



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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, unpaid rent, and damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the evidence was discussed and no party raised any issue regarding service of the evidence or the application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony 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 monetary compensation, to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this tenancy began on July 15, 2007, monthly rent began at \$1350, the ending monthly rent was \$1420, and the tenant paid a security deposit of \$675 at the beginning of the tenancy.

The written evidence indicates that this tenancy ended sometime in mid January 2013. The parties also agreed that there was not a move-in or move-out condition inspection report.

The landlord's monetary claim is \$4570.22, as follows:

Carpet replacement	\$550
Broken living room mirror	\$600
Broken bedroom door	\$90
Broken window	\$100
Cleaning costs	\$120
February rent	\$1420
Advertising	\$76
Water damage	\$1614.22

The landlord's relevant evidence included the tenancy agreement, communication and an invoice from the strata council regarding payment from water damage emanating from the rental unit, the tenant's written notice that they were vacating the rental unit, dated January 14, 2013, effective January 14, 2013, proof of advertising of the rental unit after the tenancy, a carpet replacement invoice, other receipts for the claimed costs, and photographs of the rental unit, after the tenancy ended.

I heard oral evidence from the parties as follows:

Carpet replacement- The landlord submitted that the carpets were visibly dirty and stained beyond cleaning, causing the landlords to incur a cost for replacement of the carpet.

In response to my question, the landlord did not know the age of the carpet, but did say it was at least 10-11 years old.

The tenants said that the carpets were in bad shape when they moved in and were made worse due to the flooding in the rental unit during the tenancy.

Broken living room mirror-The landlord submitted that the mirror was cracked and rather than the sum he requested in his application, that actual amount to replace the broken mirror was \$109 for the glass and \$108 for labour.

The tenant agreed that the mirror was broken that that the landlord could deduct this amount from the tenant's security deposit.

Broken door-The landlord said the door was broken during the tenancy, but rather than replace the door, it was repaired at a cost of \$90.

The tenant agreed that the door was broken.

Broken window-The landlord submitted that the window was broken during the tenancy. In response to my question the landlord was unsure of the age, but said that it was at least 10-15 years old.

The tenant agreed that the window was broken during the tenancy, but not from tenant misuse. The tenant said the window was old and thin, and that he requested that the landlord replace the window during the tenancy, which he never did.

Cleaning costs-The landlord said that the tenants did little or no cleaning, as shown by 4 of his photographs. The landlord said that cleaning was required after the contractors came in to make repairs.

The tenant said that the photographs do not depict the state of the rental unit at the end of the tenancy as everything was in good working order and clean. The tenant said he would not live in a place such as the photos would indicate.

February rent-The landlord submitted that he suffered a loss of revenue for February 2013 as the tenant gave insufficient advance notice of vacating the rental unit and they were unsuccessful in renting the suite for the month of February. In explanation, the landlord said he did not receive the tenant's letter until January 22, 2013.

The landlord said he immediately placed the listing for the rental unit on free internet websites, in an effort to re-rent the suite for February 2013. The advertised rent requested was \$1550. In response to my question as to why the landlord advertised the rental unit for more than the monthly rent the tenant was paying, the landlord contended that \$1550 was market rate.

The tenant did not deny giving insufficient notice.

Water damage-The landlord said that the water damage in the rental unit, which occurred in 2010, was caused by the tenant, which, according to the landlord, the tenant agreed to pay for. The landlord said that the strata attended to the emergency call-out and repairs and that the costs were placed on the landlord's account with the strata.

The landlord said the costs have since been paid by the landlord.

The tenant said that they did not cause the water damage, but that the overflow was from a faulty dishwasher. The tenant denied agreeing to pay for the damage and that the issue with the dishwasher continued throughout the tenancy.

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 sections 7 and 67 of 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.

Broken mirror and door-As the tenant agreed that these costs were his responsibility, I find the landlord is entitled to a monetary award of \$307, comprised of \$109 for the replacement mirror, \$108 for labour to replace the broken mirror, and \$90 to repair the damaged door.

Carpet replacement, bedroom window, and cleaning-I find the landlord submitted insufficient evidence that the tenant damaged the carpet or bedroom window or left the rental unit in a state which required cleaning.

A key component in establishing a claim for damage resulting from a tenancy 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 failed to meet his obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start. This led me to conclude I could not rely on the landlord's photographic evidence as there were no like pictures at the beginning of the tenancy.

I therefore dismiss the landlord's monetary claim of \$550 for carpet replacement, bedroom window for \$100, and cleaning for \$120, without leave to reapply.

*February rent-*As to the issue of loss of revenue, Section 45(1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy.

In the case before me, I accept that the tenant gave insufficient written notice that he was ending the tenancy; however, the landlord is under the legal obligation to minimize his loss. In this case the landlord did immediately place the rental unit back on the market for re-rental, but at a significantly increase rate of monthly rent. The tenant's monthly rent at the end of the tenancy was \$1420, and the landlord's advertising sought a monthly rent of \$1550.

Residential Tenancy Branch Policy Guideline #3 states that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation.

I find that to be the case here and I find the landlord failed to mitigate his loss by asking for a much larger rent than the tenant was obligated to pay. I therefore find the landlord failed to meet the fourth step of his burden of proof and I dismiss his claim for \$1420.

*Advertising-*I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business. Therefore, I find that I do not have authority to award the landlord advertising fees, as they are costs which are not named by the *Residential Tenancy Act* and I dismiss his claim for \$76.

Water damage-I find the landlord submitted insufficient evidence that the actions or negligence of the tenant caused water damage to the rental unit. The landlord said that the tenant caused the rental unit to flood and the tenant attributed a faulty dishwasher to be the cause of the flood. I do not accept a letter from the strata as proof that the tenants were at fault.

Additionally, I question whether or not the landlord took reasonable measures to minimize his loss as he failed to resolve this manner immediately after the incidence occurred, waiting more than 2 years afterward.

I therefore find the landlord has not met his burden of proof and I dismiss his claim for \$1614.22.

Filing fee-I find the landlord's application contained some merit, and I award him recovery of the filing fee of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$357, comprised of \$109 for the replacement mirror, \$108 for labour to replace the broken mirror, \$90 to repair the damaged door and the filing fee of \$50.

I allow the landlord to retain the amount of \$357 from the tenant's security deposit of \$675.00 and interest of \$14.91 in satisfaction of his monetary award.

I order the landlord to return the balance of the tenant's security deposit and interest of \$332.91. As such, I grant the tenant a monetary order in the amount of \$332.91, under authority of Section 67 of the Act, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recoverable from the landlord.

Conclusion

The landlord has proven a total monetary claim of \$357, which he is directed to retain from the tenant's security deposit and interest of \$689.91.

The tenant is granted a monetary order for the balance due remaining from his security deposit and interest, in the amount of \$332.91.

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: May 13, 2013

Residential Tenancy Branch

