



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security and pet damage deposits / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

In response to the tenant's application, a previous hearing was held in the dispute between these parties on May 8, 2012, with a decision issued by the same date (file # 788184). Pursuant to that decision a monetary order was issued in favour of the tenant, for return of the security and pet damage deposits, as well as recovery of the filing fee.

Pursuant to a written tenancy agreement, the fixed term of tenancy was from August 1, 2011 to August 1, 2012. Monthly rent of \$2,200.00 was due and payable in advance on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were both collected. As to a move-in condition inspection and report, the decision dated May 8, 2012 documents that the parties conducted an inspection and completed a report, even while a copy of the report was not provided by the landlord to the tenant. Presently, I have no copy of a move-in condition inspection report before me in evidence for this hearing, and the landlord claims to have misplaced it.

By letter dated December 31, 2011, the tenant gave notice to end the tenancy effective January 31, 2012. New tenants were not found until effective March 1, 2012. As was the case with the move-in condition inspection and report, while a move-out condition inspection was conducted and the report completed, a copy of the report was not provided to the tenant. Neither do I have before me a copy of a move-out condition

inspection report before me in evidence for this hearing, as the landlord claims also to have misplaced it.

The thrust of the landlord's application concerns recovery of costs associated with cleaning and repairs she claims were required in the unit as a result of this tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence which includes, but is not limited to, detailed e-mail exchanges between the parties and photographs, in addition to the affirmed testimony of the parties, the various aspects of the landlord's claim and my findings around each are set out below.

\$25.00: fee assessed for review application. Following issuance of the previous decision dated May 8, 2012, the landlord paid a \$25.00 fee for filing an application for review of that decision. Ultimately, the application was dismissed by way of review decision dated June 5, 2012. As the fee concerns a separate and distinct proceeding from the dispute currently before me, this aspect of the application is hereby dismissed.

\$1,100.00 + \$1,100.00: retention of security / pet damage deposit(s).

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, as the disposition of these deposits has already been determined in the decision of May 8, 2012, the aspect of the landlord's present application which concerns them is hereby dismissed.

\$2,200.00*: loss of rental income for February 2012. Section 45 of the Act addresses **Tenant's notice**, in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, as follows:

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.

As the tenant's manner of ending the tenancy does not comply with the above statutory provisions, and as I am satisfied that the landlord undertook to mitigate her loss by advertising for new renters in a timely fashion, I find that the landlord has established entitlement to the full amount claimed.

\$4,039.84: total amount of contractor's fees for miscellaneous labour:

\$1,500.00: painting / \$319.00: repair carpet tear / \$638.00: install flooring / \$780.00: replace stairs / \$150.00: remove & replace baseboards / \$20.00: toilet repair / \$200.00: tile repair / \$432.84: tax.

I note that while there is not a move-in or a move-out condition inspection report in evidence, and the tenant claimed a copy of neither was provided to him by the landlord, the tenant did not dispute the landlord's claim that they were both completed. Despite this, in the absence of any agreement between the parties around the tenant's alleged responsibility for any of the above damage and repairs, I find there is simply insufficient evidence to support this aspect of the landlord's claim. Accordingly, it is hereby dismissed.

\$2,155.00: *underlay and laminate to replace carpet.* For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$200.00: *carpet cleaning.* In the circumstances of this tenancy, the tenant owned one dog. The tenant testified that he did not hire a professional carpet cleaner at the end of tenancy but, rather, he undertook himself to clean the carpets before vacating the unit. Residential Tenancy Policy Guideline #1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and provides in part as follows:

CARPETS

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

While there is an absence of either a move-in or move-out condition inspection report in evidence, as previously noted, the tenant did not dispute that the inspections were conducted and the reports completed. Further, however, a tenant who occupied the unit prior to the start of the subject tenancy testified that the carpets had stains at the start of their tenancy, and even more stains at the end of their tenancy. On a balance of probabilities, I find that there is insufficient evidence to support this aspect of the claim and it is, therefore, hereby dismissed.

\$40.00: *purchase of old microwave oven in order to acquire replacement part.* In the absence of either a move-in or move-out condition inspection report in evidence, I find that there is insufficient evidence to support this aspect of the claim. It is, therefore, hereby dismissed.

\$1,106.16: *materials* / \$894.00: *labour; all arising from replacement of the hot water tank.* On August 10, 2012, the landlord made a late submission to the Branch for the specific labour costs associated with this aspect of the application.

In the absence of either a move-in or move-out condition inspection report in evidence, documented evidence of the age of the hot water tank at the time of its replacement, or any other compelling evidence that supports the claim that the tenant was in some way responsible for the replacement of the hot water tank, this aspect of the application is hereby dismissed.

\$175.34 (photocopying) + \$34.77 (registered mail). Pursuant to section 72 of the Act, with the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

\$100.00: filing fee. As the landlord has achieved limited success with her application, I find that she has established entitlement limited to \$50.00*, which is half the filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$2,250.00 (\$2,200.00 + \$50.00). This order may be served on the tenant, filed in the 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: August 24, 2012.

Residential Tenancy Branch