



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

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

The tenant applied requesting return of the deposit, compensation for damage of loss under the Act and filing fee costs.

Both parties were present at the hearing and provided affirmed testimony acknowledging receipt of the others' application and evidence.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental in the sum of \$379.43?

Is the landlord entitled to compensation for damage or loss in the sum of \$725.00 for February rent revenue loss?

May the landlord retain the deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on September 1, 2009; rent was due on the first day of each month. The tenant gave the landlord written notice on January 16, 2012, that he would vacate on January 31, 2012. Move-in and move-out condition inspection reports were completed. The landlord claimed against the deposit within fifteen days of receiving the tenant's forwarding address.

A copy of the tenancy agreement, condition inspection reports, the notice ending tenancy and invoices were supplied as evidence.

The landlord has made the following claim:

Carpet and drapery cleaning	116.43
Change lock	25.00
Loss of February 2012 rent revenue	725.00
Paint suite	168.00
TOTAL	1104.43

The tenant and landlord each supplied a copy of the condition inspection report; the landlord stated that her copy differed somewhat from the copy that had been submitted by the tenant, that her copy included reference to cleaning of the carpets and drapery at the start of the tenancy. The 2 copies before me, 1 from the landlord and the other from the tenant, mentioned professional cleaning had been completed at the end of the tenancy only.

The tenant agreed to deductions from the deposit for carpet and drapery costs as he was told it was a condition of his tenancy agreement. The tenancy agreement, clause 31, required the tenant to have these items professionally cleaned at the end of the tenancy if they were new at the start or had been professionally cleaned at the start.

The tenant dismantled a desk and put it in the large trash bin outside of the building. The landlord stated that the company who hauls the trash refused to empty the bin as they do not accept wood products. The landlord stated the bin is clearly marked with notices informing people of this prohibition. The tenant stated he did not see any notices that would prohibit him from placing the desk pieces in the bin.

The parties agreed that the couch was in the unit at the start of the tenancy. The tenant stated that he allowed the couch to remain, but did not feel he should be responsible for hauling it away at the end of his tenancy. The landlord stated that the couch became the property of the tenant and he was responsible for removing it at the end of his tenancy.

The tenant confirmed that his father had a set of keys that were not returned until the middle of February, 2012. The landlord supplied an invoice for the cost of rekeying the unit on February 4, 2012.

There was no dispute that on January 16, 2012, the tenant gave written notice ending his tenancy effective January 31, 2012. The landlord attempted to locate new occupants; the unit was immediately placed on a popular web site and it was shown a number of times. The landlord was unable to rent it for February 1, 2012. New occupants were located for March 1, 2012. The landlord is claiming the loss of February rent revenue as the tenant's notice was not sufficient.

The tenant was allowed to smoke in his unit and he did leave the unit in a very clean state. However, the smell of smoke permeated the unit and potential renters found this to be an issue. The landlord painted the unit and has claimed the cost against the tenant.

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 evidence that shows the carpets and drapery were professionally cleaned or new at the start of the tenancy, despite the tenant's agreement on the condition inspection report, I find that the landlord has not proven the claim. The tenant signed agreeing, as he was told it was a condition of his tenancy; however; in the absence of evidence showing these items were professionally cleaned at the start of the tenancy I dismiss this portion of the claim.

I find that the tenant placed a desk in the bin which could not reasonably be expected to be treated as normal household waste.

I find that the tenant rented the unit with the couch present and that the landlord has simply deferred the cost of removal to the end of the tenant's stay. I find that the tenant is not responsible for removing a couch that came with the unit as part of the tenancy.

I have considered the invoice supplied for dump fees and hauling and, as the invoice is not broken down for each item, that the landlord is entitled to a nominal amount for removal of the desk in the sum of \$25.00; the balance of this portion of the claim is dismissed.

As the tenant failed to provide the landlord with both sets of keys at the time he vacated the unit; I find, based on the verification provided by the landlord, that the landlord is entitled to re-keying costs claimed.

As the tenant gave notice ending the tenancy on January 16, 2012, and rent was due on the first day of each month, that notice was sufficient to end the tenancy effective

February 29, 2012. The landlord attempted to mitigate their loss, but could not locate new occupants for February 1, 2012. Therefore, I find that the landlord is entitled to compensation for loss of February, 2012, rent in the sum of \$725.00.

The tenant was allowed to smoke in his unit and by the landlord's testimony; he left the unit in a very clean state. It is due to no fault of the tenant if the unit smelled of smoke and required painting to attract new occupants. I find it is not unreasonable to expect a unit may smell of smoke, even after it has been cleaned and that the tenant did not breach a term of his tenancy by smoking in the unit. Therefore, this portion of the claim is dismissed.

	Claimed	Accepted
Haul away items	70.00	25.00
Change lock	25.00	25.00
Loss of February 2012 rent revenue	725.00	725.00
Paint suite	168.00	0
TOTAL	1104.43	775.00

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 \$350.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$825.00, which is comprised of damage or loss; unpaid rent 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 \$350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$475.00. 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.

The balance of tenant's 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: April 04, 2012.

Residential Tenancy Branch