



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDS MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be issued a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: photos of the rental unit taken prior to the tenancy in approximately May 2011 and at the end of the tenancy on October 31, 2012; the Landlord's written statement; the rental agreement addendum; the move in condition inspection report form; carpet estimate; statement from the gardening service company; invoice for yard clean up; statement from house cleaner; receipt for waste removal; and an e-mail sent to the Tenants from the Landlord.

The Tenant submitted documentary evidence which included, among other things, copies of: their written statements; photos of the rental unit; and receipt for carpet cleaner rental.

The parties confirmed they entered into a fixed term tenancy agreement that began on June 1, 2011 and switched to a month to month tenancy after May 31, 2012. Rent was payable on the first of each month in the amount of \$1,350.00 and on or before June 1, 2011 the Tenants paid \$675.00 as the security deposit. The Tenants did not occupy the rental unit until the end of June, 2011 when the male Tenant arrived. The parties completed and signed a move in condition inspection form on June 29, 2011. The Tenants did not stay to complete the move out inspection as they claim the Landlord was being too picky. The Landlord did not complete the form in the Tenants' absence.

Upon review of the Landlord's claims the Tenants agreed to pay the Landlord \$40.00 for yard clean up, \$26.55 for the garbage removal, and \$119.61 for carpet replacement which included tax. The Landlord withdrew his claim for carpet cleaning, withdrew the balance of the yard clean up claim, and wished to proceed with the last item claimed for interior cleaning.

The Landlord advised that no one occupied the unit between November 1, 2012 and January 6, 2013, the date the unit was cleaned. That is because he conducted renovations and had the cleaner do her work once the renovations were completed. He stated that he believes the Tenants should be responsible to pay \$40.00 for two hours of cleaning (2 x \$20.00 / hr) because of the condition they left the unit in at the end of the tenancy. The entire cleaning cost was \$160.00 as the cleaner spent 8 hours cleaning once he finished removing cabinets, removed flooring, removed the tub and installed a shower, replaced the carpets, installed ceiling fans, and installed a heater.

The Tenants dispute the Landlord's claim for cleaning and questioned why they would be responsible to pay to clean the unit after the Landlord conducted renovations. They also questioned when the photos were taken as they attempted to clean the unit the best they could. They noted that they cleaned up cob webs after the Landlord pointed them out. They argued that the mold and cobwebs could have easily formed between the end of their tenancy and over two months later when the Landlord had the unit cleaned.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenants agreed to compensate the Landlord as follows: \$40.00 for yard clean up; plus \$119.61 for carpet replacement; and \$26.55 for garbage removal for a total amount of **\$186.16**.

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.

In this case, the Landlord has the burden to prove the exact cost of cleaning which was required at the end of the tenancy and not an estimate or a portion of the cost incurred to clean the unit after construction. Accordingly, I find there to be insufficient evidence to support the claim for cleaning. Therefore, I dismiss the \$80.00 claim, without leave to reapply.

The Landlord has partially succeeded with his claim; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Yard clean up; carpet; garbage removal	\$ 186.16
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 236.06
LESS: Security Deposit \$675.00 + Interest 0.00	<u>-675.00</u>
Offset amount due to the TENANTS	<u>\$(438.94)</u>

I HEREBY ORDER the Landlord to return to the Tenants the balance of the security deposit in the amount of **\$438.94, forthwith.**

Conclusion

The Tenants has been issued a Monetary Order in the amount of **\$438.94**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is legally binding and 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 13, 2013

Residential Tenancy Branch

