



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of that amount. However, in a previous proceeding between these parties held on May 30, 2012, the Landlord was ordered to return the Tenant's security deposit (together with compensation equal to the amount of the deposit). As a result, I find that the Landlord is now barred by the principle, *res judicata*, from bringing a claim to retain the security deposit and that part of her application is dismissed without leave to reapply.

The Landlord claimed that she received an evidence package from the Tenant however it did not include copies of photographs submitted to the Residential Tenancy Branch. The Tenant admitted that she did not include the photographs in the evidence package she sent to the Landlord but claimed that shortly after the tenancy ended she e-mailed the photographs to the Landlord in response to an allegation by the Landlord that she had not cleaned the rental unit. RTB Rule of Procedure #4 says that if a Respondent intends to dispute a claim, the Respondent must serve the Applicant with *all* documents on which they intend to rely at a hearing. In this case, I find that the Tenant did not serve the Landlord with copies of her photographs in her evidence package and therefore the Landlord would not reasonably have known that she intended to rely on them at the hearing. Consequently, the Tenant's photographs are excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repairs and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?

Background and Evidence

This tenancy started in July 2009 and ended on February 29, 2012 when the Tenant and her co-Tenant, (who is not named as a party to these proceedings) moved out. Rent was \$1,050.00 per month payable in advance on the 1st day of each month.

The Landlord said she resides in another community and therefore relies on an agent of hers in the community where the rental unit is located to handle tenancy matters for her. The Landlord admitted that a condition inspection report was not completed at the beginning of the tenancy but argued that her agent tried to contact the Tenant at the end of the tenancy to do a move out inspection but that he could not arrange one with her. The Tenant said no inspection or report was done with the Landlord or the Landlord's agent at the beginning of the tenancy. The Tenant said at the end of the tenancy she set up an appointment with the Landlord's agent to do an inspection on February 23, 2012 however the Landlord's agent contacted her late that day and cancelled. The Tenant said the Landlord's agent did not contact her again to re-schedule the inspection so she contacted him on February 27, 2012 and he advised her to leave the keys to the rental unit in a hidden spot. The Tenant said the Landlord's agent did not contact her again but instead contacted the Landlord claiming that she had left the rental unit dirty. The Tenant said she provided the Landlord with photographs she took of the rental unit on February 27, 2012 to show her that it was left reasonably clean.

The Landlord claimed that the rental unit was in "excellent" condition at the beginning of the tenancy. In particular, the Landlord said the rental unit was renovated approximately 7 months prior to the tenancy with new flooring, new paint, some new kitchen appliances and countertops and bathroom fixtures. The Landlord admitted that another tenant resided in the property for "a few months" prior to this tenancy. At the end of the tenancy, the Landlord said the Tenants did not leave the rental unit reasonably clean and her agent spent 28 hours to remove items left behind by the Tenants and to clean. The Landlord said her agent also spent approximately 10 hours to make repairs such as replacing a furnace filter, painting a fireplace hearth, repairing drywall in a bathroom and bedroom, fixing loose hinges on various doors and cabinets and removing cat hair from the compressor at the back of the refrigerator. The Landlord said it took her agent most of the month of March 2012 to clean and make these (and other) repairs and therefore she also sought a loss of rental income for the month of March 2012.

The Landlord also claimed that the Tenant's roommate left an abandoned vehicle on the rental property and although she tried to make arrangements with him to move it, he failed to do so and in June she had it towed at a cost of \$70.56. The Tenant did not deny this but argued that she could not do anything about the vehicle at the end of the tenancy because it was registered in another person's name. The Tenant said she also believed that her co-tenant had made arrangements with the Landlord to move the vehicle.

In support of her claim, the Landlord relied on an unsigned witness statement of her agent who claimed that he did do an inspection of the rental unit with the Tenant at the beginning of the tenancy and that it was clean and had no garbage or belongings left in it. The Landlord's agent also claimed that the Tenant made no attempt to participate in a move out inspection. The Landlord's agent further claimed that the Tenant did not clean the rental unit and left junk and garbage behind at the end of the tenancy. The

Landlord also relied on an unsigned witness statement of her previous tenant who claimed that he left the rental unit clean at the end of his tenancy. The Landlord further relied on an e-mail from a realtor who claimed that when he viewed the rental unit “in the winter months” (which the Tenant admitted was February 11, 2012) it was messy and dirty and had stuff in the yard under the snow. The Landlord also claimed that she was advised by the Tenant’s co-tenant that they had left previous tenancies dirty.

