Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD MNDC FF
Landlord: MNSD MND FF

Introduction

This hearing was convened in response to cross-applications by the parties. The landlord filed their application on December 11, 2019 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. A monetary Order for damage – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on December 17, 2019 for;

1. An Order for return of their security and pet damage deposits - Section 38
2. A monetary Order for loss – Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given opportunity to discuss and settle their dispute to no avail. The parties respectively acknowledged receiving all the evidence of the other, as submitted to me, by registered mail. The parties were informed that despite their abundance of evidence only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present *relevant* testimony and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged they had presented all the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The tenancy has ended. The undisputed evidence in this matter is as follows. The tenancy began February 15, 2017 as a written tenancy agreement for a house (rental unit). The hearing had benefit of the written Tenancy Agreement. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in respective amounts of $1650.00, for a total of $3300.00, which the landlord retains in trust. The payable rent under the tenancy agreement was in the amount of $3300.00 due in advance on the first day of each month. The parties agree there was a *move in* condition inspection at the outset of the tenancy and there was a *move out* condition inspection conducted between the tenant and the landlord. Both parties provided a copy of a Condition Inspection Report (CIR), which the parties agree was completed November 30, 2019. With some minor differences in the copies put before this proceeding the parties disagreed in respect to the administration of the deposits at the time of the inspection, however subsequently agreed the tenant owed $220.50 for carpet cleaning, as reflected in the landlord's invoice for same. The tenant highlighted the landlord had not signed the move out portion of the CIR. The tenant also testified their submitted copy was that which they were presented and signed at the move out inspection, of which they took a photo image after doing so. The landlord acknowledged that their copy was subsequently adjusted to reflect a 6 inch x 6 inch "patch" of the carpet in the middle of the upper "bedroom(3)", as well as several references to anomalies of the walls and trim. The parties argued about their disputatious relationship and the landlord's claim the tenant was intrusive and inappropriate during the move out inspection, which at the time caused them stress and anxiety. It is undisputed the tenant provided a forwarding address at the time of the move out inspection of November 30, 2019. Subsequently, the landlord claims they sent a copy of the CIR to the tenant's forwarding address by regular mail, which the tenant denied receiving. None the less, the tenant acknowledges receiving the landlord's version of the CIR as part of the landlord's evidence for the proceeding.

Landlord's application

The landlord seeks costs for replacement of a cracked glass cooktop (stove hob) as reflected in the CIR, and which item is not disputed by the parties as being cracked. The parties agree that the stove hob does not indicate signs of an impact. The tenant claims the hob cracked following a water spill from a pot, which should not have occurred under normal use. The landlord claims that more likely the glass cooktop cracked due to a pot being slammed onto the glass surface. The landlord claims $145.95 for an estimate to replace the glass hob, and $681.45 for its eventual replacement, for a total claim of $827.40. The landlord submitted receipts for the related costs.

The landlord further claims for replacement cost of the subject bedroom carpeting in which they found a 6x6 carpet patch. It is undisputed the carpeting was new at the start of tenancy. The landlord submitted an email estimate for carpeting, underlay and installation of $450.00. In respect to this claim, the testimony of the parties is in contrast. The tenant denies the existence of a carpet patch. They deny the carpeting was patched and any reason for a patch. The tenant claims there was no patch on the day of the move out inspection, and that their CIR did not indicate a patch. The landlord claims they viewed a patch in the carpeting on the day of the move out inspection, however only placed it on the CIR after it was signed by the tenant. The landlord surmised that the tenant's dog may have somehow compromised the carpeting. The tenant denied the carpeting was damaged or patched by them.

Tenant's application

The tenant seeks the return of their two deposits (minus $220.50 for carpet cleaning) of $3079.50.

The tenant also seeks rent abatement of $6600.00, or equivalent of $200.00 per month of occupancy of the rental house, for what they claim to be an overpayment of rent, following the landlord's breach of certain promises or permissions extended the tenant at the outset of the tenancy respecting the tenant's ability to sublet a portion of the house. The tenant testified their claim represented, "extra money we had to pay" for a verbal agreement at the outset of the tenancy, later breached by the landlord. The landlord denied breaching the agreement of the tenancy. The parties agreed the tenancy became mired in dispute following complaints to the landlord and the City the tenants were using the rental house for AirBnB purposes to which the City and landlord objected. The parties agreed that the tenancy agreement did not provide terms linking rent to promises or permissions between them.

