



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: MNSD

For the landlord: MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss, unpaid rent and damage to the rental unit, authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The tenant's witnesses were asked to leave the conference, with instructions that they would be called into the conference call hearing at the appropriate time as they would not be allowed hear testimony. Thereafter the parties were provided the opportunity to present their evidence orally and refer to relevant documentary evidence submitted prior to the hearing.

At the outset of the hearing, the evidence was discussed. The only party submitting written evidence was the landlord. The tenant denied receiving all evidence; however the landlord provided proof that the tenant was served the landlord's evidence via registered mail to the address listed by the tenant. As the tenant was not clear as to whether or not she received a notice of registered mail, I allowed the landlord's evidence in for consideration.

No party raised any issue with regard to the service of the other's application.

I have reviewed all relevant oral and written evidence before me that met the Residential Tenancy Branch Rules of Procedure (Rules); however I refer to only the evidence relevant to the issues and findings in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a return of her security deposit, doubled, and a monetary order?
2. Are the landlords entitled to retain the tenant's security deposit, to a monetary order, and to recover the filing fee?

Background and Evidence

The parties provided undisputed evidence that this tenancy began in August 2008, ended on October 31, 2012, and the tenant paid a security deposit of \$497.50 at the beginning of the tenancy.

Both parties agree that a move-in inspection was not conducted and therefore there was not a move-in condition inspection report

Tenant's application-

The tenant's claim is for her security deposit of \$495.00, doubled. I note that the tenant's claim listed in incorrect amount of the actual security deposit of \$497.50.

In support of her application, the tenant said that she gave her written forwarding address to the landlord in her application for dispute resolution served on the landlord on December 13, 2012, via personal service.

The tenant said that the landlord failed to return her security deposit.

Landlord's application-

The landlord's monetary claim is as follows:

Carpet removal	\$302.40
Carpet & floor replacement	\$2984.80
Painting/wall repair/floor sealant	\$1820.00
Key/lock replacement	\$50.00
Junk removal	\$814.00
General suite cleaning	\$120.00
Drape/blind replacement	\$350.00
Garbage removal	\$75.00
Feline removal	\$75.00
Suite Maintenance/repairs/replacements	\$400.00
November rent	\$995.00
Writ filing fee	\$120.00
Bailiff services	\$3465.52
Arbitration filing fee	\$100.00

Glass replacement	\$168.32
Total	\$11,840.04

The parties provided the following relevant evidence regarding the landlord's application-

Carpet removal, carpet and floor replacement-The landlord stated that the carpet and floor in the rental unit were covered in cat feces and urine at the end of the tenancy, and were so damaged that they were beyond repair, necessitating a replacement.

When questioned, the landlord could not provide the age of the carpet or floor.

The tenant denied there was anything wrong with the carpet and linoleum floor when she left, as she placed her own rugs over the carpet in the rental unit.

The tenant also submitted that the floors and carpet were damaged when she moved in and that her cats never sprayed the rental unit as they were neutered.

Painting/wall repair/floor sealant-The landlord said that it was necessary to have the rental unit painted and have the walls repaired as a result of the damage by the tenant.

The landlord could not provide information as to when the walls were last painted, but said that rental units are generally painted at the beginning of each tenancy.

The tenant said the walls did not need repainting when she left.

Key/lock replacement-The landlord submitted that it was necessary to replace the door locks and make new keys.

Junk removal-The landlord submitted that after the bailiff removed the tenants' personal property to the front lawn, where it stayed for thirty days; thereafter it was necessary to hire junk removers as the tenant did not collect the items.

The tenant submitted that she believed she had until October 31, 2012, to move as she had paid rent for October; as such, she had movers ready for that date.

Suite cleaning-The landlord submitted that the rental unit required cleaning after the tenant left, as the tenant failed to do so. In support, the landlord said that photos were taken and these were submitted into evidence.

Drape/blind replacement-The landlord contended that the damage by the tenant required that the window treatments be replaced.

The tenant denied the damage.

Garbage removal-The landlord argued that it was necessary to remove garbage left behind by the tenant.

In response, the tenant said that there was a lot of garbage around the storage area, and that it was not her junk.

The tenant also questioned some of the photographs of the landlord, stating that some of the photos were taken well before the end of the tenancy.

Feline removal-The landlord's agent stated that the tenant left so many cats behind, it was necessary to hire someone to help in the removal.

Suite maintenance/repairs/replacements-The landlord again contended that these costs were incurred as a result of the damage by the tenant.

The tenant denied the damage.

November rent-The landlord contended that the condition of the rental unit at the end of the tenancy, as left by the tenant, prevented the landlord from re-renting the rental unit the month following the end of the tenancy, as repairs and cleaning were required to be done.

Writ filing fee/bailiff services-The landlord submitted that due to the tenant not vacating the rental unit pursuant to the terms of the order of possession issued to the landlord, it was necessary to hire a file a writ in the Supreme Court of British Columbia and hire a bailiff to remove the tenant. The landlord supplied the bailiff receipts.