The Tenant claimed that the rental unit was not reasonably clean at the beginning of the tenancy and as a result, the Landlord’s agent had to return after the previous tenant left to do additional cleaning. The Tenant also claimed that at the beginning of the tenancy there were a number of items left on the rental property either by the Landlord or the previous tenant which included paint cans, screens, a large freezer, wood, and other items. The Tenant said she and her co-tenant moved these items into the basement. The Tenant further claimed that there were some condition issues at the beginning of the tenancy such as cracks and nicks in the walls, water damage to a kitchen wall, dog hair (from the previous tenant) in the air vents, a buckled carpet and other miscellaneous damages.

The Tenant said she and her co-tenant moved all of their belongings out of the rental unit at the beginning of February 2012 and were therefore able to spend a significant amount of time cleaning everything. The Tenant admitted that she and her co-Tenant may not have cleaned the compressor behind the refrigerator. The Tenant also admitted that she initially had to leave some belongings in the yard that were frozen under the snow but claimed that she made arrangements with the Landlord to remove them at a later time. The Tenant admitted that there may have been some other belongings left under snow in the yard.

The Tenant denied that she was responsible for any repairs and argued that those for which the Landlord was seeking to be compensated were not her responsibility. The Tenant denied that the fireplace mantle needed painting or that there were loose hinges. The Tenant also denied that there was a damaged heat duct in the bathroom and claimed that cracks in the paint were due to the house shifting. The Tenant said she replaced the furnace filter and steam cleaned the carpets at the end of the tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines “reasonable wear and tear” as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.”

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the

Regulations and provide a copy of it to the Tenant (within 7 to 15 days). The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. Similarly, the purpose of a condition inspection report at the end of the tenancy is to provide some objective evidence of whether the Tenant has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and that any damages occurred during the tenancy and were the result of an act or neglect of the Tenant rather than reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord did not complete a move in or a move out condition inspection report and I find that there is no other reliable evidence (such as photographs) to support her claim. Instead the Landlord relied on unsigned witness statements which I find are hearsay and inherently unreliable because the deponents did not attend the hearing to confirm if they made those statements or to be questioned as to the truthfulness or accuracy of their statements. Consequently, I give the Landlord's witness statements little weight. Furthermore, I find that the Landlord's realtor's statement is of little use given that it stated only what the rental unit appeared like on February 11, 2012 when the tenancy did not end for a further 2 weeks.

Given the contradictory evidence of the Parties on the issue of cleaning and repairs, and in the absence of any reliable corroborating evidence from the Landlord (who bears the onus of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant is responsible for the cleaning and repair expenses sought by the Landlord. Although the Tenant admitted that she did not clean the refrigerator compressor and may have left some belongings under the snow in the yard, (for the reasons set out above) I find that there is insufficient evidence to conclude that there was *in fact* hair on the compressor or that there were items left in the yard that warranted 2 hours of labour by her agent. Consequently, the Landlord's claim for cleaning and repair expenses is dismissed in its entirety without leave to reapply.

As the Landlord has not proven that the Tenant was responsible for cleaning and repairs at the end of the tenancy, I find that there is insufficient evidence to award the Landlord compensation for a loss of rental income for the month of March 2012 and that part of her claim is also dismissed without leave to reapply. I find that there is sufficient evidence that the Tenant's co-tenant abandoned a vehicle on the rental property at the end of the tenancy and as a result, I find that the Landlord is entitled to recover her towing expenses of \$70.56. The Landlord also sought at the hearing to amend her

claim to include an amount for vehicle storage however, as the Tenant has had no notice of this claim I denied the Landlord's application to amend her application.

As the Landlord has been unsuccessful on the majority of her claim, I find that it would not be appropriate to order the Tenant to bear the cost of the filing fee paid by the Landlord for this proceeding and that part of her application is also dismissed.

Conclusion

The Landlord's application for cleaning and repair expenses and to keep the Tenant's security deposit is dismissed without leave to reapply. A Monetary Order in the amount of **\$70.56** 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 22, 2012.

Residential Tenancy Branch