



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 hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, authority to retain the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for damage to the unit, site or property, and to recover the filing fee.

The tenant and the agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant testified that she received and had the opportunity to review the evidence submitted by the landlord, which consisted of the Notice of Hearing, a quote regarding carpets, and a ledger. I find the tenant was served in accordance with the *Act*.

Issues to be Decided

- Should the landlord be granted a monetary order for unpaid rent, or money owed or compensation for damage or loss, for damage to the unit, site or property, and/or for unpaid rent or utilities?
- Should the landlord be granted authority to retain all or part of the security deposit and/or pet damage deposit?

Background and Evidence

The parties agree that a fixed term tenancy began on September 16, 2011. Monthly rent in the amount of \$750.00 was due on the first day of each month. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid at the start of the tenancy.

The tenant vacated the rental unit on July 31, 2012 after receiving a 1 Month Notice to End Tenancy for Cause (the "Notice"). The tenant did not dispute that Notice.

The landlord is seeking \$750.00 for unpaid rent for July 2012, \$25.00 for a previous month's NSF fee, and \$750.00 for carpet replacement due to the tenant's dog allegedly urinating on the rental unit carpets resulting in a residual urine odour.

The tenant agreed that she did not pay rent for July 2012 in the amount of \$750.00 and had not paid an NSF fee of \$25.00 that was owed from a previous payment. The tenant disputed that the carpets were left unclean or damaged. The agent stated that a carpet technician attended the rental unit after the tenant clean the carpets, and the carpets were still damp the next day and that the rental unit smelled like dog urine. The tenant disputed that the rental unit smelled like dog urine. The agent stated that the carpet and underlay was removed, and the subfloor was painted with a coating to seal out any smells before the new carpet was installed.

The landlord did not submit photos, witnesses, witness statements or other documents to corroborate their claim supporting that carpet replacement was necessary. The landlord did submit a quote for carpet replacement from a floor company store in the amount of \$750.00.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Landlord's claim for unpaid rent and NSF fee – The tenant agreed during the hearing that she failed to pay rent for the month of July 2012 in the amount of \$750.00 and also had not paid an earlier NSF fee of \$25.00. Section 26 of the *Act*, states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the tenant breached the *Act* by failing to pay rent for July 2012 and that the landlord has established a monetary claim of **\$775.00** consisting of unpaid rent in the amount of \$750.00 for July 2012, and \$25.00 for an NSF fee.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for carpet replacement – The agent stated that rental unit was last renovated in 2007. As a result, the carpets in the rental unit were 4 years old. The landlord provided a quote for carpet replacement, however, failed to provide corroborating evidence that the carpets were in need of replacement. At the very least, I would expect the landlord to have provided a move-in/move-out condition inspection report, a witness or witness statement, photos and/or other evidence to support their claim. The tenant disputes the agents' testimony that the rental unit smelled like dog urine.

Given the disputed testimony, and without further evidence to support the landlord's claim, **I find** that the landlord's claim fails as the burden of proof has not been met. **I find** that the landlord has not proven that the tenant breached the *Act*, regulation or tenancy agreement resulting in the landlord suffering damage or loss. Therefore, **I dismiss** the landlord's claim for compensation for carpet replacement without leave to reapply.

As the landlord was partially successful in their application, **I grant** the landlord recovery of half of the filing fee in the amount of **\$25.00**.

The tenant's security deposit of \$375.00 and pet damage deposit of \$375.00 has accrued no interest during the tenancy.

I find that the landlord has established a total monetary claim of **\$800.00** consisting of \$775.00 in unpaid rent and an NSF fee, and \$25.00 of the filing fee. **I authorize** the landlord to retain the full security deposit of \$375.00 and full pet damage deposit of \$375.00 in partial satisfaction of the claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$50.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of **\$800.00**. I order that the landlord retain the security deposit of \$375.00 and pet damage deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$50.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2012

Residential Tenancy Branch