The landlord submitted a large volume of evidence; included in the landlord's relevant evidence were receipts for home repair stores, the tenancy agreement, a move-out condition inspection report, photographs depicting the state of the rental unit, receipts for repairs and replacement of items, and the bailiff expense sheet.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

Carpet removal; carpet and floor replacement; painting/wall repair & wall/floor sealant; drape/blind replacement; broken window (damage to the rental unit) - A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to submit evidence of meeting their obligation under of the Act of conducting a move-in inspection and completing the inspection report. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

The landlord claimed the tenant committed the damage to the rental unit and the tenant denied committing the damage, saying that the rental unit was damaged and the window was cracked when she moved in and that the landlord was negligent in attending to her repair requests. Without further evidence from the landlord, it is just as likely true as not that the tenant did not damage the rental unit as alleged by the landlord.

The landlord was further unable to provide the age of the carpet and flooring, the blinds and drapes, and paint, so that I was unable to determine whether these items had been fully depreciated according to Residential Tenancy Branch Policy Guideline #40.

In the absence of any independent evidence, such as the move-in condition inspection report or photographs prior to the tenancy, or proof of the age of the carpet and flooring, the blinds/drapes, and paint, and in light of the disputed oral evidence, I find the landlord submitted insufficient evidence to prove their claim for compensation for these items upon the balance of probabilities.

I therefore dismiss the landlord's monetary claim for carpet removal for \$302.40, carpet and floor replacement for \$2984.80, painting/wall repair & wall/floor sealant for \$1820.00, and drape/blind replacement for \$350.00.

Key/lock replacement-After a tenancy ends, under section 37 of the Act, the tenant is responsible for returning the key. In the case before me, I have no evidence that the tenant returned the key; however, I also have no evidence from the landlord that they incurred a specific cost of \$50.00 for a key/lock replacement, which is step 3 of their burden of proof.

I therefore dismiss their claim for \$50.00 due to lack of proof of a cost incurred.

Junk removal-I find the landlord submitted sufficient photographic evidence that the tenant failed to remove her furniture and other personal property prior to being evicted,

requiring the landlord to hire workers to remove the items, as shown by their written evidence.

I therefore find the landlord is entitled to a monetary award for \$814.00.

Suite cleaning and garbage removal-I accept the landlord's photographic evidence that the rental unit required cleaning and removing of garbage after the tenancy ended and I therefore approve their monetary claim for \$120.00 for suite cleaning and \$75.00 for garbage removal.

Feline removal-I accept that the landlord was required to remove the tenant's many cats from the rental unit; however, I have no evidence from the landlord that they incurred a specific cost of \$75.00 for feline removal, which is step 3 of their burden of proof.

I therefore dismiss their monetary claim for \$75.00.

Loss of rent revenue for November-I find the landlord submitted sufficient evidence of the state of the rental unit at the end of the tenancy which prevented the landlord from attempting to re-rent the rental unit for the month following the tenancy. Additionally as the tenant failed to vacate the rental unit pursuant to the terms of the order of possession for the rental unit granted in favour of the landlord, the tenancy was not ended until October 31, 2012, with the assistance of a bailiff. I find that it is not reasonable the rental unit would be ready by the next day.

I therefore grant the landlord's monetary claim of \$995.00.

Writ filing fee and bailiff services-I find the landlord submitted sufficient evidence that the tenant refused to vacate the rental unit pursuant to the terms of the order of possession for the rental unit granted in favour of the landlord and therefore it was necessary to hire a bailiff to remove the tenant and her personal property.

I therefore grant the landlord's monetary claim of \$120.00 for the writ filing fee and \$3465.52 for bailiff services.

As the landlord's application had merit, I grant them recovery of the filing fee for their application for dispute resolution in the amount of \$100.00.

Due to the above, I find the landlord has established a total monetary claim in the amount of \$5689.52, comprised of \$814.00 for junk removal, \$120.00 for suite cleaning, \$75.00 for garbage removal, \$995.00 for loss of rent revenue for November 2012, the writ filing fee of \$120.00, bailiff services for \$3465.52, and recovery of the filing fee of \$100.00.

As authorized by section 72(2)(b) of the *Act* and at the landlord's request, I allow the landlord to retain the tenant's security deposit and interest of \$500.76 in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$5188.76, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the tenant.

Tenant's application-

As I have granted the landlord a monetary award and authorized them to retain the tenant's security deposit in partial satisfaction of this award, I dismiss the tenant's application seeking a monetary order for the return of her security deposit.

Conclusion

The landlord has proven a monetary claim in the amount of \$5689.52, is ordered to retain the tenant's security deposit in set off against that amount and is granted a monetary order for the balance due in the amount of \$5188.76.

The tenant's application is dismissed.

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* and is being mailed to both the applicant and the respondent.

Dated: March 28, 2013

Residential Tenancy Branch

