



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNDC; MNSD; FF

Introduction

This Hearing was scheduled to consider the Landlord's Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and pet damage deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written, electronic and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Landlord served the Tenant with the Notice of Hearing documents by mail. It was also determined that the parties exchanged their documentary and electronic evidence and that the parties were able to open each other's USB stick.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The Tenant testified that she had filed a counterclaim to the Landlord's Application. The Tenant's counterclaim was filed too late to be added to today's Hearing and has been given a date for a hearing in May, 2015. During the Hearing, the parties attempted to come to an agreement with respect to both of their claims but were unsuccessful. I explained to the parties that I would be making a decision with respect to the Landlord's Application only and that the Tenant's Application would be considered on the May hearing date.

Issues to be Decided

- Is the Landlord entitled to a monetary award for repairs to a lawnmower; replacement of sod; replacing a towel rack; cost to clean the rental unit at the end of the tenancy; and the cost to paint the rental unit and remove paint splatters from floors, ceiling and cupboards?

Background and Evidence

This tenancy began in November, 2011 and ended on July 31, 2014. Monthly rent was \$1,200.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$300.00 at the beginning of the tenancy.

A copy of a move-in Condition Inspection Report, signed by both parties, was provided in evidence. There was no move-out Condition Inspection Report, which complies with the requirements of the regulations, completed at the end of the tenancy.

The Landlord gave the following testimony:

The Landlord testified that he believed that the rental unit was painted about three years before the Tenant moved in. He stated that the paint was still in good condition at the beginning of the tenancy, but the Tenant was not happy with the paint colours and wanted to paint the walls. He stated that he agreed to pay for the paint and that the Tenant could do the painting. The Landlord stated that he also gave her a one-time rent reduction of \$200.00 in compensation for her labour. The Landlord testified that the Tenant did a sloppy job of painting, leaving paint splatters on the ceilings, floors and cupboards.

The Landlord stated that he got an estimate in the amount of \$3,275.00 for the cost of repainting, a copy of which was provided in evidence. He testified that he chose to paint the rental unit himself in November, 2014, and that he chose to use darker colours which were similar to the colours the Tenant had used. He also chose not to paint the ceiling to cut costs. The Landlord stated that he painted all walls with the exception of the "upstairs bedroom", at a cost of \$1,522.50.

The Landlord testified that the Tenant broke the Landlord's lawnmower by running over a shoe. The Landlord seeks to recover the cost repairing the lawnmower in the amount of \$100.00.

The Landlord stated that the Tenant asked permission to put in a garden on the rental property. He stated that he told the Tenant that she could do so, but that she would

have to replace the sod when she moved out. The Landlord testified that the Tenant did not replace the sod. He provided an estimate in the amount of \$178.50 for “sod pick-up and delivery” and “prepping and rolling out sod over old garden”.

The Landlord testified that the rental unit was not reasonably clean at the end of the tenancy. In particular, he stated that the floors, window sills and carpets were dirty. The Landlord provided a copy of a receipt in the amount of \$173.24 from a carpet cleaning company in evidence.

The Landlord seeks a monetary award, calculated as follows:

Repair lawnmower	\$100.00
Clean house and carpet shampoo	\$200.00
Replace sod	\$178.50
Repair walls and paint	\$1,522.50
Replace towel rack	<u>\$30.00</u>
TOTAL	\$2,031.00

The Tenant gave the following testimony:

The Tenant disputed the Landlord’s claim in its entirety. She stated that there were holes in the walls when she moved in and that the Landlord had agreed that she could paint and offered to help her with painting the higher areas. She stated that the Landlord gave her the wrong kind of paint. The Tenant submitted that the paint was 3 ½ years old when she moved in and therefore the Landlord should have painted during the tenancy.

The Tenant testified that the lawnmower was old and “not worth \$50.00 to begin with”. She stated that she told the Landlord when it broke, but the Landlord was not interested in looking at it. She said that the Landlord wanted her to buy a used lawnmower to replace it or pay for the repairs.

