

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND MNDC MNR MNSD O OPB OPR FF

Introduction

This matter dealt with an application by the landlord for an order of possession, a monetary order for unpaid rent, a monetary order for damages and an order to recover the filing fee for the cost of this application.

The tenant did not appear at the hearing, but the landlord has given evidence that the tenant personally served the Notice of Hearing and the Application for Dispute Resolution on November 22, 2008. I am satisfied that the tenant has been duly served and find that the hearing will continue in his absence.

At the outset of the hearing, the landlord advised that the tenant had vacated the rental unit on November 21, 2008. I find that an order of possession is no longer required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit, and if so, in what amount?

Background and Evidence

The facts of this tenancy are as follows:

- the tenancy commenced on February 1, 2008
- the monthly rent payable was \$1850.00
- the landlord and tenant entered into a written "Residential Lease with Option to Purchase Agreement"

- the agreement included the provision of a non-refundable security deposit of \$3000.00 which was paid to the landlord
- the tenant vacated the property on or about November 21, 2008 and did not exercise the option to purchase
- the rent was not paid for the month of November of December 2008

The landlord's application claims damages and rent as follows:

- replace glass window \$414.58
- house cleaning \$650.00
- rent November 2008 \$1850.00
- rent December 2008 \$1850.00
- replace chandelier \$450.00
- repairs to blinds, curtains, bathroom fans, stains on mantle, loose banister, bathroom vanities, screen door, stair caps, broken door, hole in wall and painting, shelving repair \$550.00
- carpet replacement \$3519.81

Analysis

I have reviewed the agreement signed by the landlord and the tenant in this matter in order to determine whether I have jurisdiction under the Residential Tenancy Act. The Act does not normally apply where a purchase has occurred or is imminent and only applies to genuine tenancies. I have determined that as no sale took place I find that the Act does apply and that I have jurisdiction to make a decision in this matter.

In finding that I have jurisdiction, I am required to examine the agreement and its contents to determine if it complies with the Act. I note that paragraph 7 deals with a security deposit of \$3000.00 and it is noted that this deposit is non-refundable. I find that this particular paragraph is not in accordance with the Act and I will therefore treat it as a security deposit under the Act and deal with it accordingly.

I find that the evidence presented by the landlord is undisputed and is supported by photographs that have been submitted. I accept the evidence of the landlord as to the magnitude of the damage to the rental unit.

I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$3700.00. I further find that the landlord is entitled to a monetary order for all of the above items (with the exception of the carpet replacement) in the amount of \$2064.58.

In regards to the carpet replacement, I find that the life span of normal carpet is 10 years. This carpet was new in December 2006 and as such I award the amount of \$3519.81 reduced by 20% to cover the two years of use and find the balance owing to be \$2402.93.

I also award the landlord the filing fee of \$50.00.

Conclusion

The amount of \$3000.00 paid pursuant to the agreement is to be dealt with as a security deposit, and I find its current value including interest to be \$3038.48. The landlord may retain the security deposit plus interest, and I grant the landlord a monetary order for the balance of \$5179.03. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: December 9, 2008