



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Newport Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord's application filed January 25, 2013: MND; MNDC; MNSD; FF

Tenant's application filed April 8, 2013: MNDC; FF

Introduction

This Hearing was scheduled to consider cross applications. The Landlord seeks a monetary award for damage and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply a portion of the security deposit towards partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant's forwarding address, by registered mail. The Landlord's agent did not provide the date that the documents were sent by registered mail, however the Tenant stated that she received the Notice of Hearing documents and copies of the Landlord's documentary evidence in "late January, 2013".

The Tenant testified that she sent the Landlord her Notice of Hearing documents and copies of her documentary evidence by overnight priority post on April 9, 2013. The Tenant provided the tracking numbers for the documents. The Landlord's agent admitted receiving the documents. It is important to note that the Tenant stated that she also provided documentary evidence to the Residential Tenancy Branch, but these were not uploaded into the electronic data base, nor were they present on the case file. I accepted the Tenant's affirmed testimony that she had provided the documents to the Residential Tenancy Branch and the Landlord faxed the documents to me during the Hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary award for cleaning charges?
- Is the Tenant entitled to compensation for loss of use of a portion of the rental unit?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. This fixed term tenancy began on February 1, 2012 and ended on January 31, 2013. The Tenant paid full rent for the month of January, 2013, but vacated the rental unit on or about January 2, 2013. A move-out condition inspection took place on January 14, 2013, with the Tenant being represented by an agent. A copy of the Condition Inspection Report was provided in evidence. The Tenant's agent did not agree to any deductions from the security deposit.

The rental unit is a 2 bedroom, 2 bathroom suite with a large deck and hot tub. Monthly rent was \$1,950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$975.00 at the beginning of the tenancy.

The Landlord returned a portion of the security deposit (\$435.80) along with a copy of the completed Condition Inspection Report to the address that the Tenant provided by e-mail, on January 28, 2013. The Landlord seeks to retain the residue of the security deposit for the cost of cleaning the rental unit, calculated as follows:

Cost of Shampooing carpets	\$212.80
Cost of cleaning rental unit	\$203.84
Cost of cleaning/servicing hot tub and cleaning the deck and garage	<u>\$123.20</u>
TOTAL	\$539.84**

** note: there is an addition error in the Landlord's application, which claims a total of \$539.20. **

The Landlord's agent stated that it was a term of the tenancy agreement that the hot tub be drained and cleaned at the end of the tenancy, but it was not done.

The Tenant stated that she hired a cleaner and that the rental unit was reasonably clean at the end of the tenancy. She stated that the Condition Inspection Report shows check marks beside all of the rooms, which she submitted means that the condition of the rental unit was "satisfactory". Therefore, the Tenant is disputing the Landlord's application for the cost of cleaning the rental unit. The Tenant submitted a copy of an e-mail from the cleaner in evidence.

The Tenant agreed that the hot tub and deck were overlooked, but stated that it should not have taken more than one hour to empty and clean the hot tub and deck. She stated that this was done for her at the beginning of the tenancy and the worker only took one hour at \$47.50 an hour. The Tenant submitted that one hour at the current rate of \$55.00 was reasonable.

The Tenant stated that the carpets were thoroughly vacuumed at the end of the tenancy and did not require shampooing except for possibly the stairs. She testified that the Landlord's own documentary evidence shows that it cost \$66.00 to shampoo the stairs at the beginning of the tenancy. The Tenant submitted that \$66.00 was a reasonable amount to pay for shampooing the carpets at the end of the tenancy.

The Tenant testified that the hot tub and deck were a major draw when she agreed to rent the rental unit, but that she did not have use of either for the first 2 months, 3 weeks of her tenancy. She stated that none of the outlets or lights worked properly on the deck and that turning them on would either trip the breaker in the rental unit, or the bulbs would explode causing a safety hazard. In addition, the hot tub would not get hot despite being serviced.

The Tenant testified that the Landlord's agent ("N") had promised to provide her with compensation once the term of the lease had expired. She stated that N agreed to compensation in the amount of 15% of the rent for 2.66 months (\$778.05 in total). The Tenant provided copies of e-mails between the Tenant and N in evidence.

The Tenant's witness gave affirmed testimony. She was an occupant at the rental unit. The witness stated that she spoke to N in mid to late April, 2012, and that N agreed to compensate the Tenant in the form of a 15% rent reduction for loss of use of the hot tub and deck. The witness testified that N said the compensation would come off the last month's rent.

