



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a Monetary Order for unpaid rent, for damage to the rental unit, an Order to keep all or part of the security deposit, and for money owed or compensation for damage or loss and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing via personal delivery by the Landlord on March 12, 2011, the Tenant did not appear. The Landlord, via her testimony, successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Tenant's absence.

The Landlord and her witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the Landlord to an Order for monetary relief and to recover the filing fee?

Background and Evidence

This tenancy began on December 1, 2007, monthly rent was \$800.00 and the Tenant paid a security deposit in the amount of \$400.00. The Landlord stated that the Tenant moved out in March 2011 and the witness, her partner, stated the Tenant moved out on February 28, 2011.

The Landlord's monetary claim is as follows:

New carpet	\$1,573.00
Tiles	\$73.40
Blinds	\$124.10
Labour for tiling	\$38.00
Home repair store	\$107.37
Home Repair store	\$15.98

Tiles	\$24.63
Store charge	\$10.05
Home repair store (carpet cleaning)	\$27.10
Strata Fee	\$375.00
Strata Fee	\$150.00
Unpaid rent for Jan. 2011	\$300.00
Unpaid rent for Feb. 2011	\$800.00
Loss of rent Mar. 1-15, '11	\$400.00
Filing fee	\$50.00
TOTAL	\$4,068.63

In support of her application, the Landlord's witness stated that during the course of the tenancy, the Tenant caused cigarette burns in the carpet, which required replacing the rug in the fall of 2010. The witness submitted that the Tenant agreed that the carpet would be replaced and he, the Tenant, would pay for the replacement.

The witness stated that the carpet and flooring was replaced in November 2010, but that the Tenant did not reimburse the Landlord. Further, the witness submitted that since the carpet replacement, the Tenant and his son committed further damage to the new carpet and flooring.

Upon query, the witness stated that the carpet was 10 years old at the time of replacement and that the new carpet, despite alleged damage, has not been replaced or repaired.

The witness stated that the Tenant destroyed the blinds and had to be replaced. Upon query the witness stated that the blinds were 2-3 years old at the beginning of the tenancy, which began in December 2007.

The witness stated that the walls had to be repainted due to smoke damage, even though the rental unit was a non-smoking unit.

The witness submitted that a large part of the problem with the Tenant and the alleged damage was as a result of the Tenant's son staying in the rental unit. The witness stated that the son had previously moved out, but returned and caused damage to the front door lock, which incurred a strata fee assessment.

The Landlord submitted that the Tenant left old furniture on the patio after moving out, which caused a strata fee assessment.

The Landlord stated that there was no move-in or move-out condition inspection report.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Section 23(3) of the Residential Tenancy Act (the "Act") requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. Section 36(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

In the absence of a move in or move out condition inspection report, I find the Landlord has not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and is thereby unable to meet steps 1 and 2 of her burden of proof.

I therefore **dismiss** her claim for costs incurred for painting the rental unit, cleaning supplies, blind replacement and for the strata costs for garbage removal. Further, as to the \$150.00 charge for garbage removal, I find the evidence unclear as to whether the Tenant was responsible, as the invoice was dated April 9, 2011, and the Tenant vacated the rental unit at the end of February 2011.

As to the replaced carpet and flooring, Residential Tenancy Branch Policy Guideline states that carpet has a useful life of 10 years and the Landlord stated that the replaced

carpet was 10 years old. I therefore find that the carpet was fully depreciated at the time it was replaced and I therefore **dismiss** the Landlord's claim for carpet and tiling costs.

As to the Landlord's claim that the Tenant committed further damage to the new carpet, the Landlord stated that the carpet is still in use, has not been repaired or replaced and I therefore find that she has not suffered a loss for any carpet damage.

As to the Landlord's claim for carpet cleaning, I find that the Tenant failed to clean the carpet after vacating the rental unit, as required under Residential Tenancy Branch Policy Guideline 1 and that the Landlord has established a monetary claim in the amount of \$27.10.

As to the Landlord's claim for unpaid rent in January and February, in the absence of a response from the Tenant, I accept the uncontradicted testimony of the Landlord, and I find the Landlord has established a **monetary claim** in the amount of **\$1,100.00**.

As to the Landlord's claim for lost rent for March 2011, in the absence of documentary proof and testimony of a specific date when the rental unit was advertised, if any, I find the Landlord did not submit proof that she took the necessary steps to mitigate her claimed loss by advertising and marketing of the rental unit. Therefore I **dismiss** her claim for **\$400.00** for the March 2011, rent.

As to the Landlord's claim for a locksmith charge, I accept the strata corporation's assessment that the Tenant's son damaged the door mechanisms and find that the Landlord has established a **monetary claim** in the amount of **\$375.00**.

I award the Landlord the filing fee to reflect a partial success with her application, in the amount of \$50.00.

I allow the Landlord to retain the security deposit and interest in partial satisfaction of the claim.

Conclusion

I find that the Landlord has established a monetary claim and is entitled to a monetary order as follows:

Carpet cleaning	\$27.10
Unpaid rent	\$1,100.00
Strata fee for locksmith	\$375.00
Filing Fee	\$50.00
Subtotal	\$1,552.00
Less security deposit and interest	\$406.52
TOTAL Monetary Order In Favour Of The Landlord	\$1,145.58

The Landlord is hereby granted a monetary Order in the amount of **\$1,145.58**.

I am enclosing a monetary order for \$1,145.58 with the landlord's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

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 29, 2011.

Residential Tenancy Branch