



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This is the Landlord's Application for a monetary award for damages to the rental unit and loss of revenue; and to recover the filing fee from the Tenant for the cost of the filing fee.

The parties and their witnesses gave affirmed testimony at the Hearing.

Issue(s) to be Decided

Is the Landlord entitled to a monetary award for loss of revenue for the period of May 20 to 31, 2010 and the cost of cleaning the rental unit at the end of the tenancy, pursuant to the provisions of Section 67 of the Residential Tenancy Act (the "Act")?

Background and Evidence

This tenancy started on November 15, 2000. The Tenant moved out of the rental unit on May 15, 2010, and returned the keys to the rental unit on May 19, 2010. Monthly rent was \$825.00, due on the first day of each month. No condition inspection reports were completed. Disposition of the security deposit was decided in a previous Hearing on application by the Tenant, under Section 38 of the Act.

The Landlord seeks the following monetary award:

Loss of income from May 20 – 31 (prorated)	\$319.35
Cost of cleaning the rental unit (39 hours @\$10.00 per hour)	\$390.00
Cost of repairing a railing and wall	<u>\$100.00</u>
Total	\$809.35

The Landlord stated that she was had agreed to return \$319.35 to the Tenant if he moved out early in May. She stated that she had new tenants for the rental unit, who were going to move in mid-May, but they could not do so because the Tenant had not cleaned the rental unit. She stated that there was also a smell of animal urine (ferret or cat) and that the Tenant had broken a banister and damaged an adjoining wall.

The Landlord's witness, JW, stated that he took photographs of the rental unit on May 19, 2010, at 5:00 p.m.. He stated that he saw animal spray marks on the baseboards and there was a strong smell of urine in the rental unit.

The Landlord's witness, JP, is the new tenant. He testified that he viewed the rental unit in the middle of May and that the stove was dirty, the house was dirty, there was junk and garbage in the shed and the house smelled like cat pee. He stated that the Landlord took some photographs while they were doing the walk through. The witness could not remember the date that he moved into the rental unit.

The Tenant testified that these matters have already been decided. He stated that there was a decision, dated November 5, 2010, wherein he was awarded a rebate for rent for the period of May 20 – 31. He stated that the Dispute Resolution Officer had also found that the Landlord had given up her right to claim for damages because there was no condition inspection report done at the beginning or the end of the tenancy. The Tenant stated that he and a friend cleaned the rental unit at the end of the tenancy and that the junk in the shed was there at the beginning of the tenancy. The Tenant stated that he didn't have any cats and that his ferrets were caged and did not spray the baseboards. The Tenant questioned when the photographs were taken of the rental unit. He also questioned the validity of the invoice for cleaning, stating that there was no company name on the invoice and it looked like the Landlord had made it up.

The Tenant's witness stated that he and the Tenant cleaned the rental unit on May 19, 2010. He stated that it looked pretty good, and that it might have needed "one or two

little wipes". The Tenant's witness said he took some garbage out of the shed. The witness stated that there was no urine smell in the basement, but there was a slight smell of urine in the bedroom near the kitchen. He stated that the rental unit was in the same condition at the end of the tenancy as it was when the Tenant moved in, and that the railing was loose at the beginning of the tenancy. The Witness stated that the Tenant had kittens, and that he had seen the ferrets uncaged, but under supervision.

Analysis

The Landlord is seeking compensation for damage or loss under the provisions of Section 67 of the Act. The Tenant submits that she should not be successful in a claim for damages to the rental unit because:

- there were no condition inspection reports done and therefore no way to prove the damages claimed; and
- he has already been awarded compensation with respect to the return of the security deposit, so the matter has already been decided.

While it is true that the Landlord's rights to claim against the security deposit were extinguished because there was no condition inspection report done, this does not preclude the Landlord from making a claim for damages under Section 67 of the Act.

In the Decision of November 5, 2010, the Tenant was awarded compensation pursuant to the provisions of Section 38(6) of the Act, which provides that a Landlord must pay compensation in the equivalent of double the amount of the security deposit if the Landlord does not return the security deposit to the Tenant or file an Application against the security deposit within 15 days of the end of tenancy/date the Tenant provides a forwarding address. This does not preclude the Landlord from making a claim for damages under Section 67 of the Act.

In order to be successful in her claim for damage or loss, the Landlord has the burden of proof to establish her claim on the civil standard. To prove a loss and have the

Tenant pay for the loss requires the Landlord to prove that the damage or loss exists and that it occurred due to the actions or neglect of the Tenant.

The Landlord did not provide sufficient evidence to support her claim for loss of rent between May 20 and May 31, 2010. Her witness could not recall the exact date that he moved into the rental unit. There was no evidence before me that the witness had agreed to move into the rental unit on May 20, 2010, but could not because of the actions of the Tenant. This portion of the Landlord's claim is dismissed.

Section 21 of the Residential Tenancy Regulation states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition 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.

In the absence of a condition inspection report, the Landlord can still be successful in a claim for damages if there is a preponderance of evidence that the Tenant caused the damages.

There was insufficient evidence to support the Landlord's claim with respect to the damage to the banister and wall, therefore this portion of the Landlord's claim is dismissed.

There was conflicting testimony from the parties with respect to the remainder of the Landlord's claim. Section 37 of the Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. The Landlord's witness JW testified that the rental unit was dirty and smelled of urine at the end of the tenancy when the Tenant provided the key to the Landlord. The Landlord's witness testified that he took photographs of the rental unit on that day, which show a dirty oven and spattered baseboards.

The Tenant's witness testified that the rental unit looked pretty good, but that he did not look inside the stove. He stated that the Tenant had kittens, which the Tenant had refuted earlier on in the Hearing. He also stated that the Tenant's ferrets were not always caged, contrary to what the Tenant had stated. The Tenant's witness also stated that there was a "slight smell" of urine in one of the bedrooms. Based on the totality of the testimony and documentary evidence, I am satisfied on a balance of probabilities that the Tenant did not clean the stove at the end of the tenancy and that the carpet and baseboards required cleaning and deodorizing. Therefore, I allow the Landlord's claim with respect to cleaning in the amount of \$100.00 (1 hour to clean the stove and 3 hours to clean the carpet and baseboards @\$25.00 per hour).

The Landlord has been only partially successful in her application and is entitled to recover a prorated amount of the filing fee, in the amount of \$6.25 ($1/8 \times \50.00).

I hereby provide the Landlord with a Monetary Order in the amount of \$106.25 against the Tenant.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of \$106.25 for service upon the Tenant. This Order may be filed in the Provincial 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: April 08, 2011.

Residential Tenancy Branch