



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

This application was brought by the landlord on October 14, 2011 seeking a monetary award for unpaid rent/loss of rent, costs of cleaning the rental unit, damage to the rental unit, replacement of missing items, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a preliminary matter, the landlord submitted further evidence on December 21, 2011 which increased claims from \$1, 171.37 to \$7,335.17. Such a change would have required the landlord to submit an amended application and to have served that to the tenants at least five days in advance of the scheduled hearing. In addition, as the change would have raised the claims to over \$5,000, the landlord would have been required to pay a \$100 filing fee instead of the \$50 charged for the original application.

Therefore, as the application has not been properly amended, the original claim \$1,171.37 is set as the maxim that may be claimed, although I accept the evidence in the December 21, 2011 submission to the extent that it supports claims made in the original application. In addition, I will exercise the discretion granted under section 64(3)(c) of the *Act* to allow the new evidence pertaining to the potential successor tenants' refusal to proceed with their tenancy due to the malodorous state of the rental unit attributable to the tenant's cats.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain all or part of the security deposit in set off.

Claims in damages require that several factors be taken into account: The comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on October 26, 2010 and ended on or about October 1, 2011. Rent was \$1,600 per month for each of two rental units and the landlord holds a security deposit of \$1,000 paid at the beginning of the tenancy.

The landlord is at a distinct disadvantage in the present hearing as no move-in or move out condition inspection reports were completed at the beginning and end of the tenancy and there is no written rental agreement, or an agreed upon inventory of items provided with the furnished rental unit.

The tenancy is somewhat unusual as there are two rental units in the building rented by the tenants, upper and lower units in the same building. Only one tenant was named as a respondent as the landlord was unable to find addresses for two others.

During the hearing, the landlord gave evidence that the tenants had been victims of a fire in their previous home and in view of the difficult position they were in, she had relaxed her customary refusal to accept pets and had permitted the tenants' two cats.

She also stated that the unusual circumstances contributed to the lack of a move-in condition inspection report although the tenant representative stated she had requested one as the units were rented fully furnished and some of the contents appeared older and worn.

The landlord was able to rent one of the units at the end of the tenancy, but tenants for the other have just recently been found after a tenancy was lost in mid-October due to a pungent odour which the landlord attributed to the tenants' cats. The prospective tenants provided a written submission to verify that the cat odour was the cause of their declining the tenancy at move in.

The landlord submitted her claims in two separate lists, the first compiled with her application on the 15-day deadline for claims on a security deposit and the second compiled as cleaning and repair of the rental unit revealed further damages.

The landlord claims and I find as follows:

Coffee table glass missing - \$44.74. This is the only claim on which the parties concurred and it is allowed in full.

I find that in the absence of an agreed inventory or move-in and move-out condition inspection reports, or some other reliable record of the presence and value of the items, I cannot make an informed award on the following claims and they are dismissed.

Missing laundry hamper and basket - \$34.31.

Repair couch, chair, stool and screen - \$150.

Replace missing table, wear, dutch oven and frying pan - \$79.90.

Two missing Rubbermaid totes missing - \$24.68.

Various kitchen tools - \$37.90.

Missing pillows - \$100.

Missing duvets and bedding - \$280.

Pyrex bake ware missing - \$19.48.

Window screen repair - \$15/

Two missing throws - \$20.

Towels and bedding - \$223.79.

Quilts Etc. Bedding throw - \$61.18.

Economy flooring (Adhesive) - \$21.11 and Replace flooring -- \$1,282.17. As noted, This claim would have required that the landlord properly amend the application to warrant full consideration. In addition, the landlord advised that the carpet was in place when she purchased the property approximately 10 years ago. Therefore, given that standard depreciation tables place the useful life of standard carpeting, I the carpet was fully depreciated and would not have qualified for an award in any case.

Accurate door and Hardware - \$44.80. This claim for changing locks arose from the fact that not all keys were returned to the landlord until several days after the end of the tenancy. It is allowed in full.

TV repair - \$66.86. The tenant conceded to having moved the television set in the rental unit, and the repairer noted that the damaged signal connection was consistent with the unit having been moved while still tethered. In any case, I am persuaded that the damage was done during the tenancy and the tenant is responsible for the repair. The claim is allowed in full.

Loss of rent - \$4,000. The landlord bases this claim on the fact that the tenants who declined the rental unit on October 15, 2011 did so solely because of the odour caused by the tenant's cats and, as a result, the landlord suffered a loss of rent for two and one half months. This claim was supported by a letter from the prospective tenants. However, as this was not a fixed term tenancy agreement, and as the furnished rental unit normally accommodates a more limited clientele, I find that the tenant cannot be held accountable for the entire period during which the unit remained vacant. I award the landlord \$800 for two weeks loss of rent due to the loss of rent caused by the cat odour.

Advertising - \$454.16. This claim is made for the cost of advertising for new tenants for half of October, all of November and estimated for December. Having found the cat odour left behind by the tenants as contributory to the landlord's loss of the new tenant on October 15, 2011, I will allow the \$98.91 claimed for October advertising. The remainder, I find the landlords would normally encounter as a cost of doing business.

Postage - \$9.73. Costs of hearing preparation cannot be compensated under the legislation. Dismissed.

Filing fee - \$50. Although the landlord's claims were hampered by the failure to amend the application, complete a written rental agreement and complete inspection report forms, I find sufficient merit in the application to award recovery the filing fee for this procedure from the tenant.

Security deposit – (\$1,000). As authorized under section 72(2) of the *Act*, I find that the landlord is entitled to retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the landlord is entitled to a monetary award calculated as follows:

Coffee table glass missing	\$ 44.74
TV repair	66.86
Loss of rent	800.00
Advertising	98.91
Filing fee	<u>50.00</u>
Sub total	\$1,105.31
Less retained security deposit (No interest due)	<u>- 1,000</u>
TOTAL outstanding	\$ 105.31

Conclusion

In addition to authorization to retain the tenant's security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$105.31 for service on the tenant. .

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: January 10, 2012.

Residential Tenancy Branch