



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 made application requesting compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant Agent for the landlord stated that on November 18, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number and receipt was provided as evidence of service. The landlord submitted a copy of the Canada Post tracking information indicating that on November 24, 2011, the tenant signed, accepting the registered mail.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$770.00 for unpaid October 2011, rent?

Is the landlord entitled to in the sum of \$770.00 for loss of November, 2011, rent revenue?

Is the landlord entitled to compensation in the sum of \$1,864.65?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

This 1 year fixed-term tenancy commenced on June 1, 2011; rent was \$770.00 per month, due on the first day of each month. A deposit in the sum of \$385.00 was paid. A copy of a signed tenancy agreement was supplied as evidence; it contained a

liquidated damages clause in the sum of \$300.00 plus a clause imposing a \$25.00 late payment fee.

A move-in condition inspection report was completed and a copy was submitted as evidence, which included the move-out report completed by the landlord. The tenant was not available for the move-out condition inspection, although a final written notice was not given to the tenant.

The tenant did not provide the landlord with a written forwarding address; the tenant was served with Notice of the hearing to his mother's address; and he signed accepting the mail.

The landlord has made the following claim:

Unpaid rent/loss of revenue	1,540.00
Pro-rated carpet replacement	750.00
Cleaning	202.50
Cleaning supplies	10.50
Repairs	50.00
Replace drapes	150.00
Lock and key	50.00
Disposal hauling	145.60
Liquidated damages	300.00
Light fixtures	100.50
Replace medicine cabinet	70.55
TOTAL	3,394.65

The landlord supplied photographs as evidence of the broken light fixtures, the carpet damage, the dirty oven, broken lock, garbage left in the unit and the glass doors missing from the bathroom cabinet.

Copies of invoices verifying costs claimed for carpet replacement, cleaning and repairs completed by staff; hauling fees charged, light fixtures and the medicine cabinet.

The tenant was given a 30 Day Notice ending Tenancy for Cause, which had an effective date of October 31, 2011. The tenant did not pay October, 2011, rent; a copy of the tenant ledger was supplied as evidence. On October 31, 2011, the landlord went to the unit; the tenant had left but unknown occupants remained in the unit for another day before the landlord had vacant possession. The landlord is claiming loss of November 2011, rent as the unit could not be cleaned on time for new occupants. The tenant had not disputed the Notice and the landlord had shown the unit to several potential occupants, but had not yet rented the unit.

The landlord claimed a portion of the cost of replacing the carpets that were approximately 5 years old. The tenant caused damage to the carpets and left them in a

very dirty condition, which required replacement; there had been 1 burn mark, but the tenant caused significant irreparable damage. The total cost for carpet was \$1,455.86; the landlord has claimed a portion of the cost.

The walls were damaged and required repair. The medicine cabinet was new, but at the end of the tenancy the doors to the cabinet were missing; the cabinet was replaced. Light fixtures were broken, the door lock was damaged and only 1 of three keys given to the tenant was returned to the landlord.

The unit was on a ground floor and the tenant would leave his dining room window open so his friends could climb in the window. The drapery was ruined as a result of people entering through the window. The landlord supplied an invoice for the cost of new drapes.

The tenancy ended as a result of an undisputed Notice issued for cause. The liquidated damages is payable should the tenancy end as a result of termination and is meant to cover administrative costs of re-renting.

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.

In the absence of the tenant, who was served with notice of this hearing, I find that the landlord has shown, on the balance of probabilities that the tenant did not pay rent owed in October, 2011 and that the landlord is entitled to compensation in the sum of \$770.00.

I find that the landlord had legal possession of the rental unit on November 1, 2011, when the occupants vacated. The fixed term tenancy ended as the result of an undisputed Notice for cause. I find that the unit was left in a state that was not suitable for immediate occupation which entitles the landlord to compensation for loss of November, 2011, rent revenue in the sum of \$770.00. Even though new occupants were not immediately available, the state of the unit would not have attracted new tenants.

As the evidence before me indicated rent was paid late in September, 2011, I find, as provided by the tenancy agreement terms, that the landlord is entitled to a \$25.00 late fee.

Residential Tenancy Branch policy suggests the useful life of carpeting is ten years; I find this to be a reasonable stance. As the carpets were 5 years old, I find that the

landlord is entitled to replacement cost equivalent to one half of the amount paid; \$727.93. The balance of the claim for carpets is dismissed.

I find that the landlord has provided evidence in support of the claim made for cleaning costs, repairs, hauling, replacement of the fixtures and cabinet and lock repair. The photographs show that the unit was left in a state that was not reasonably clean; the move-in condition inspection report indicated the unit had been in good condition at the start of the tenancy. Therefore, as the landlord has provided verification of the amount claimed, I find they are entitled to compensation as claimed.

I find that the tenancy ended as the result of an undisputed Notice ending tenancy for cause and that the liquidated damages clause of the tenancy agreement entitles the landlord to compensation the sum of \$300.00, as an estimate of the administrative costs of re-renting the unit.

	Claimed	Accepted
Late September 2011 fee	25.00	25.00
Carpet replacement	750.00	727.93
Cleaning	202.50	202.50
Cleaning supplies	10.50	10.50
Repairs	50.00	50.00
Replace drapes	150.00	150.00
Lock and key	50.00	50.00
Disposal hauling	145.60	145.60
Liquidated damages	300.00	300.00
Light fixtures	100.50	100.50
Replace medicine cabinet	70.55	70.55
TOTAL	3,394.65	3,372.58

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 plus interest, in the amount of \$385.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$3,377.58, which is comprised of damage to the unit, unpaid rent, damage and loss 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 plus interest, in the amount of \$385.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,992.58. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 17, 2012.

Residential Tenancy Branch