



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

SS; MNR; MND; MNSD; FF

Introduction

This is the Landlord's application to allow service of documents in a different way than required by the Act; a Monetary Order for unpaid rent and loss of rent and damages to the rental unit; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord and his agent gave affirmed testimony at the Hearing.

Preliminary Matters

The Landlord testified that the Tenants moved out of the rental unit without providing a forwarding address. The Landlord testified that their agent GY advised them him the Tenants had told him where they were going to be living. The address provided to GY was also where the Tenants work. The Landlord testified that he called the Tenants' employer, who advised that the male Tenant was working at that address and that the Tenants were also living there. The Landlord testified that he mailed both of the Tenants, by registered mail, the Notice of Hearing documents to that address and that the male Tenant signed for the registered mail document on April 27, 2010.

The Landlord testified that he also set duplicate copies of the Notice of Hearing documents to both Tenants, via "general delivery". The Landlord testified that the female Tenant signed for that registered mail document on April 27, 2010.

The Landlord provided copies of Canada Post confirmations with respect to the delivery of the documents on both of the Tenants.

Based on the affirmed testimony of the Landlord, and the documentary evidence provided by the Landlord, I am satisfied that the Tenants were sufficiently served with the Notice of Hearing documents in accordance with the provisions of Section 71(c) of the Act.

Despite being deemed sufficiently served, the Tenants did not sign into the teleconference and the Hearing continued in their absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent and damages to the rental unit, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony:

Monthly rent was \$1,000.00 per month, due the first day of each month. The tenancy started on January 15, 2009 and was to end on June 1, 2010. The Tenants paid a security deposit in the amount of \$500.00 at the beginning of the tenancy. The Tenants ended the tenancy early, and moved out on March 1, 2010 after being provided with a Notice to End Tenancy for unpaid rent. The Landlords spent a month cleaning and repairing the rental unit and re-rented it for June 1, 2010. The Landlord is not applying for loss of rent for the months of April and May, 2010.

The Tenants did not pay rent for the months of February and March, 2010. The Landlord is seeking a monetary award in the amount of \$2,000.00 for unpaid rent.

The Tenants broke the dishwasher, which was 5 or 6 years old, and did not advise the Landlord.

The rental unit had been painted just prior to the beginning of the tenancy.

The Landlord's agent gave the following testimony:

The agent and the Tenants did a walk-through of the rental unit in May, 2009, although no formal move-in Condition Inspection Report was done. The rental unit was in very good condition and had been freshly painted. At the end of the tenancy, the Tenants told the agent that they would not be cleaning or removing garbage from the rental unit. The Tenants did not clean the rental unit or shampoo the carpets, which were also stained and torn. There were holes in the walls; furniture and garbage was left in the rental unit, shed, carport and yard; the refrigerator was dented; the toilet was leaking; ceiling tiles, a patio screen door and lights were broken; a storm door had been removed; and there were dog feces throughout the yard.

It took 4 people 16 hours (a total of 64 hours) to clean the rental property and remove and bag the garbage. Four 14 foot trailer loads of garbage and four truckloads of debris were removed from the rental unit and its perimeter. The agent billed the Landlord \$675.00 for the cost of cleaning the rental unit and removing the garbage.

The agent spent the following monies and billed the Landlord (for the cost of materials only), as follows:

- The agent replaced the broken dishwasher with a similar dishwasher at the cost of \$299.00.
- The bathroom door appeared to have been kicked in, and the agent repaired the door jam and replaced the door. The agent billed the Landlord \$100.00 for this.
- There were two broken door knobs and one door knob was missing. The agent billed the Landlord \$9.99 to replace the door knobs.
- Two interior wall sconces and one outdoor light were damaged and left hanging. The agent billed the Landlord \$45.00 for replacing these items.
- A railing in the living room was ripped out, leaving the floor damaged. The agent replaced the railing and billed the Landlord \$436.00 for the cost of replacing the railing and repairing the floor.

