



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 10, 2012, a copy of the original Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail at the address noted on the Application. The address was given to the landlord on August 27, 2012. A Canada Post receipt and tracking number was provided as evidence of service.

On September 11, 2012 the landlord amended the application and served the tenant a copy of that application, sent via registered mail to the forwarding address provided by the tenant.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The details of the dispute section of the application included a claim for damage to the rental unit; therefore, the application has been amended to include a claim for compensation for damage.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid September 2012 rent?

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

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in 2005, at the end of the tenancy rent was \$702.00 per month, due on the first day of each month. A deposit in the sum of \$325.00 was paid September 12, 2005. A copy of the tenancy agreement was supplied as evidence.

The tenancy agreement did not prohibit smoking. The agreement included a clause requiring the tenant to pay \$55.00 for carpet cleaning at the end of the tenancy and a term imposing a \$25.00 fee for NSF cheques.

A move-in condition inspection report was not completed in 2005. The current landlord became responsible for the unit in 2006 and on May 30, 2007, a condition inspection report was completed and signed by the tenant.

The landlord said that on August 27, 2012 they received a written notice from the tenant; dated August 24, 2012. The tenant informed the landlord that she would vacate on August 29, 2012 and that she would pay rent for September, 2012, as she was not providing proper notice to end the tenancy.

The landlord expected to meet with the tenant on August 29, 2012, but when she went to the building at 8 a.m. the keys had been left and the tenant did not return.

The landlord has made the following claim for compensation:

Flooring replacement	1,811.14
Bulbs	2.22
Cleaner	4.01
Drape cleaning	30.00
Suite cleaning	125.00
Removal of items left in unit	200.00
Unpaid September rent	702.00
NSF fee September 2012 rent	25.00
Carpet cleaning cost	55.00
NSF fee for carpet cleaning cheque	25.00
TOTAL	3,136.03

The landlord supplied the following documents as evidence:

- Bank records showing NSF cheques issued for carpet cleaning and September 2012 rent;
- A security deposit statement that included costs incurred by the landlord for cleaning, removal of belongings and drape cleaning;
- A move-in and move-out condition inspection report;

- A September 5, 2012 Home Depot invoice for a holding company, for cleaner, paint and bulbs;
- A June 1, 2012 Costco invoice for vinyl tile and other products, with notes indicating costs of \$320.62 to replace the bathroom floor;
- An August 2, 2012 Costco invoice for black oak totaling \$1,077.15, with notes indicating a cost of \$1,811.14 to replace 445 sq. feet of carpeting;
- Multiple photographs of the unit after the tenant had moved out; and
- A copy of the notice the tenant issued on August 24, 2012, giving Notice ending the tenancy, which contained her forwarding written address.

The tenant gave the landlord payment for September 2012 rent owed; acknowledging she needed to give 1 month's notice to end the tenancy. The cheque was returned by the bank as insufficient funds.

A cheque issued by the tenant, for carpet cleaning costs in the sum of \$55.00, a requirement of the tenancy agreement, was also returned as NSF.

The tenant smoked heavily and the apartment required painting at the end of the tenancy. The unit was last painted prior to the start of the tenancy in 2005.

The tenant left several light bulbs that had burnt out and not been replaced.

The photographs showed carpeting that was very dirty; the landlord said it was beyond being able to be cleaned and that they have estimated the cost of replacement. An invoice supplied was for oak flooring and vinyl, with estimates made for the area that required new flooring. No testimony was given in relation to flooring, outside of carpeting. The age of the carpets was unknown; it was not new when the tenant took possession in 2005.

The landlord's agent spent 5 hours cleaning the unit and another 8 hours removing items that were left by the tenant. Photographs submitted as evidence showed boxes of items; a bed and box spring; a dresser and mirror and numerous miscellaneous belongings such as a chair, blanket, lamp, TV, computer components and drapes; plus garbage and numerous kitchen items.

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.

As the tenant failed to give proper notice, in accordance with section 45 of the Act; she was correct in giving the landlord rent payment for September, 2012. Notice given at the end of August 2012 would have been effective at the end of September 2012. As the rent payment cheque was returned as NSF I find that the landlord is entitled to compensation in the sum of \$702.00 for September loss of revenue plus a NSF fee in the sum of \$25.00. The NSF fee was included as a term of the tenancy agreement; in compliance with the Regulation.

The tenancy agreement required the tenant to pay \$55.00 for carpet cleaning at the end of the tenancy. As the tenant's cheque for carpet cleaning was returned as NSF I find that the landlord is entitled to compensation in the sum of \$55.00 plus the \$25.00 NSF fee, as provided by the tenancy agreement.

Residential Tenancy Guidelines are provided as a statement of the policy intent of the legislation, and have been developed in the context of the common law and the rules of statutory interpretation.

Policy suggests that carpet and tile flooring has a useful lifespan of 10 years; I find this to be a reasonable stance. Therefore, as the flooring in this unit was at least 8 years old and the landlord did not provide evidence of the age of the flooring at the time the unit was rented, I find that the flooring was beyond its useful lifespan and that this portion of the claim is dismissed.

Policy suggests that a rental unit should be painted at least once every 4 years. As the rental unit had not been painted since at least 2005, I find that the claim for paint is dismissed. Even if extra paint was required due to smoking; there was no evidence before me that the tenant was prohibited from smoking in her unit.

From the evidence before me I find that the landlord is entitled to the sums claimed for bulbs, cleaner, drape cleaning, suite cleaning and removal of items from the unit. These costs were incurred by the landlord, through the purchase of items and through labour provided by the landlord. The photographs clearly showed a rental unit that was not left in a reasonably clean state, with numerous belongings that had been left behind, by the tenant.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Paint	156.66	0
Bulbs	2.22	2.22
Cleaner	4.01	4.01
Drape cleaning	30.00	30.00
Suite cleaning	125.00	125.00
Removal of items left in unit	200.00	200.00
Unpaid September rent	702.00	702.00
NSF fee September 2012 rent	25.00	25.00
Carpet cleaning cost	55.00	55.00
NSF fee for carpet cleaning cheque	25.00	25.00
TOTAL	3,136.03	1,168.23

The landlord will retain the \$325.00 deposit, plus interest in the sum of \$11.51 in partial satisfaction of the claim for unpaid rent.

As the application has merit I find that the landlord is entitled to filing fee costs in the sum of \$50.00.

Based on these determinations I grant the landlord a monetary Order for \$881.72. 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.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$1,218.23.

The landlord will retain the deposit, plus interest, in partial satisfaction of the claim for unpaid rent.

The balance of the claim is dismissed.

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: November 28, 2012.

Residential Tenancy Branch