



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Performance Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, 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 damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 16, 2012 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant, to the written forwarding address provided on October 31, 2012, as part of the move-out condition inspection report. A copy of the Canada Post receipt and tracking number for each tenant was supplied as evidence.

One mail package was returned by Canada Post, marked as unclaimed.

Section 89 and 90 of the Act deem mail sent to the forwarding address given by the tenant as served effective the 5th after mailing. Therefore, I find that the tenants are each deemed served with notice of the hearing effective November 21, 2012. Refusal to claim registered mail does not avoid service.

Neither tenant attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensaiton in the sum of \$576.80 for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to the filing fee cost?

Background and Evidence

The tenancy commenced on November 1, 2011, this was a fixed-term and was followed by a new agreement that ended on October 31, 2012. Rent was \$1,600.00 per month. A deposit in the sum of \$450.00 had been paid in November 2011.

A copy of the tenancy agreement, move- in and move-out condition inspection report, invoices for items claimed and a detailed calculation of the claim were submitted as evidence.

The landlord has claimed compensation for repair of a balcony railing that was damaged by a burning cigarette and unit cleaning in the sum of \$392.00 and \$184.80 respectively.

The tenants attended both inspections and signed the reports. At the end of the tenancy the landlord recorded that multiple areas of the unit were dirty and that an invoice in the sum of \$300.00, plus could be expected. The tenants signed agreeing to the need for cleaning but they disputed the cost of the balcony railing repair. The tenants recorded a comment on the report that repair of the balcony should be \$120.00 and that they could have had it fixed on several occasions.

The landlord said that a cigarette had been left on the balcony railing; it was repaired and an invoice in the sum of \$392.00 issued on November 13, 2012, was supplied as evidence. The landlord stated that the tenants had said they knew someone who could fix the railing; however they did not complete the repair.

The condition inspection report indicated that the unit had not been sufficiently cleaned at the end of the tenancy. An invoice dated November 5, 2012, in the sum of \$184.80 was supplied as evidence of costs to the landlord.

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 tenants, who were served with notice of this hearing, I find that the landlord has proven, on the balance of probabilities, that the tenants did cause damage to the railing and that the unit was not left in a reasonably clean state.

Therefore, as tenants must repair damage they have caused and must leave a unit reasonably clean, I find that the landlord is entitled to compensation in the sums claimed. The landlord submitted evidence verifying the amounts claimed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants 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 \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of for \$176.80. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 for damage to the rental unit.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit paid.

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: February 21, 2013

