



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arjay Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for unpaid utilities, and damage to the rental unit, for authority to retain the tenant's security deposit and pet damage deposit, and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on December 21, 2012. The landlord supplied the receipt and the tracking number of the registered mail.

When questioned further, the landlord stated that he received the tenant's forwarding address in a text based email.

I therefore find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit and pet damage deposit, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on November 1, 2010, ended on November 30, 2012, monthly rent was \$1200.00, and the tenant paid a security deposit and pet damage deposit of \$600.00 each.

The landlord stated that the tenant was also responsible to pay \$150.00 monthly for utilities and 60% of the total utilities exceeding \$150.00.

On his application for dispute resolution, the landlord listed his monetary claim in the amount of \$4999.80. In his details of dispute listed on the application, the landlord requested compensation in the amount of \$663.60 for carpet cleaning, carpet tear out for \$560, new carpet and underlay for \$3052, yard clean-up for \$150, utility shortfall of \$529.20, and an estimated cost of \$95 for paint spill clean-up. I note that these amounts do not equal the landlord's monetary claim listed on his application.

The landlord's relevant evidence considered included black and white, indiscernible copies of photographs of the rental unit, a tenancy agreement, a move-in condition inspection report, an email from the tenant living in the lower suite regarding alleged mould and rodent problems, an email from the succeeding tenant to the rental unit regarding a noxious smell, an invoice from the carpet cleaning company, an email from a person the landlord said was a carpet installer, an email from a contractor, and a spread sheet showing unpaid utilities.

In support of his application, the landlord testified the carpet in the rental unit was so saturated with cat urine, a cleaning did not remediate the smell or the condition, which meant the carpet and underlay had to be replaced.

The landlord pointed to the email from the carpet installer, mentioning a toxic smell and condition of the carpet. When questioned, the landlord said the carpet was 3 years old, although I note the carpet installer's email mentioned that he installed a new carpet in the rental unit 5 years ago.

When questioned further, the landlord did not recall if a pet lived in the rental unit prior to the tenancy in question.

As to the circumstances surrounding the final inspection, the landlord submitted that he was to meet the tenant at the rental unit at 1:00 on November 30, 2012; however a motor vehicle accident prevented him from being there on time, being 25 minutes late. The landlord said that he informed the tenant of the accident and the delay in his arrival.

In the mean time, according to the landlord, the tenant allowed the succeeding tenants to move their personal property into the rental unit prior to a final inspection occurring. The landlord said that the tenant did not wait until his arrival and failed to attend any inspection.

The email from the succeeding tenant confirmed that they moved their belongings into the rental unit as it was raining and their personal property was getting wet.

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, the landlord 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Section 35(2) of the Act requires that the landlord offer the tenant 2 opportunities, as prescribed, for the inspection of the rental unit at the end of the tenancy. This requirement is not discretionary. An opportunity to inspect also must be in the approved form. Section 36(2) of the Act states that the right of a landlord to claim against the security deposit and pet damage deposit for damages is extinguished if the landlord has not complied with section 35(2).

Residential Tenancy Branch Regulations #14 requires that the rental unit must be empty of the tenant's possessions.

In the case before me, I find the final inspection did not occur due to circumstances beyond the landlord's control; however I do not find that the tenant was at fault for not being available for the final inspection as she was at the rental unit on the day and time agreed upon.

Regardless of the landlord's right to claim against the security deposit and pet damage deposit being extinguished, the landlord retains the right to claim for damages and unpaid utilities, pursuant to Residential Tenancy Branch Policy Guideline 17.

With the above parameters, I considered the landlord's application as follows:

Carpet cleaning-At the end of a tenancy, a tenant is generally responsible for steam cleaning or shampooing carpets if the tenant had an uncaged pet during the tenancy. I find that to be the case here and I have no evidence from the tenant that she did steam clean or shampoo the carpets.

I therefore find the landlord submitted sufficient evidence with his receipt that he incurred a loss for cleaning the carpet, that he was entitled to compensation for that loss due to the tenant's failure to so clean the carpet, and I approve his claim for \$663.60.

Carpet tear out and replacement-In the case before me, I cannot determine from the landlord's evidence that the landlord sustained a loss, which is the first step of his burden of proof. The landlord submitted an email from a carpet installer quoting the price, but the landlord did not submit an invoice or proof that payment had been made.

I therefore find the landlord submitted insufficient evidence to meet his burden of proof and I dismiss his claim for carpet tear out for \$560 and new carpet and underlay for \$3052.

Unpaid utilities-As to the unpaid utilities, I likewise find the landlord submitted insufficient evidence that he sustained a loss with such documentation as a receipt, other proof of payment, or a billing statement from the utilities company.

I therefore find the landlord submitted insufficient evidence to meet his burden of proof and I dismiss his claim for unpaid utilities for \$529.20.

Yard clean-up and paint spill clean-up-I find the landlord submitted no evidence of a payment for these costs and I dismiss his claim for yard clean-up for \$150 and \$95 for paint spill clean-up.

Filing fee-I find the landlord's application contained partial merit and I allow recovery of the filing fee of \$50.00

I find that the landlord has established a total monetary claim of \$713.60.00 comprised of carpet cleaning of \$663.60 and the \$50.00 filing fee paid by the landlord for this application.

Conclusion

At the landlord's request, I allow the landlord to retain the amount of his monetary award of \$713.60 from the tenant's security deposit and pet damage deposit in partial satisfaction of the claim.

I order the landlord to return the balance of the tenant's security deposit of \$600.00 and the pet damage deposit of \$600.00, in the amount of \$486.40.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$486.40, which I have enclosed with the tenant's Decision.

This order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

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 25, 2013

Residential Tenancy Branch

