



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with an application for dispute resolution by the landlord seeking a Monetary Order for authority to retain the security deposit, for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the “Act”) and for damage, and to recover the cost of the filing fee from the tenant.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, and in documentary form.

The landlord testified that she served the tenant with the Notice of Hearing and Application package via registered mail on November 16, 2011, and provided the tracking number as evidence. As well, the landlord testified that she served her amended application and Notice of Hearing via registered mail on January 14, 2012, and provided the tracking number as evidence. Having been satisfied the landlord served the tenant in a manner that complies with section 89 of the Act I proceeded to hear from the landlord without the tenant present.

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant’s security deposit and for recovery of the filing fee?

Background and Evidence

This fixed term tenancy began on December 1, 2010, ended on October 31, 2011, monthly rent was \$1,800.00 and the tenant paid a security deposit of \$900.00 on or about November 15, 2010.

The landlord's monetary claim is in the amount of \$1,147.08, which includes \$480.00 for painting, \$117.60 for cleaning, \$125.00 for carpet cleaning, \$364.00 for replacement of a closet door, \$10.48 for light bulb placements and the filing fee of \$50.00.

The landlord's relevant evidence included a move in and move out condition inspection report, receipts for the costs claimed and proof of service of the hearing documents.

The landlord stated that during the tenancy, the tenant broke a closet door, which required replacing. As well, the landlord submitted that it became necessary to repaint a certain portion of the rental unit due to the tenant's unauthorized partial painting of a wall, which did not match the other walls and did not reach the top or bottom.

The landlord submitted that the tenant did not clean the rental unit and that the carpet was extremely filthy and stained at the end of the tenancy. In support of her testimony, the landlord pointed to the condition inspection report, noting her claims and which the tenant signed.

Analysis

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

In the absence of the tenant who was duly served, the landlord's evidence will be the preferred evidence.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Residential Tenancy Branch Policy Guideline states that a tenant will be held responsible for a deliberately or carelessly stained the carpet. Additionally, the Guidelines state a tenant will be responsible for paying cleaning costs if the rental unit is

not left in a reasonable state of health, cleanliness or sanitary standards and to pay for repairs where damages are caused by the tenant or his or her guest.

I find the landlord provided sufficient evidence of the damage to the rental unit caused by the tenant. In reaching this conclusion, I was persuaded by the condition inspection report and photos of the rental unit. I also find that the landlord substantiated her costs claimed. I therefore find that the landlord has established a **monetary claim** in the amount of **\$1,147.08**, which includes the filing fee of \$50.00.

Conclusion

I allow the landlord to retain the security deposit of \$900.00 in partial satisfaction of the monetary claim and grant the landlord a monetary order in the amount of **\$247.08** for the balance due.

I am enclosing a monetary order for **\$247.08** 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) for enforcement 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: February 29, 2012.

Residential Tenancy Branch