on August 20, 2010 with an effective date of August 31, 2010, prior to the end of the fixed term, but the tenant didn't move then, and actually moved on September 15, 2010. The landlord was okay with that, and has not made a claim for loss of rental income.

He further testified that on January 17, 2011 a hearing was held before another Dispute Resolution Officer for the same claim as the claim before me, but the application was dismissed with leave to reapply.

The landlord's agent also testified that after the tenant moved out, the carpets were left very dirty; not vacuumed or cleaned. The landlord has provided a receipt for carpet cleaning in the amount of \$90.00, as well as a cleaning receipt in the amount of \$259.69. He stated that the unit was not cleaned, and provided a copy of the move-in/move-out condition inspection report to substantiate that claim. Comments from the landlord on that report include, "very dirty for age; suite lacks any cleaning, carpets not cleaned, hardwood scratched significantly throughout." The tenant's comments on the report state that the tenant does not agree that the report fairly represents the condition of the rental unit, and that "\$250.00 to be held against damage deposit for janitor; tenant disputes carpet cleaning and damages." Further, the invoice from Bizee Budees cleaners contains a comment that states: "The owners were there when the staff left and they were pleased with the work, that showers and bath had not been cleaned for a very long time, kitchen was bad, shower curtain stained with hair dye, we washed and it is a little better. Owners say they are missing towels and bed linens." A photograph of the oven was also provided in advance of the hearing, and it shows an oven in need of cleaning.

The landlord's agent also testified that there were numerous unusual scratches on the hardwood floor, and believes the tenant had sub-leased the rental unit. The owner decided to repair the floor rather than replace it, and provided an estimate for the repair at \$1,543.08. The owner moved in after the tenancy ended rather than re-renting, and has not yet repaired the hardwood. Photographs of the floor were also provided in advance of the hearing, which show multiple scratches.

He also testified that the owners had provided the tenants with towels, linens and a dresser, but the items were missing after the tenant had vacated the rental unit,

however, none of those items appear on the tenancy agreement or on the move-in/move-out condition inspection report.

The landlord also provided a copy of a letter written by the tenant to the landlord which is dated October 4, 2010 and is stamped as being received the same day. The letter provides a forwarding address for the tenant, and requests return of all of the security deposit less the \$250.00 that the tenant agreed on the move-out condition inspection report that the landlord could retain for cleaning costs, and requests half a month's rent that was agreed to by the tenant's husband and the landlord's agent. Also provided is a Tenant Ledger, which shows that the tenants were credited \$825.00, being a half of a month of rent, and the tenant's account was in a credit balance for the amount of \$425.31 at the end of the tenancy in addition to the security deposit. That is the amount of the credit balance after the landlord deducted \$90.00 for carpet cleaning and \$259.69 for janitorial.

The landlord claims \$2,597.14 for:

- \$90.00 for carpet cleaning
- \$259.69 for janitorial
- \$1,543.08 to repair the hardwood floors
- \$89.49 for 10 missing towels
- \$124.32 for a missing bedspread
- \$301.28 for a missing umbrella
- \$189.28 for a broken dresser and light switch

Analysis

Firstly, I accept the evidence of the landlord's agent that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing documents within the time provided in the *Residential Tenancy Act* and the Rules of Procedure.

With respect to the landlord's application, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of a breach by the opposing party of the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have reviewed the move-in/move-out condition inspection report and find that the tenant left the unit unclean in comparison to the condition of the unit at move-in. In the circumstances, I find that the landlord has established a claim for cleaning in the amount of \$259.69, carpet cleaning in the amount of \$90.00 and \$1,543.08 to repair the hardwood floors.

I have also reviewed the landlord's tenant ledger, and I accept that the landlord agreed to reimburse the tenant one half of a month's rent in the amount of \$825.00. I also accept that the tenancy agreement provides for a \$25.00 fee for an N.S.F. cheque in addition to bank charges. The ledger shows that \$30.00 was charged against the tenant's account on August 9, 2010 and another \$5.00 on October 4, 2010, but only one N.S.F. cheque appears on the ledger. I find that the landlord is entitled to the \$30.00 charge, but not the additional \$5.00 charge. The ledger also shows a \$25.00 charge for a late fee on August 9, 2010, and the tenancy agreement shows that the late fee is \$3.00 per day, and I accept that the landlord is entitled to the \$25.00 late fee. Therefore, the \$825.00 credit to the tenant should be reduced by \$55.00.

With respect to the broken dresser, the move-in condition inspection report shows that a drawer was broken at move-in, and 2 drawers were broken at move-out. If a drawer was broken at the commencement of the tenancy, I find it reasonable to assume that it was not a new dresser. No receipt was provided, however, the landlord claims \$139.00, plus 12% HST. I find that the landlord has failed to satisfy element 3 of the test for damages, and has not established a claim for that item. The same applies to the broken light switch. Although I accept the evidence of the landlord's agent that the light switch was broken during the tenancy, the landlord has failed to establish the cost.

With respect to the towels and missing bedspread, the landlord has established the cost to replace those items, but has not established that the items were included in the rent or that they were supplied to the tenant. Nothing about those items appears on the tenancy agreement or the move-in/out condition inspection report. The same applies to the missing umbrella.

Since the landlord has been successful with a claim for damages, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In summary, I find that the landlord has established a claim for \$90.00 for carpet cleaning, \$259.69 for cleaning the rental unit, \$1,543.08 for the cost to repair the hardwood floors, and \$50.00 for recovery of the filing fee, for a total of \$1,942.77. That amount is reduced by \$770.00 for the credit agreed by the parties at the end of the tenancy, for a total due to the landlord of \$347.77.

Conclusion

For the reasons set out above, I order the landlord to retain the security deposit in the amount of \$825.00 and I hereby grant a monetary order in favour of the landlord for the balance due of \$347.77. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: May 2, 2011.

Residential Tenancy Branch