



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EY Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent and damage or loss under the Act; to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 23, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number and receipt was provided as evidence of service.

The mail was returned to the landlord, marked by Canada Post as "unclaimed." The landlord said that several days prior to the tenant leaving she had sent the landlord a text message that provided her forwarding address; that address was used for service.

A respondent may not avoid service by refusing to claim registered mail; as the mail was returned to the landlord as unclaimed by the tenant, I find, pursuant to section 71(2) of the Act, that the tenant was sufficiently served with notice of the hearing; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid October and November, 2012 rent?

Is the landlord entitled to compensation in the sum of \$1,091.04 for damage to the unit?

May the landlord retain the \$435.00 security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2011; rent was \$870.00 per month, due on the first day of each month. A deposit in the sum of \$435.00 was paid.

A 10 Day Notice to End Tenancy for Unpaid Rent had been issued to the tenant, with an October 31, 2012 effective vacancy date. Notes submitted by the landlord indicate that the hydro service had been terminated on October 18, 2012 and that effective November 5, 2012 the landlord had changed the locks to the unit.

The tenant had been offered several dates and times to complete the inspection report and had gone to the landlord's office the week prior to November 16, 2012, saying she would attend an inspection on the 16th; the tenant did not attend and the report was completed in her absence.

The landlord has made the following claim:

Suite cleaning	\$175.00
Laundry smart card	50.00
Drape cleaning	91.04
Painting	500.00
New bedroom drapes	150.00
Bedroom closet door	75.00
Dump fees	50.00
Unpaid October & November 2012 rent	1,740.00
TOTAL	\$2,831.04

The landlord supplied copies of the following documents:

- Move-in and move-out inspection report;
- Tenancy agreement;
- 10 Day Notice to End Tenancy for Unpaid Rent issued on October 18, 2012;
- Security deposit statement authorization, listing damages costs;
- Tenant ledger;
- Laundry card sign-out sheet on which the tenant acknowledged a \$50.00 fee for lost cards;
- November 19, 2012 invoice issued by the landlord for costs claimed;
- A list of costs for repair and cleaning given to the tenant when the tenancy was ending; and
- Photographs of the state of the unit at the end of the tenancy.

The photographs supplied by the landlord showed that the tenant had drawn on a bedroom wall, painted 2 walls a deep mauve or purple and painted the kitchen cabinets

black. The landlord said the cost claimed for painting was actually less than what it cost in time to complete the work.

Photographs showed that the unit was not cleaned; food was left in the fridge and it had rotted. Drapes had been damaged by a cat; the tenant was not to have pets. A bedroom door had been broken and the tenant had not cleaned the drapes, as required by clause 23 of the tenancy agreement. The landlord had to take garbage and items left behind to the landfill and incurred costs. The tenant failed to return her laundry smart card.

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.

In the absence of the tenant who was sufficiently served with notice of this hearing, I find, on the balance of probabilities, from the evidence before me, that the tenant failed to attend the scheduled inspection on November 16, 2012 and that she then extinguished her right for return of the deposit. The tenant had gone to see the landlord 1 week prior to the inspection and said she would attend; she did not.

From the evidence before me I find that the tenant failed to leave the unit in a reasonably clean state, as required by section 37(2) of the *Act* and that the landlord is entitled to the cost claimed for cleaning.

I find that the evidence before me supports the landlord's claim that the tenant damaged the closet door, the curtains and that she painted walls without permission. I also find that the tenant failed to return the laundry smart card. Therefore, I find that the tenant has breached the *Act* by not making repairs that were beyond wear and tear and that the landlord is entitled to the cost of repairs and cleaning as claimed.

As the laundry smart card was not returned and the tenant signed a document agreeing to a fee in the sum of \$50.00, I find that the landlord is entitled to compensation in that amount.

I find that the tenant did not pay rent owed for October, 2012 and that the landlord is entitled to compensation in the sum of \$870.00. The tenant was given a Notice requiring her to vacate the unit on October 31, 2012. The actual date of vacancy was not provided but, no later than November 5, 2012, the landlord had possession of the unit and the locks were changed.

I find, from the evidence before me, that even if the landlord had had a new occupant for November 1, 2012, the unit was not in a state that would have allowed occupation. The unit was dirty and required extensive painting. Therefore, I find that the tenant's failure to leave the unit in a reasonably clean state, free from damage, resulted in the loss of November, 2012 rent revenue to the landlord and that the landlord is entitled to compensation in the sum of \$870.00.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$435.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of for \$2,446.04. 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

Conclusion

The landlord is entitled to compensation as claimed, for damage to the unit and unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: February 27, 2013

Residential Tenancy Branch