- The walls in the entrance way were too badly damaged to repair. The agent billed the Landlord for the cost of five 4 x 8 drywall sheets, in the total amount of \$91.25.
- The leaking toilet had caused water damage to the linoleum in the bathroom and the adjoining closet. When the linoleum was removed, the subfloor was rotting and moldy. The agent had to replace a portion of the subfloor and billed the Landlord \$23.00 for replacing the subfloor and \$520.00 for replacing the linoleum in the bathroom and adjoining closet.
- The carpet in the bedroom was damaged beyond repair. The agent billed the Landlord \$559.00 for the cost of similar replacement carpet.
- Eight ceiling light diffusers were broken or missing. The agent billed the Landlord \$102.90 for the cost of replacing them.
- The transitions were missing, dented or missing. The agent billed the Landlord \$152.00 for transitions.
- The doors to a bathroom, bedroom and entrance way were missing casings. The agent billed the Landlord \$40.00 for the cost of replacing the casings.
- The carpets in the living room were damaged beyond repair. The agent replaced the carpets with laminate flooring, which was less expensive than replacing the carpet with similar carpet. The agent billed the Landlord \$508.20 for the cost of the laminate flooring.
- The linoleum in the laundry room was torn by the Tenants and had to be replaced. The agent billed the Landlord \$108.00 for the cost of new linoleum.

The agent also billed the Landlord \$1,675.00 for labour and supplies for removal and installation of the above items.

In addition to the above, the walls in the living room bedrooms and bathrooms had to be painted. The agent billed the Landlord \$2,150.00 for the cost of paint, materials and labour (approximately 1200 square feet at \$10.00 a square foot for labour).

Analysis

Based on the undisputed testimony of the Landlord, the Landlord has established his monetary award in the amount of \$2,000.00 for unpaid rent for the months of February and March, 2010.

This is the Landlord's application for a monetary order for damages caused by the Tenants, and therefore the onus is on the Landlord to prove his claim in this regard. Contrary to the provisions of Section 23 of the Act, there was no Condition Inspection Report done at the beginning of the tenancy. The agent provided testimony with respect to the general condition of the rental unit when the Tenants took possession, but without a written Condition Inspection Report signed by the Tenants and the Landlord or his agent, there is insufficient evidence to prove portions of the Landlord's claim for damages. In addition, neither the Landlord nor the agent provided copies of invoices or receipts for the cost of the items repaired or replaced in order to prove those costs.

The Landlord provided photographs of the rental unit, taken immediately after the Tenants moved out. These photographs support some of the Landlord's claims, but not all. For example, there are no photographs of holes in walls or damage to the bathroom floor and adjoining closet. Based on the photographic evidence, I find that the Landlord has established that:

- The railing was torn away from the wall, causing damage to the wall and the floor;
- The Tenants left a large amount of discarded furniture and garbage on the deck, in the carport, throughout the rental unit, in the shed and throughout the yard of the rental property; and
- The rental unit was dirty and the carpets were stained and damaged in the bedroom.

Therefore, I allow the Landlord's claim in the amount of \$350.00 for replacing the railing and repairing the wall and floor, \$500.00 for materials and labour in replacing the carpet

in the bedroom and \$675.00 for the cost of cleanup and disposing of the Tenant's garbage and discarded furniture.

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 security deposit.

Fees for filing applications are \$50.00 for claims under \$5,000.00 and \$100.00 for claims over \$5,000.00. In this case, the Landlord paid a filing fee of \$100.00. The Landlord has been only partially successful in his application and has established a claim of less than \$5,000.00. Therefore, I find he is entitled to recover half of the cost of the filing fee from the Tenants, in the amount of \$50.00.

The Landlord has established a monetary claim as follows:

Un paid rent	\$2,000.00
Replacing/repairing railing, wall and floor	\$350.00
Cleaning the rental unit and disposing of Tenants' garbage	\$675.00
Replacing the carpet in the bedroom	\$500.00
Partial recovery of the filing fee	\$50.00
Subtotal	\$3,575.00
Less security deposit	- \$500.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$3,075.00

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$3,075.00 against the Tenants. This Order must be served on the Tenants 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: August 26, 2010.

Dispute Resolution Officer