



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, on May 27, 2013. She testified that she mailed her amended Application for Dispute Resolution and copies of her documentary evidence to the Tenant, by registered mail, on August 9, 2013. The Tenant acknowledged service of the documents.

The Tenant testified that she sent copies of her documentary evidence to the Landlord by regular mail. The Landlord acknowledged receipt of the Tenant's documents on July 16, 2013.

Issues to be Decided

- Is the Landlord entitled to a monetary award for the cost of replacing damaged laminate floors; cleaning the rental unit; serving the Tenant with documents; and replacing a lost parking pass and a remote control device?
- May the Landlord deduct her monetary award from the security and pet damage deposits?

Background and Evidence

This tenancy began on May 25, 2012, and ended on May 24, 2013. Monthly rent was \$1,680.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$840.00 and a pet damage deposit in the amount of \$840.00 at the beginning of the tenancy.

The parties met for an inspection of the rental unit on May 24, 2013. A copy of a Condition Inspection Report was provided in evidence. The Tenant signed the Report, agreeing that it fairly represented the condition of the rental unit. The Tenant indicated on the Report that she agreed to the following deductions from the security and pet damage deposit: "to be decided".

The Landlord WF gave the following testimony:

WF testified that the rental unit was three years old and that WF's daughter was the second owner. She stated that the rental unit was used as a vacation home by the first owner and that the Tenant was the first person to rent it.

WF stated that the floors in the kitchen, both bedrooms, entrance to the patio and the living room were damaged by water or pet urine. WF stated that the Tenant lost her parking pass and a remote control to the fireplace. WF testified that the Tenant left food in the fridge and garbage at the rental property.

WF testified that the charge for replacing the parking pass would "probably be" about \$100.00, because that is the administration fee that the strata corporation charges for most things.

She stated that she called the manufacturer about replacing the fireplace remote control and was advised that there was no way to get another remote control and that she would have to replace the fireplace. A new fireplace would cost \$498.00 plus tax and installation charges. The Landlord estimated that the total cost would be approximately \$700.00.

WF testified that she paid a cleaning service to remove the food from the fridge and dispose of some garbage that the Tenant left. She stated that the cleaning service charged her a "minimum charge" of \$200.00.

The Landlord stated that she would like to replace the whole floor because the flooring company would not guarantee that replacement boards would match the original colour of the floor. She stated that the flooring company gave her a quote of \$1.99 per square foot plus labour to replace the floor. WF testified that she has not repaired or replaced the floors yet, but will do so.

WF submitted that some of the damage could be attributed to normal wear and tear, but that the Tenant should pay a portion of the cost of repairs. WF stated that she would be satisfied with keeping the security and pet damage deposits, in the total amount of **\$1,680.00**, in total satisfaction of her monetary claim.

WF provided photographs, a receipt for cleaning and copies of e-mails in evidence.

The Tenant LB gave the following testimony:

LB testified that there was minimal damage to the floors and that she did not notice any damage to the floors at the time of the move-out inspection. She stated that the Landlord first advised her about the damage to the kitchen floor on April 22, 2013, by e-mail. The Tenant testified that there was spare flooring in storage which could have been used to repair the kitchen floor.

The Tenant stated that on May 9, 2013, the Landlord advised her of two other spots that required repair; one in the living room and one by the sliding door.

On May 14, 2013, the Tenant got a quote for repairing the floors. A copy of the quote in the amount of \$803.20 was provided in evidence.

The Tenant submitted that the damage was minimal and in high traffic areas and that there was no evidence that the damage was caused by her dogs. The Tenant stated that it was probable that the water damage in the kitchen was caused by moisture from the dishwasher or the fridge.

LB stated that she could not clearly see the photographs that the Landlord provided because the copies that she was provided were black and white and of poor quality.

LB testified that she paid \$156.45 for the toilet to be unclogged and \$120.00 for new blinds to be installed at the end of the tenancy. A copy of the invoice for the toilet repair was provided in evidence.

LB agreed that she was responsible for losing the fireplace remote control and the parking pass. She stated that she researched on-line and found that she could get a replacement remote control. She testified that the deluxe version was **\$100.00**, which she was prepared to pay.

LB testified that she called the strata corporation and was advised that it would cost **\$20.00** to replace the lost parking pass, which she would be prepared to pay for.

The Tenant agreed that she left a small amount of food in the fridge, which she had intended to eat on the last day of the tenancy, but the Landlord told her she would dispose of it. She stated that she left no garbage inside or outside. The Tenant provided colour photocopies of photographs in evidence, which depict the state of

cleanliness of the rental unit at the end of the tenancy. She also provided a written statement of a cleaner who cleaned the rental unit at the end of the tenancy.

Analysis

During the course of the Hearing, the parties attempted to reach a settlement agreement, but were unsuccessful.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The photographs provided by the Landlord indicate that there is a small amount of lifting of the laminate in the master bedroom, kitchen and the second bedroom. The Landlord did not provide photographs of damage to any other floors in the rental unit. Certain types of floor coverings are not practical in certain kinds of rooms; for example, carpet in a bathroom, or laminate in a kitchen. It is probable that water or liquid will spill on a kitchen or bathroom floor, and this is attributable to normal wear and tear through daily living. The Condition Inspection Report that was provided in evidence is not filled out completely or correctly. Based on the testimony and documentary evidence provided, I find that the Landlord has not provided sufficient evidence to prove parts 2, 3 or 4 of the test for damages as set out above. This portion of her application is dismissed.

Section 37 of the Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. Based on the Tenant's documentary evidence including the photographs and her cleaner's written statement, I find that the Tenant left the rental unit reasonably clean and empty, with the exception of a few small items of food left in the refrigerator. I find the bill presented in the amount of \$200.00 is excessive and therefore award the Landlord a nominal amount of **\$25.00** for this portion of her application.

The Tenant admitted responsibility for the lost parking pass. As stated above, the onus is on the Landlord to provide sufficient evidence of the cost of replacing the parking pass. The Landlord provided insufficient evidence of the cost to replace the parking pass; however, the Tenant testified that it would cost \$20.00. Therefore, I award the Landlord the amount of **\$20.00** for this portion of her claim.

The Tenant agreed that she had lost the remote control to the fireplace. The Landlord provided no documentary evidence to support her claim that it would be necessary to replace the whole fireplace, or that the cost would be \$700.00. However, the Tenant stated that it was possible to replace the remote control and that a deluxe remote control cost \$100.00, which she was prepared to pay. Therefore, I allow the Landlord's claim in the amount of **\$100.00** for this portion of her application.

There is no provision in the Act for recovery of the cost of serving another party with documents. This portion of the Landlord's application is dismissed.

I find that the Landlord has established a monetary award in the total amount of **\$145.00**.

The Landlord has been partially successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the deposits. I order the Landlord to return the remainder of the security deposit and the pet damage deposit to the Tenant forthwith. The Tenant's copy of this Decision is accompanied by a Monetary Order, calculated as follows:

Security deposit and pet damage deposit	\$1,680.00
Less Landlord's monetary award (\$145.00 plus \$50.00 filing fee)	<u>-\$195.00</u>
BALANCE DUE TO TENANT	\$1,485.00

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$1,485.00** representing return of the balance of the security and pet damage deposit after set-off of the Landlord's monetary award. This Order may be served on the Landlord and 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: September 03, 2013

Residential Tenancy Branch