The Tenant testified that she hired a professional cleaner to clean the rental unit at the end of the tenancy. She said the carpets were stained prior to her moving in.

The Tenant stated that she offered to put down grass seed where the garden was and that she did not believe she was responsible for the cost of putting in sod. She stated that the grass was of poor quality and full of weeds when she moved into the rental unit.

The Landlord gave the following response:

The Landlord stated that he did not agree to help the Tenant paint and that he did not give her the wrong kind of paint.

The Landlord submitted that the Tenant broke the lawnmower and should be responsible for the cost of fixing it.

The Landlord stated that the lawn was in good shape before the Tenant put in the garden.

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. Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

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**.

With respect to the Landlord's Application, I make the following findings:

1. Cost to repair lawnmower: The Landlord did not provide sufficient evidence of the cost of repairs to the lawnmower (for example, a copy of an estimate or receipt for repairs). Therefore I find that the Landlord has not satisfied part 3 of the test for damages. However, the Tenant did not dispute the Landlord's allegation that the lawnmower was broken as a result of the Tenant running over a shoe. Therefore, I provide the Landlord with a nominal amount of **\$25.00** for the cost of repairing the lawnmower.
2. Landlord's claim for cleaning: Section 35 of the Act requires landlords to complete a condition inspection report in accordance with the regulations at the

end of the tenancy. Section 21 of the regulations states that a condition inspection report completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless there is preponderance of evidence to the contrary. A tenant is required to shampoo carpets at the end of a tenancy, particularly if the tenant has a pet. In this case, the invoice for carpet cleaning refers to "soil, spots and spills" on the carpet and not just stains. I am satisfied that the Landlord has provided sufficient evidence to support a claim for the cost of cleaning the carpet in the amount of **\$173.24**. With respect to the Landlord's remaining claim in the amount of \$26.76, I find that the Landlord has not provided a preponderance of evidence to support this portion of his claim and therefore has not met part 1, 2 or 3 of the test for damages as set out above.

3. Replace lawn: The Residential Tenancy Branch Guidelines provide that unless there is an agreement to the contrary, when a tenant has changed the landscaping, the tenant must return it to its original condition at the end of the tenancy. In this case, I find insufficient evidence that the Landlord agreed that the garden could remain. The Tenant could have put down grass seed prior to the end of the tenancy and tended it until it grew; however, the Tenant didn't. I find that the Landlord is entitled to his cost of replacing the lawn with sod in the amount of **\$178.50**.
4. Repair the walls and repaint the rental unit: Policy Guideline 40 provides a useful live for indoor paint of 4 years. Policy Guideline 1 provides that a landlord is responsible for repainting the rental unit at reasonable intervals. It is undisputed that the Landlord agreed that the Tenant could repaint the rental unit during the tenancy. I find that there was insufficient evidence that the Tenant alleged that she was a professional painter and therefore I find that the Landlord could not reasonably expect that the Tenant would do a professional job. Because of the agreement the Landlord made that the Tenant could repaint and the fact that the paint had exceeded its useful life, I find that the Landlord is not entitled to recover the cost of repainting the rental unit at the end of the tenancy. This portion of the Landlord's claim is dismissed.
5. Replace the towel rack: The Landlord did not provide sufficient evidence with respect to this portion of his monetary claim. Therefore, I dismiss this portion of his claim.

The Landlord has been partially successful in his Application and I find that he is entitled to recover the **\$50.00** filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct his monetary award from the deposits. I Order that the Landlord return the balance of the deposits to the Tenant forthwith.

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Landlord's monetary award:

Nominal award for fixing the lawnmower	\$25.00
Cost of shampooing the carpet	\$173.24
Cost to replace the lawn	\$178.50
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$426.74

Set off of deposits:

Security deposit	\$550.00
Pet damage deposit	\$300.00
Less Landlord's monetary award	<u>-\$426.74</u>
BALANCE OF DEPOSITS DUE TO TENANT	\$423.26

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$423.26** 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: March 09, 2015

Residential Tenancy Branch

