



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF, SS

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 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.

Both parties were present at the hearing. 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.

Preliminary Matter

The landlord did not require consideration of his request for substitute service.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid February, 2012, rent?

Is the landlord entitled to compensation for damage to the unit?

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

Is the landlord entitled to compensation for loss of rent revenue?

Is the landlord entitled to filing fee costs?

Background and Evidence

The month-to-month tenancy commenced on March 2, 2011; rent was \$725.00 due on the first day of the month. A deposit in the sum of \$362.50 was paid. A copy of the tenancy agreement was not supplied; the parties dispute whether the tenant received a copy.

The parties dispute whether a move-in condition inspection report was completed. The landlord stated there was a report but he does not have access to a copy; the tenant stated there was no report completed and that she was never given a copy of the written tenancy agreement.

On February 15, 2012, the tenant informed that landlord she was vacating; no move-out inspection was arranged and the landlord had possession of the unit the next day. The parties agreed that they did communicate via email; however no email was sent providing an inspection time or date.

A copy of a Notice of Rent Increase, effective March 1, 2012, raising rent to \$740.00, was supplied as evidence.

The landlord has made the following claim:

Unpaid February 2012 rent	725.00
Cleaning supplies	34.00
Painting of suite	1372.00
Replace carpet	200.00
Misc.	75.00
Microwave	120.00
Hot plate	33.00
TOTAL	3299.00

The tenant agreed that she did not provide proper notice to end the tenancy and that the landlord is entitled to rent for February, 2012. The tenant agreed that she had been paid to replace the hot plate and that it was mistakenly packed and removed from the unit. The tenant had removed the faceplates to install her own and forgot to leave the bag of original plastic faceplates in the unit.

The landlord stated that on February 16, 2012, the unit was not in a state for showing and he did not commence advertising until March 1, 2012. A new tenant was located for April 1, 2012; the landlord is claiming loss of rent revenue for March, 2012.

The landlord painted the unit himself, shortly before this tenancy commenced. Several photographs of the walls were submitted that showed marks on walls and damage above a baseboard heater, resulting in discolouration of the paint. A March 3, 2012, invoice in the sum of \$1,372.00 for painting the interior, priming, sanding walls and

doors, two coats of paint on areas of 3 different colours and replaced of carpet and faceplates, was supplied as evidence.

A February 16, 2012, invoice for cleaning supplies was provided. The landlord has claimed this cost as he had to clean the unit.

The landlord has claimed replacement costs for the carpet and provided a copy of a February 23, 2012, invoice in the sum of \$200.26. The landlord claimed the tenant's cat had urinated on the carpet and that it required replacement.

The photographs submitted as evidence showed the dryer sitting on a desk, which had a drawer missing. As the tenant had removed the drawer the landlord had to place the dryer on the floor and incur costs for ducting.

The tenant removed the microwave from the unit and it was replaced. An invoice was supplied.

The tenant took all of the light bulbs, which the landlord had to replace.

The tenant broke the lock on the upper window; the landlord submitted a receipt for the repair cost.

The landlord claimed a number of costs not itemized in the details of his application for ducting, tiles (\$29.64;) dryer supplies (15.88;) carpet tape (14.99;) landfill costs (12.25;) light bulbs (15.66 + 16.00;) and a window latch (10.00.)

Tenant's Response:

The tenant responded that she took the unit as it was; with missing drawers, had marked walls, a carpet that was in acceptable condition. The tenant did not expect anything more, as the rent was reasonable. The tenant was not given the opportunity to complete an inspection at the start of the tenancy and disputed the claim made by the landlord.

The tenant disagreed that the landlord should be entitled to loss of March, 2012, rent, as she had cleaned the unit and it was in much the same state as when she had taken possession. The tenant admitted she had not washed the floors with a mop.

The marks on the wall were there when she moved in and the area above the baseboard heater was damaged from the heat rising up the wall.

The tenant does not use microwaves and did not take the microwave; there was not one in the unit at the start of the tenancy. The tenant also denied taking light bulbs.

The tenant denied her cat had urinated anywhere and stated that the carpets did not require replacement at the end of the tenancy.

The window latches on the upper and lower windows did not work at the start of the tenancy and the tenant was able to repair the lower window latch. As the upper window was next to her sleeping area the tenant put a nail in the window ledge, so the window could not open.

The tenant testified that she had no issue with admitting to the costs she believes were her responsibility but that the balance of the landlord's claim was not substantiated.

After the tenancy ended the parties had talked several times, but the conversation did not go very well. The tenant did not supply the landlord with a written forwarding address.

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.

By agreement of the tenant I find that the landlord is entitled to compensation for unpaid February, 2012, rent; the cost of the hot plate replacement and a nominal sum of \$3.00 for faceplates.

In relation to the loss of March 2012, rent; I find that this portion of the claim is dismissed.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.***

(Emphasis added)

In the absence of any evidence that the rental unit was in a state that could not accommodate viewing by potential occupants, I find that the landlord failed to mitigate

the loss he is claiming, by not advertising the unit until April 1, 2012. The landlord had possession of the unit on February 16, 2012, and from the evidence before me I find there was no reason the unit could have been immediately advertised in order to mitigate a potential loss of March rent revenue.

From the evidence before me I find, on the balance of probabilities, that the work the landlord wished to complete on the unit was cosmetic and not a bar to showing the unit during February. In the absence of condition inspection reports or photographs that support the claim that the unit was not in a state ready for showing, I find that the landlord did not mitigate the loss he has claimed.

In relation to the balance of the claim, in the circumstances before me, I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. In relation to the portion of the claim for damage to the unit, considered in its totality, I favoured the evidence of the tenant over the landlord. The tenant readily agreed to certain costs that landlord incurred; which had the ring of truth. In the absence of a move-in condition inspection report, I determined that the balance of the landlord's claim; beyond the items agreed to by the tenant, are dismissed.

It is the landlord's reasonability to ensure that a condition inspection report is completed at the start of the tenancy and that the tenant is provided with a copy of that report. If a report was completed, there was no evidence of such; further, there was no evidence before me that the tenant had been given a copy of that report, as required by the Act.

There was no evidence before me that the unit had not been left in a reasonably clean state; as required by the Act.

Further, the invoice for painting costs included items that appeared to have been incurred as the result of the use of multiple colours applied and sanding of doors and walls; costs that appear to be related to the need for repair or updating; that was not the responsibility of the tenant. There was no evidence before me that the tenant caused any damage to the walls or that she caused any damage that would have required patching and repair to drywall.

Therefore, the landlord is entitled to the following:

	Claimed	Agreed	Accepted
Loss of March rent revenue	740.00		0
Cleaning supplies	34.00		0
Painting of suite	1372.00		0
Replace carpet	200.00		0
Misc.	75.00		3.00
Microwave	120.00		0
Hot plate	33.00	33.00	
TOTAL	3299.00	758.00	3.00

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 \$362.50, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$811.00, which is comprised of unpaid rent, 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 \$362.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$448.50. 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 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: June 19, 2012.

Residential Tenancy Branch