



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ardent Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC and FF

Introduction

By application of April 4, 2013, the landlord's property manager (referred to herein as the landlord) sought a monetary award of \$8,632.04 for unpaid rent and loss of rent and damage to the rental unit after the tenants abandoned the fixed term rental agreement without notice and left the rental unit in need of cleaning and repairs.

Despite having been served with the Notice of Hearing sent by registered mail on April 4, 2013, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims for rent/loss of rent and cleaning and repairs to the rental unit and in what amounts.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Claims for loss or damage under the legislation or rental agreement require that the claimant do whatever is reasonable to minimize the loss. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on April 1, 2012 under a fixed term rental agreement set to end on March 31, 2013. Rent was \$1,800 per month and the landlord holds security and pet damage deposits of \$900 each, both paid on February 22, 2012.

The rental unit is a 3,000 square foot single family dwelling in an area of executive housing.

During the hearing, the property manager gave evidence that, when she had been unable to contact the tenants after they had not paid the rent due on January 1, 2013, she attended the rental unit on January 21, 2013. She found that the tenants had abandoned it and had removed their personal belongings. Therefore, she proceeded to complete the move-out condition inspection report with the participation of the tenants.

The landlord stated that there had been substantial damage to the rental unit and submitted into evidence a copy of the rental agreement, the move-in/move out condition inspection reports, numerous photographs and receipts and details of the efforts to find new tenants.

The landlord claims and I find as follows:

Unpaid rent/loss of rent for January, February and March 2013 - \$5,400. The landlord stated she began advertising for new tenants immediately on January 21, 2013 on her corporate website and Craigslist. When she had no success within the first month, she lowered the advertised rent from \$1,800 per month to \$1,600 per month. However, the landlord stated she had been unable to find new tenants before the March 31, 2013 expiry of the fixed term agreement and noted there is a 10 percent vacancy rate in the city. Section 7 of the *Act* provides that if a party to a rental agreement suffers a loss due to the other's breach of the legislation or rental agreement, then the noncompliant party must compensate the other for that loss. Section 45 of the *Act* provides that tenant cannot end a fixed term tenancy on any date before the end date set by the agreement. I find that the landlord met the obligation under section 7(2) of the *Act* to do whatever is reasonable to minimize the loss and allowed this claim in full.

Painting - \$1,008. This claim is supported by the move-out condition inspection report and receipt detailing large holes cut into the walls of four rooms in the rental building which the landlord stated appear to have been made to accommodate flat screen television screens for which the tenants had not sought consent. She stated that the cost was not for repainting the whole house but only those areas where it was made necessary by the damage to the walls and baseboard. This claim is allowed in full.

Fill drywall holes - \$70. This claim is for the preparation work required before the painting and is supported by receipt and photographic evidence. It is allowed in full.

Garbage removal – \$62.72 This claim is supported by a receipt and photographic evidence of large amounts of refuse left behind by the tenants. It is allowed in full.

General cleaning – \$274.40. The landlord stated that the tenants had done absolutely no cleaning at the end of the tenancy. The claim, supported by receipt and photos, is allowed in full.

Repair large gouge in kitchen hardwood floor - \$728. The landlord stated that there had been some minor scratching of some areas of the home, but the quotation supporting this claim notes details a very deep gouge in the pre-finished hardwood maple floor in the kitchen. The estimate states that repairs may not fully restore the floor to its original condition the cost may increase if subfloor work is required. This claim is allowed.

Replace missing wall mirror - \$670.88 This claim is for replacement of a mirror of approximately 6.5 feet by 4 feet wide. The landlord gave evidence that the mirror was new at the beginning of the tenancy and had been removed by the tenants. The claim is allowed.

Replace lateral filing cabinet - \$418.04. This claim is for replacement of a filing cabinet removed from the rental unit. The landlord stated it had been in new condition at the beginning of the tenancy. The claim is allowed.

Filing fee - \$100. As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security and pet damage deposits – (\$1,800). As authorized by section 72 of the *Act*, I hereby order that the landlord retain the tenants' security and pet damage deposits of \$900 each in set off against the balance owed.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Unpaid/loss of rent for Jan, Feb & March 2013 @ \$1,800 per mo.	\$5,400.00
Painting	1,008.00
Fill drywall holes	70.00
Garbage removal	62.72
General cleaning	274.40
Repair large gouge in kitchen hardwood	728.00

Replace missing wall mirror	670.88
Replace lateral filing cabinet	418.04
Filing fee - \$100.	<u>100.00</u>
Sub total	\$8,732.04
Less retained security and pet damage deposits	- 1,800.00
TOTAL	\$6,932.04

Conclusion

In addition to authorization to retain the security and pet damage deposits in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$6,932.04** for service on the tenants.

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: June 28, 2013

Residential Tenancy Branch