



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the property, unpaid rent or utilities, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 14, 2011 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant at the forwarding address provided in writing by the tenants as part of their notice ending tenancy given on September 28, 2011. The address was a postal box number.

A Canada Post tracking number was provided as evidence of service; however the mail was returned to the landlord indicating the tenants had moved.

These documents are deemed to have been served in accordance with section 89 of the *Act*; as they were served as provided by the Act to an address given by the tenants; however the tenants did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent, damage to the unit, damage or loss under the Act in the sum of \$3,523.65?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2010; rent was \$1,400.00 per month, due on the first day of each month. A deposit in the sum of \$700.00 was paid. A move-in condition inspection report was completed. Copies of the tenancy agreement and condition inspection report were supplied as evidence.

The tenants gave written Notice ending the tenancy effective October 31, 2011. The parties agreed to meet at 1 p.m. on October 31, 2011, to complete the move-out condition inspection. When the landlord arrived at the unit the tenants were not there. Repeated telephone calls were made to the tenant's cell phone; no one answered.

The landlord completed the report in the absence of the tenants; photographs were taken. The photographs showed very dirty carpets, damage to the fridge door, damage to the kitchen cabinets and furniture left behind by the tenants. The landlord knew that the unit had been damaged, as they had entered to show the unit in October. The tenants had been directed to repair the bathroom floor that had lifted as the result of the tenant's allowing water from the shower to run on the floor. The tenants did not make repairs.

The unit was freshly painted in August 2010. At the start of the tenancy the carpet and bathroom linoleum were new; the kitchen cabinets were in good repair and the drapes had been professionally cleaned.

The landlord has made the following claim:

Loss of rent revenue	653.38
Missing fob/keys	120.00
Replace carpet and linoleum	1,852.27
Clean curtains	168.00
Cupboard door damage	100.00
Dispose of furniture	140.00
Wall repair and painting	360.00
TOTAL	3,523.65

The tenants left the unit in such a poor state new occupants were not willing to commit to taking possession on November 1, 2011. The landlord had to clean the unit and make repairs and was able to locate new occupants effective November 15, 2011. The landlord is claiming the loss of rent revenue for the first half of November, 2011, in the sum of \$653.38.

The landlord wants to replace a shelf/rack in the fridge that was damaged by the tenants. The fridge was new at the start of the tenancy. The landlord estimated a cost of \$130.00.

The tenants were given keys and a recreation room remote and a key fob; they left only the keys. The landlord has estimated the fob and remote replacement costs to be \$120.00

The landlord testified that the carpet cleaning company examined the carpets and advised the landlord to replace the carpeting. The landlord submitted an October 31, 2011, invoice in the sum of \$1110.76 plus \$133.29 HST, for carpet in 2 bedrooms; the

balance of the flooring was replaced with plank product. Photographs submitted as evidence showed carpets that were stained and damaged.

The landlord supplied a copy of an October 31, 2011, invoice for replacement of the bathroom linoleum in the sum of \$394.08. The sub-floor had lifted as a result of the tenant's failure to ensure shower water did not flow onto the floor. The tenants were asked to make this repair; they did not.

The tenancy agreement requires tenants to have the curtains professionally cleaned at the end of the tenancy, if they had been professionally cleaned at the start. The landlord testified the curtains had been cleaned at the start of the tenancy. The landlord has claimed compensation for costs, as the tenants did not clean the curtains; however, no verification of the amount claimed was supplied.

The photographs supplied indicated that the kitchen cupboards had been damaged. The landlord stated they were in good condition at the start of the tenancy and that the tenants had allowed water to run down the cabinets, causing the damage. The landlord supplied a copy of November 3, 2011, in-house invoice for in the sum of \$100.00 for cupboard door repair costs.

The landlord supplied a copy of an in-house invoice for labour costs to remove furniture left behind by the tenants and a City of Vancouver receipt in the sum of \$60.00 for dump fees on November 7, 2011.

The photographs supplied showed some walls that were left unclean and in need of re-painting. The landlord supplied a copy of a November 3, 2011, invoice for painting and touch-up painting costs exceeding the amount claimed.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has 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.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

As the rental unit was left in a state that rendered it unfit for occupation on the first day of the month, I find that the landlord is entitled to the loss of rent revenue claimed. I find

that the landlord mitigated their claim, by completing the necessary repair and cleaning and quickly locating new occupants for mid-month.

In the absence of verification of the cost of repairing the damage to the fridge rack and missing key fob/remote, I find that the landlord is entitled to nominal compensation in the sum of \$25.00, and \$20.00 respectively, in recognition of the damage and loss.

I have considered the claim for carpet replacement and find that the landlord is entitled to costs for carpet replacement in the bedrooms in the sum of \$1,244.05 and the bathroom linoleum that required replacement as a result of the negligence of the tenants, in the sum of \$394.08. These amounts are supported by the verification of the costs incurred. The tenants did not attempt to clean the carpets and did not replace the bathroom flooring they had damaged as a result of water from the shower. The balance claimed for flooring is dismissed, as it does not relate to carpeting or the bathroom floor.

In the absence of verification of the cost claimed, I find the landlord is entitled to nominal compensation in the sum of \$35.00, for the cost of cleaning the curtains. I have accepted the testimony that the curtains had been cleaned at the start of the tenancy and that the tenants did not clean them at the end of the tenancy.

I find that the landlord is entitled to costs claimed for kitchen cupboard repair. The photographs showed damage that was not reported to the landlord by the tenants, as a repair that was required due to normal wear and tear. In the absence of evidence that the tenants attempted to notify the landlord of this issue, I find they are responsible for repair costs.

Based on the evidence before me I find that the tenants left the unit in need of painting, before the landlord would have been expected to re-paint the unit. The unit was painted 1 month prior to the tenants moving in to the unit in September 2010; the landlord could be expected to repaint the whole unit every 4 years; as suggested by Residential Tenancy Branch policy. As the tenants left the walls in need of repair and paint, I find that the landlord is entitled to amount claimed for painting.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Fridge rack/stove chip	130.00	25.00
Missing fob/keys	120.00	20.00
Replace carpet and linoleum	1,852.27	1638.13
Clean curtains	168.00	35.00
Cupboard door damage	100.00	100.00
Dispose of furniture	140.00	140.00
Wall repair and painting	360.00	360.00
TOTAL	3,523.65	2971.51

The balance of the claim is dismissed.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$700.00 in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$3,021.51, which is comprised of damages, damage or loss and damage to the unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,321.51. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

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 01, 2012.

Residential Tenancy Branch