The Landlord's stated that N no longer works for the Landlord, but that he had spoken with N, who has denied making any such offer of compensation. The Landlord's agent stated that he thought somewhere in between \$100.00 to \$200.00 was a more reasonable amount to pay in compensation. The Landlord's agent stated that use of the hot tub and deck was impacted during the winter months when the Tenant would not normally be using it anyway. The Landlord's agent stated that the deck was approximately 400 square feet and that the suite (not including the deck) was approximately 920 square feet.

The Tenant replied that winters are very mild where the rental unit is situated, and submitted that winter is precisely the time when hot tubs are used because it is too warm in the summer months.

Analysis

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Regarding the Landlord's Application:

Section 36 of the Act provides for how security deposits must be handled at the end of a tenancy. In this case, the Landlord applied against the security deposit within 15 days of the date of the condition inspection, and therefore Section 36(8) of the Act does not apply.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. Based on the testimony and documentary evidence, including the Condition Inspection Report, I find that the Tenant left the rental unit reasonably clean at the end of the tenancy. Landlords may wish to clean rental units beyond that standard of cleanliness for incoming occupants, and in fact the Landlord did so for this Tenant at the beginning of her tenancy, but I find that the Tenant was not required to do more than was done inside the rental unit when she vacated with the exception of the carpets. Therefore **the Landlord's request to keep \$203.84 of the security deposit for general cleaning is dismissed.**

Residential Tenancy Branch Policy Guideline 1 provides that Tenants are required to shampoo carpets regularly and at the end of the tenancy when the tenancy has been one year. The tenancy agreement indicates that the carpets were cleaned by a professional cleaner at the beginning of the tenancy. In this case, the Tenant admitted that the carpets were not shampooed at the end of the tenancy. **I find that the Landlord is entitled to compensation for the cost of shampooing the carpets in the demonstrated amount of \$212.80.**

There is a clause in the tenancy agreement which states, "The Tenant agrees to leave the hot tub drained and thoroughly clean when the Tenant vacates the Rental Unit." In this case, the Tenant agrees that this was overlooked at the end of the tenancy. The Condition Inspection Report indicates that the garage floor had dust and debris and that there were leaves on the deck. Therefore, **I allow the Landlord's demonstrated cost of draining and cleaning the hot tub, and cleaning the garage and lower deck in the amount of \$123.20.**

The Landlord has established a total claim of \$336.00. I order that the Landlord retain that amount from the security deposit and return the remainder in the amount of \$639.00 to the Tenant. The Landlord has already returned \$435.80 to the Tenant. Therefore **I order the Landlord to return the balance of \$203.20 to the Tenant.**

Regarding the Tenant's Application:

Based on the testimony and documentary evidence provided, I am satisfied that the Tenant did not have use of the hot tub for the first 2 2/3 months of the tenancy. The parties had conflicting hearsay evidence with respect to whether or not N had agreed to compensation in the equivalent of 15%, but the Landlord did agree that the Tenant was entitled to some compensation.

The Landlord's agent N's e-mail to the Tenant, dated April 13, 2012 states, in part: "**We will definitely make restitution to you** for the problems with the suite. As far as I know we have to wait until the end of the lease to make sure you complete the term of the lease. I will call you when I know what time and day the electrician will be coming to **fix the lights and the hot tub.** Sorry again for the inconvenience." (emphasis added)

I accept the Tenant's testimony that she would have used the hot tub and deck had it been in working order. However, I find the requested compensation of 15% is high considering the purpose for the deck and the hot tub. Outdoor living space (recreational area) is different from indoor living space. People use kitchen, bathroom and bedroom facilities daily, but possibly not barbeques or hot tubs. The Tenant did not provide evidence of how often she would have used the hot tub or deck.

Pursuant to the provisions of Section 67 of the Act, I find that compensation in the amount of 10% of the rent is reasonable. Therefore, I find that the Tenant has established a monetary award in the amount of **\$518.70** (\$195.00 x 2 2/3 months) in compensation for the devalued tenancy due to loss of use.

Recovery of filing fees:

Both parties have been partially successful in their applications, and I order that they each bear the cost of their filing fees.

Conclusion

The Landlord has established a monetary award in the amount of **\$336.00**. The Landlord has already returned \$435.80 of the \$975.00 security deposit.

The Landlord is hereby ordered to return the balance of the security deposit in the amount of **\$203.20** to the Tenant. The Tenant has established compensation for loss of use of the rental unit in the amount of **\$518.70**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$721.90** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 29, 2013

Residential Tenancy Branch