



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary Order for compensation for damage, loss and unpaid rent;
2. An Order to be allowed to retain the security deposit; and
3. Recover of the filing fee paid for this application.

Total sum sought by the landlord \$14,114.11.

Both parties appeared at the hearing of this matter which was originally scheduled for October 4, 2012 and rescheduled to October 10, 2012.

Both parties gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

This tenancy began on January 4, 2004 and ended on September 30, 2010. Rent throughout the tenancy was \$1,350.00 per month and the tenant paid a security deposit of \$650.00 on January 1, 2004.

The landlord testified that the tenant did not supply him with her forwarding address for the purposes of returning the security deposit. The landlord says over one year has passed since the end of the tenancy and the tenant has not forfeited her right to recovery the \$650.00 deposit.

The landlord says that the tenant did not pay rent for the last month of her tenancy (September 2010) and he is therefore claiming \$1,350.00 for rent for that month.

In addition the landlord claims the following sums for which he says the tenant is responsible:

City water bills up to September 30, 2010 – landlord says tenant was responsible for water bills and she did not pay the final billing	\$445.38
Replace 10 year old carpets	3,687.41
Landlord repaired 8 holes in the wall including repainting 25 hours x \$20.00 per hour	450.00
Landlord replaced and repaired damaged windows, damaged moldings and doors 30 hours @ \$20.00 per hour	675.00
Stove and house cleaning charges	100.0
Remove bed, hide-a-bed and bike parts to recycling depot	34.50
Repairs to lawns caused by the tenant's dog digging holes in the	100.00
Total	\$5,649.33

Although the landlord originally claimed a total of \$14,114.11 the above are the only claims submitted into evidence at the hearing. The landlord submitted that these are the only claims he could come up with at the time of the hearing.

The tenant says the landlord always knew her address so she did not supply it to him at the end of the tenancy. The tenant says she did not pay her last month's rent because the landlord held the security deposit and 6 years of interest.

The tenant says she declared bankruptcy when this tenancy ended and she has proof that her trustees in bankruptcy paid the \$445.38 water billing although she did not tender documentary proof of payment at this hearing.

The tenant says the carpets were old and in fact the landlord never replaced the carpets at all and he simply pulled them out and installed hardwood.

The tenant says there was one hole in the wall downstairs when this tenancy ended and nothing more.

The tenant says she replaced two broken windows. As to the damages to moldings etc. the tenant says the house is very old, probably older than the 40 years the landlord claims it is. The tenant says the windows are wood framed as were the doors and through normal wear and tear the frames became loose and separated at the joints.

The tenant submits that the landlord did almost no maintenance to the property during her 6 year tenancy and that he is now simply trying to get her to pay for all of his renovations. The tenant says the house has sat empty since she left 2 years ago while the landlord attempts to sell it.

The tenant says she used the landlord's appliances for the first year then moved in her own appliances and used them for the balance of the years she lived in the rental unit. The tenant says she cannot recall whether she cleaned the landlord's stove when she removed it to install her own stove however she does recall cleaning the entire house before vacating.

The tenant says there was one loveseat left behind after the garage sale she held before vacating the rental unit.

The tenant says her dog was 8 pounds and he did not cause damage to the yard. The tenant says that during her tenancy she had lawn maintenance people take care of the yard and this only stopped when she vacated the rental unit.

Analysis

The tenant agrees that she did not pay rent for the last month of her tenancy. I will therefore allow the landlord's claim in this regard in the sum of \$1,350.00.

With respect to the landlord's claim for recovery of fees for water the landlord has submitted an invoice from the City in this regard and the tenant agrees that she was responsible for paying for these services. While she says she has proof she paid these sums, the landlord submitted proof, in the form of an invoice from the authority, that the sums had not been paid. I will therefore find in favour of the landlord in this regard in the sum of \$445.38 as claimed.

The tenant states that she left a loveseat behind and while the landlord claimed the cost of other items which had to be removed to recycle, not a love seat, I find that his claim for removal costs of \$34.50 to be appropriate in the case as it has been admitted that goods were in fact left behind.

With respect to the landlord's claim for replacement of all carpets, the landlord has failed to demonstrate that the tenant caused the damage which required replacing all carpets. Further, the evidence is that the carpets were 10 years old. As such, according to Residential Tenancy Branch policy, the carpets were past their viable life in any event.

With respect to the holes in the walls the tenant has admitted to causing one hole. The landlord has claimed \$450.00 to repair 8 holes, this would result in a cost of \$56.25 per hole. I find that the landlord has failed to show that the tenant caused all of the holes but as she has admitted to causing one hole I will allow his claim in the sum of \$56.25.

With respect to the balance of the landlord's claims the landlord bears the burden of proving his claims. When one party has a different but equally probable version of events than the other party, the party bringing the claim must provide adequate documentation to prove his version correct. I find that the landlord has failed in this regard.

With respect to the security deposit, the landlord claims that the security deposit cannot be offset from any award made herein because the tenant's right to recover the deposit had been extinguished because she did not supply her forwarding address to him within the one year period set out in the Act. While, on the face of it this may appear to be true I disagree with this interpretation of the Act. In all things the Act intends to be balanced and fair and I cannot reasonably believe that the legislators intended that landlords, especially those who wait to bring their claims long after the tenancy has ended, should be rewarded by being awarded what would amount to double the tenant's deposit. I will therefore deduct the deposit of \$650.00 plus applicable interest of \$23.00 calculated from January 1, 2004 to the date of the hearing of this matter from the award made herein.

City water bills up to September 30, 2010 (end of tenancy)	\$445.38
Removal costs	34.50
Total	\$536.13
Less Security Deposit and interest	-673.00

The landlord holds a deposit and interest of \$673.00 and I will allow him to keep that entire sum in full satisfaction of his claims even though this sum exceeds the amount awarded to him in this matter. I find in this manner because while I do not agree he should receive a windfall in what would amount to double the deposit as explained above, I do find that the tenant has in fact extinguished her right to recovery of her deposit and it will therefore remain with the landlord.

The tenant has been provided with an Order in the above terms. This Order must be served by the tenant on the landlord. This Order is final and binding as any Order of the Provincial Court of British Columbia.

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: October 10, 2012.

Residential Tenancy Branch