



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes MND, FF

Introduction

These hearings dealt with the Landlords' Application for Dispute Resolution, seeking monetary compensation for alleged damages to the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

The parties had been involved in an earlier dispute resolution hearing, involving the Application of the Tenants before a different Dispute Resolution Officer. The Tenants received a monetary order in the Decision from that hearing. The Landlords applied for a review of that Decision which was dismissed. The Landlords attempted to bring up issues which were the subject of the earlier Decision several times in this hearing, however, it was explained to them and their counsel that those issues were already determined (*res judicata*), and I had no authority to alter the early determination.

The first hearing before me in this matter was held on August 11, 2011, and was adjourned at the request of the Landlords, with the agreement of the Tenants, in order for evidence from the file in the earlier hearing to be introduced for this hearing.

Issue(s) to be Decided

Are the Landlords entitled to a monetary order?

Background and Evidence

This tenancy began on April 7, 2008, with the parties entering into a written, two year term tenancy agreement, following which the tenancy became month to month.

The Tenants vacated the rental unit on August 31, 2010.

The Landlords alleged that the Tenants damaged a carpet in the rental unit. According to their testimony, the carpet had two large stains and a burn on it. The Landlords allege there was mould under the carpet when it was pulled up. Rather than replace the carpets the Landlords put in laminate wood floor. The Landlords request \$1,500.00 for the laminate wood floor.

The Landlords allege the Tenants failed to clean the rental unit to a reasonable standard when they vacated. The Landlords allege the Tenants failed to clean the windows, stove, walls, or bathroom vanity. The Landlords claim \$150.00 for cleaning.

The Landlords allege they had to haul garbage away left behind by the Tenants and to remove the carpet taken out of the unit. The Landlords claim \$150.00 for garbage removal.

The Landlords claim the Tenants changed a lock in the rental unit and it cost \$71.19 to have the lock rekeyed.

The Landlords claim the Tenants broke a light fixture in the rental unit and to replace if from a large warehouse store will cost \$61.23. The Landlords claim the broken light can be special ordered for \$188.77.

The Landlords claim the Tenants did not mow the lawn before they vacated and request \$40.00 for mowing the lawn at the rental unit.

The Landlords claim the Tenants damaged a bi-fold door and claim \$9.99 for broken slides.

The Landlords claim \$300.00 for labour to re-key the locks, to remove the carpet, underlay and staples, and to clean and sand the floor prior to the installation of laminate flooring.

The Landlords claim \$32.15 for paint and a brush.

The Landlords claim \$150.00 as a portion of costs for labour upstairs.

The Landlords further claim for the costs of preparing and providing evidence for their Application. The Landlords claim in total \$3,306.03 in monetary compensation.

In reply, the Tenants testified that they had accidentally stained the carpet with spilled coffee and acknowledged they caused a small burn mark. They testified that they told the Landlords they would do another pass with the carpet cleaner they had rented. They further testified that the Landlords began removing the carpet before the Tenants had finished removing their property on the last day of the tenancy. The Tenants submit the Landlords should have got a professional cleaner to see if the carpet could have been cleaned.

The Tenants agreed to the \$150.00 claimed for cleaning.

The Tenants testified they lost a key for the rental unit and changed a lock in the rental unit so it opened with a different key than the other locks.

The Tenants agreed they broke a light fixture in the rental unit.

The Tenants agreed they did not mow the lawn before they vacated.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlords, have the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

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

I deny the Landlords' claim for the cost of installing a laminate floor. I find that the Landlords did not prove that the carpet was a total loss and that it could not be cleaned by a professional carpet cleaner. Furthermore, the Landlords might have replaced the carpet with another carpet, at a lower price than having the Tenants pay for laminate wood floors.

Under section 7 of the Act the Landlords are required to mitigate their losses. I find the Landlords failed to prove the carpets were a total loss and that they acted reasonably to minimize the damage or loss. By removing the carpets prior to the Tenants even vacating the rental unit, it appears the Landlords simply wanted to renovate the floors in the room. This is not the responsibility of the Tenants. Likewise, I find the Landlords must bear their own costs to remove the carpet, underlay and staples, and to clean and sand the floor prior to the installation of laminate flooring.

I find the Landlords provided insufficient evidence with regard to garbage removal or for labour for re-keying the locks. For example, there is no breakdown of time, cost per hour or record of dump fees. Someone has added amounts to the invoice for re-keying the locks which were not part of the original receipt, and therefore, I find this receipt is not credible.

As the Tenants agreed to some of the claims, I allow the Landlords \$150.00 for cleaning and \$71.19 to have the lock rekeyed. The receipt the Landlords provided for the light fixture was for three items from a warehouse store, and I find it is not relevant to this portion of the claim. Nevertheless, I allow the Landlords the nominal amount of \$75.00 to replace a broken light fixture. I also allow \$40.00 for mowing the lawn as it was required under the tenancy agreement.

I find the Landlords failed to prove the Tenants damaged a bi-fold door at the rental unit.

I find the Landlords failed to establish the claim for paint and a brush, and for \$150.00 as a portion of costs for labour upstairs. There was insufficient evidence regarding what the brush, paint or labour were required for.

The Act does not provide for the costs of preparing and providing evidence for an Application, therefore, I dismiss the claims of the Landlords for the costs of photographs and other items.

I find the Landlords have established a claim for losses in the amount of **\$361.19**, comprised of the above described amounts and \$25.00 as a portion of the filing fee for the Application. I have reduced the filing fee awarded to reflect the limited success the Landlords had in this claim.

The Landlords are granted a monetary order in the amount of \$361.19, which must be served on the Tenants. This order may be enforced in the Provincial Court of British Columbia.

This decision is final and binding on the parties, except as otherwise provided for under the Act and 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: October 3, 2011.

Residential Tenancy Branch