Analysis

*A copy of the Residential Tenancy Act, Regulations and other publications are available at **www.gov.bc.ca/landlordtenant**.*

The onus is on the respective parties to prove their claim on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

Landlord's claim

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In respect to the landlord's claims, the test established by Section 7 is as follows,

1. Proof a loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss claimed, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In respect to the landlord's claim for a cracked (glass) stove hob; in the absence of more definitive evidence as to it's cause, I find the parties' respective explanations for the occurrence equally likely. None the less, I find that in this type of claim the onus to prove a claim rests with the applicant landlord that the loss was the sole result of the actions or neglect of the tenant, and not reasonable wear and tear as otherwise purported by the tenant, for which the tenant would not be responsible. I find that when parties present equally likely evidence, such as in this matter, an applicant has not sufficiently met their onus on a balance of probabilities as prescribed by Section 7 of the Act, and therefore I must **dismiss** this portion of the landlord's claim, without leave to reapply.

In respect to the landlord's claim for carpeting replacement due to a 6-inch x 6-inch carpet patch, I am mindful of the intentions and purpose of a Condition Inspection Report. I am satisfied that the copy of the CIR submitted by the tenant represents the offering of the landlord to the tenant for signing. As an instrument of the landlord, whether signed by the landlord or not, a CIR is the landlord's own document and evidence of their acceptance as to the condition of the rental unit.

Residential Tenancy Regulation 21 states as follows:

> **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.

I find that the CIR was completed in accordance with the Act and Residential Tenancy Regulation 21 when offered to the tenant for their signature, and therefore represents the state of the rental unit at the time of the move out inspection. I find that the CIR submitted into evidence by the tenant does not reference a patch in the carpeting within the report and as a result I must **dismiss** this portion of the landlord's claim, without leave to reapply. As a result, the landlord's claim is effectively dismissed in its entirety.

Tenant's claim

I find the tenant provided their forwarding address on November 30, 2019 and the landlord filed their application within the required 15 days to do so in accordance with Section 38(1) of the Act. As a result, the tenant is not entitled to the doubling provisions afforded by Section 38(6) of the Act.

During the hearing the parties were informed that the tenants would be returned their tenancy deposits, unless the landlord was entitled to retain any of them or any other amount agreed by the parties. As I have dismissed the landlord's application it is only appropriate that I return to the tenants their security and pet deposits, minus the landlord's cost for carpet cleaning, in the resulting amount of **$3079.50.**

In respect to the tenant's claim for rent abatement of $200.00 per month or $6600.00, I find the parties contracted for the tenant to pay the landlord $3300.00 each month in return for possession of the rental house any agreed terms, and thereby were obligated to satisfy this amount. I find the tenancy agreement does not define terms, other than the standard terms, upon which the rent was payable. The tenant has not presented

evidence the landlord breached a term of the agreement upon which the amount of the rent was predicated.

In this matter, I find that the legal principle respecting **parol evidence** aptly applies. The **parol evidence rule** is a legal principle that preserves the integrity of written documents, such as a contractual tenancy agreement, by prohibiting the parties from attempting to rely on prior, contemporaneous, verbal or written declarations not referenced in the written document. The rule works like this.

- The **parol evidence rule** applies after the parties put their final agreement in writing.
- The parties must intend that the written contract is complete and final.
- No **parol,** or extra evidence, will be allowed to contradict or modify the written contract.

In general, the **parol evidence rule** prevents the introduction of evidence of prior negotiations, agreements, or, in this matter promises or permissions that contradict, modify or vary the contractual terms of the actual written contract when the written contract is intended to be a complete and final expression of the parties' agreement. I find that if the parties felt strongly that the amount of rent was linked to certain promises or permissions, such links within the written agreement would reveal themselves. In this matter, I find that the written agreement is the sole agreement guiding terms of this tenancy; and, I find insufficient evidence supporting that the landlord breached the written agreement. As a result, I must **dismiss** the tenant's claim of a rent abatement, without leave to reapply.

The tenant's total award is the sum of $3079.50. The tenant is further entitled to recover their filing fee. *Calculation for a Monetary Order is as follows.*

Landlord's award on application	$0.00
Tenant's award	$3079.50
filing fee - tenant	$100.00
Monetary Order to tenant	**$3179.50**

I Order the landlord may retain $120.50 from the tenant's security and pet damage deposits and must return the balance of $3179.50 to the tenant, forthwith.

To perfect the above Order,

I **grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$3179.50.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed. The tenant's application, in those parts compensable, has been granted.

This Decision is final and binding.

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: February 19, 2020

Residential Tenancy Branch