



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for unpaid utilities and loss of revenue; for compensation for damage or loss; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenants with the Notice of Hearing documents in accordance with the provisions of Section 891)(c) of the Act, by mailing the documents via registered mail to the Tenants at their forwarding address on December 15, 2010. Copies of the Landlords' documentary evidence were provided at the same time.

The Tenants' documentary evidence was not provided within the allowable time lines and therefore was not considered. The Tenants were invited to provide affirmed testimony with respect to their documentary evidence.

Issues to be Decided

- Are the Landlords entitled to a monetary award for unpaid utilities; loss of revenue for the month of December, 2010; the cost of removing carpet and replacing the flooring; compensation for missing blinds; cost of disposing of garbage; and the cost of developing photographs?
- Disposition of security deposit.

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on March 31, 2010. Monthly rent was \$1,100.00 plus ½ of the utilities. Rent was due on the first day of each month. The Tenants paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

On November 7, 2010, the parties entered into a mutual agreement to end the tenancy effective January 1, 2011. A copy of the agreement was provided in evidence. It indicates that the Tenants “may move before 2011 Jan 1st date.” On November 17, 2011, the Tenants provided the Landlords with written notice that they intended to vacate the rental unit as of December 1, 2010. The Tenants moved out of the rental at the end of November, 2010.

The Landlords testified that the Tenants’ pets ruined the carpets in the rental unit and stated that they had to remove the carpets which had pet stains. The Landlords chose to replace the carpets with laminate floors and testified that the cost was similar or less than the cost of replacing the carpets with carpets. The Landlords provided receipts for the cost of laminate flooring and sound reducer foam underlay, totalling \$892.01. The Landlords also seek \$212.42 for the cost of removing the carpet and \$848.68 for the cost of installing the laminate floors. The Landlords did not provide receipts for these costs, and stated that they were based on the industry standard charge rates.

The Tenants testified that they shampooed the carpets at the end of the tenancy and referred to the carpet cleaning bill that the Landlords provided in evidence. The Tenants testified that the Landlords lived in the same building and that when the Tenants moved in, the Landlords’ dog and cat had been used to coming in and out of the rental unit. They stated that the previous Tenant had a daughter, cat and a dog. The Tenants stated that the majority of the stains were situated under where the Tenants put their beds and that their dogs did not fit under their beds. The Tenants stated that they believe the Landlords intended to change the flooring and that they were just trying to get the Tenants to pay for it. The Tenants noted that one of the

invoices provided by the Landlords indicate that some of the new flooring was purchased on November 28, 2010, which is before the tenancy ended.

The Landlords seek loss of rent for the month of December, 2010, because they could not re-rent the rental unit until the floors were installed.

The Landlords stated that the Tenants took some custom made European blinds with them when they moved out. The Landlords seek compensation in the amount of \$300.00 for the missing blinds.

The Tenants stated that there never were any blinds in the rental unit, that they borrowed curtains from the female Landlord and had them cleaned at the end of the tenancy and left them on the banister. The Tenants testified that their son's room had a blanket covering the window and their daughter's room had a sheet.

The Landlords seek a monetary award for unpaid utilities in the amount of \$223.35 for the month of November, 2010. The Landlords provided copies of the relevant utility bills in evidence. The Tenants testified that this was probably a legitimate claim, but that the Landlords had not provided them with copies of the utility bills until they received the Landlords' documentary evidence.

The Landlords testified that the Tenants left an old accordion and a wooden pallet at the rental unit, which the Landlord had to dispose of. The Landlord seeks a monetary award in the amount of \$18.00 for the disposal fee. No receipt was provided.

The Tenants stated that they had forgotten the wooden pallet, but would have gladly come and picked it up along with their accordion except the Landlords would not allow them back on the property.

The Landlords testified that they would not allow the Tenants back on the property because they swore at the Landlords on the day the move out inspection was to take

place. As a result of a breakdown in the relationship, no inspection report was prepared.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case, the onus of proof lies with the Landlords to prove 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 Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Re: Claim for cost of replacing floors in the rental unit

I find that The Landlords did not provide sufficient evidence to prove this portion of their claim. There is no documented proof of the condition of the carpet at the beginning of the tenancy or at the end of the tenancy, as no Condition Inspection Reports were completed or provided. It is the responsibility of a landlord to ensure that Condition Inspections are completed at the beginning and at the end of a tenancy, pursuant to the provisions of Sections 23 and 35 of the Act. If the tenant does not participate on either occasion (after being offered two opportunities) then the landlord may complete the Inspections on his own and provide the tenant with a copy of the report. Without proof of the condition of the carpets at the beginning or the end of the tenancy, the Landlords have failed to prove part 1 or 2 of the four part test. This portion of the Landlords' application is dismissed.

Re: Claim for loss of revenue for the month of December, 2010

The Landlords seek loss of rent for the month of December, 2010, because they could not re-rent the rental unit until the floors were installed. The Landlords provided insufficient evidence that the carpets required replacing because of the Tenants' actions, or at all. Therefore, this portion of their application is dismissed.

Re: Claim for compensation for missing blinds

The Landlords did not provide sufficient evidence that there were European blinds in the rental unit at the beginning of the tenancy, or that the Tenants had taken with them at the end of the tenancy. This portion of their application is dismissed

Re: Claim for unpaid utilities

The Tenants did not dispute the Landlords' claim for unpaid utilities but stated that they never received copies of the invoices until they received the Landlords' documentary evidence. Therefore, I allow the Landlord's claim in the amount of \$223.35 for unpaid utilities.

Re: Claim for recovery of disposal fees

The Tenants did not dispute the Landlords' claim that they left a wood pallet and accordion at the rental unit. The Tenants stated that their accordion was of value however the Tenants have not filed an application for dispute resolution. This matter was convened to consider the Landlords' application. The Landlords did not produce an invoice for the cost of disposing of these items and therefore I award them a nominal amount of \$10.00 for this portion of their application.

Re: Claim for recovery of cost of photographs

These costs are not recoverable by either party in a dispute resolution claim. This portion of the Landlords' application is dismissed.

Regarding the disposition of the security deposit

The Landlords have established a monetary award in the amount of \$233.35. The Landlords sought a monetary award in the amount of \$3,623.88. Therefore, I find the Landlords are entitled to recover a portion of the filing fee, calculated as follows:

$$(\$50.00 \times \$233.35) / \$3,623.88 = \$3.22$$

The Landlords have established a total monetary claim of \$236.57.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply a portion of the security deposit towards satisfaction of their monetary claim. No interest has accrued on the security deposit. The remainder of the security deposit in the amount of \$313.43 (\$550.00 - \$236.57) must be returned to the Tenants forthwith. I hereby provide the Tenants with a Monetary Order in the amount of \$313.43 against the Landlords.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of \$313.43 for service upon the Landlords. 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: May 09, 2011.

Residential Tenancy Branch