



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for unpaid rent, money owed or compensation for damage or loss and for damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and refer to their documentary evidence submitted prior to the hearing, and make submissions to me.

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, authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began on August 1, 2007, that it ended on May 31, 2012, and that the tenant paid a security deposit of \$237.50 at the beginning of the tenancy on or about June 29, 2007.

The landlord's monetary claim is in the amount of \$840.48, which is comprised of unpaid rent of \$535.00 for May 2012, paint and labour costs for painting in the amount of \$292.98, carpet cleaning for \$150.00, curtain installation and yard clean-up for \$30.00, filing fee of \$50.00 and \$20.00 for a process server. This amount totals \$1077.98, from which the landlord has deducted the tenant's security deposit of \$237.50.

The landlord's relevant evidence included the a written submission outlining the landlord's claim, a tenancy agreement, notice to end the tenancy given by the tenant, a receipt for paint, a tenant ledger sheet and a telefaxed sheet of copies of photos, which I note were mostly black images.

As to the landlord's monetary claim-

Carpet Cleaning-The landlord stated he informed the tenant that he would clean the carpet at the end of the tenancy as he preferred to ensure the carpet was cleaned.

In response, the tenant stated that she did not clean the carpet as the landlord stated he would clean them and never informed her there would be a charge for the cleaning.

Unpaid Rent for May 2012-The landlord stated that the tenant did not pay rent for May 2012. The tenant agreed that she did not pay and that she owed rent to the landlord. The tenant further agreed that the landlord could keep her security deposit and interest in partial satisfaction of the rental unit amount.

Paint costs and labour-The landlord stated that the tenant repainted the rental unit after she moved in and that the work by the tenant required a re-painting by the landlord at the end of the tenancy.

When questioned, the landlord stated that he gave the tenant permission to paint only one room; however the tenant painted most of the rental unit.

When questioned further, the landlord confirmed there was no move-in or move-out condition inspection report and that he gave the tenant a month's free rent to clean up the rental unit to her satisfaction.

The tenant in response stated at the beginning of the tenancy it was necessary to paint and repair the walls due to the poor condition of the walls. The tenant submitted that there were multiple nail and screw holes, fist sized holes and that the walls were unpainted.

Additionally, the tenant stated she received the landlord's permission to paint the walls and that he approved the colour.

Curtain Installation and yard clean-The landlord stated that he was required to put up the curtain and clean the yard of dog excrement. When questioned the landlord stated he performed the work himself.

In response the tenant stated that she had asked the landlord to remove the curtain when she moved in as it was damaged. The tenant stated that she took her dog off premises for a daily walk and that the excrement was not from her dog. Additionally the tenant stated the yard was unfenced and that many dogs were loose in the neighbourhood.

The tenant's relevant evidence included photos of the rental unit, written submissions and witness statements.

Analysis

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

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, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, 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.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Carpet Cleaning-I find the evidence supports the tenant's position that the landlord informed the tenant that he would provide carpet cleaning. I find the landlord's requirement that he provide the carpet cleaning at the end of the tenancy to contravene the requirements of the Act and I further find that the landlord submitted insufficient evidence of a cost incurred for carpet cleaning. I therefore find that the landlord has failed to meet the second and third step of his burden of proof and I dismiss his claim for \$150.00.

Unpaid Rent for May 2012-The landlord submitted sufficient evidence that the rent was owed for May and was not paid. Additionally, the tenant agreed that this amount of was owed. I therefore find the landlord has proven his monetary claim for \$535.00.

Paint costs and labour, curtain installation and yard clean- The Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection, which in this case, the landlord failed to comply with this provision. In the absence of a condition inspection report, photographs at the start of the tenancy or other documentation, I find the landlord provided insufficient evidence to establish the condition of the rental unit at the beginning of the tenancy and I therefore cannot conclude that the tenant committed any damage to the rental unit. Additionally, the landlord himself confirmed that the rental unit was not suitable for occupation at the start of the tenancy as he allowed the tenant free rent for a month in order to clean and bring the rental unit to her standards.

Due to the landlord's insufficient evidence, I dismiss the landlord's monetary claim for \$292.98 for paint and labour and \$30.00 for curtain installation and yard clean.

Service of hearing documents- Landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy

agreement, pursuant to section 67 of the act. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the Act. I find that I do not have authority to award any other costs related to a dispute resolution proceeding and I therefore dismiss the landlord's claim to recover costs for serving the hearing documents for \$20.00.

Filing fee-As I find only a portion of the landlord's application had merit and that the tenant offered a reasonable settlement of the issues prior to the landlord's application being filed, I find the landlord is entitled to only a partial recovery of the filing fee, in the amount of \$25.00.

Conclusion

I therefore find that the landlord has established a monetary claim of \$560.00, comprised of unpaid rent for May 2012 of \$535.00 and a partial filing fee of \$25.00.

I direct the landlord to retain the tenant's security deposit and interest in the amount of \$242.91 in partial satisfaction of his monetary claim and I grant the landlord a monetary order for the balance due, in the amount of \$317.09.

The monetary order is enclosed 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: July 06, 2012.

Residential Tenancy Branch