



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, MNSD, MND, FF

Introduction

This was a cross-application hearing.

The landlord applied requesting compensation for damage to the rental unit; unpaid rent, to retain the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenant.

The tenant applied requesting return of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the landlord.

The landlord provided affirmed testimony that on April 30, 2013 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the forwarding address provided by the tenant on March 10, 2013. The tenant's mother signed accepting the registered mail on May 1, 2013.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord confirmed receipt of Notice of the tenant's hearing. The tenant failed to attend the hearing, in response to the landlord's application or in support of his own application. Therefore, I find that the tenant's application is dismissed.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent?

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the security deposit?

Is the landlord entitled to compensation for unpaid rent?

Background and Evidence

The tenancy commenced on October 15, 2012, rent was \$950.00 per month, due by the 1st day of each month. The tenancy agreement required the tenant to place the hydro account in his name. A security deposit in the sum of \$475.00 was paid. The tenancy agreement included a term, clause 8; that required payment of a \$25.00 late rent fee. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was not completed.

The landlord made the following claim:

	Claimed
Late rent fee December 2012, January 2013, March 2013 \$50.00 each	\$75.00
Hydro costs added to taxes	81.56
City of Kelowna hydro March 2013	399.22
Hot tub repair, strata	212.00
Electronic keys and key card	150.00
32 hours cleaning X \$20.00 per hour X 2 people	640.00
Storage costs	97.44
½ month rent	475.00
Lock replacement	44.24
Travel costs – landlord	358.28
Paint material, patching	675.49
Moving costs	320.00
Photographs	14.00
TOTAL	\$3,542.23

The tenant failed to pay rent owed on March 1, 2013. On March 3, 2013 the landlord posted a 10 day Notice to end tenancy for \$950.00 in unpaid rent and \$501.67 in unpaid utilities, to the door of the rental unit. Within 5 days the tenant paid the rent owed; the hydro was not paid.

The landlord supplied copies of numerous text messages sent between the parties throughout the tenancy. On March 1, 2013 the tenant sent a message stating he was living in Calgary.

A notice of entry was posted to the tenant's door and sometime around March 4, 2013 the landlord entered the rental unit. The unit was found in a state of disarray. Photographs taken of the unit over the next several weeks showed the state of the unit; items left on the floor, dirty walls, a dead mouse in a dirty bowl that was in the freezer, dirty toilet, bathtub with clothing laying in it, a dirty oven, a hole in a door, dirty floors and balcony, a substance sprayed down walls, items left in the freezer and a dirty cat litter box. The landlord does not believe that the tenant ever cleaned the unit.

The tenant failed to put the utility in his name and did not pay hydro costs at any time during the tenancy. The landlord supplied a copy of a March 1, 2013 City of Kelowna Notice of unpaid utility account in the sum of \$81.56. The landlord paid the utility cost that was placed on their property tax. A copy of a cut-off notice issued by the City of Kelowna was supplied as evidence; hydro in the sum of \$420.11 was owed. The landlord supplied a copy of a receipt for additional hydro paid on March 6, 2013 in the sum of \$399.22. The hydro had been cut off by this date.

During the time the tenant said he was in Calgary his key fob was used to enter the hot tub area of the strata. No other user was recorded on the electronic record of entry that is maintained by the strata. The hot tub was found to have newspapers floating in the tub; which resulted in the filter becoming clogged. An invoice in the sum of \$112.00 for repair; plus a \$100.00 fine, issued on April 22, 2013, was supplied as evidence. The tenancy agreement did not include a clause requiring payment of strata fines. The landlord said that the tenant was given a copy of the strata Rules, but they were not supplied as evidence. A March 12, 2013 repair invoice in the sum of \$112.00 was supplied as evidence

The tenant did not return the keys fob or keys to the unit. The landlord supplied a copy of 2 receipts for key replacement, issued by the strata, in the sum of \$100.00 and \$50.00 on April 3 and March 6, 2013, respectively.

The landlord claimed the cost of their own time for cleaning of the unit; 2 people each spent 32 hours cleaning the unit. The landlord provided photographs in support of the claim; showing the state of the unit.

The landlord also repainted the unit; which had last been painted in mid-2011. The receipts supplied for costs claimed were reviewed with the landlord. The receipts indicated that between March 29, 2013 and April 1, 2013 the landlord purchased items from Home Depot in the sum of a total of \$745.36. The landlord supplied evidence of a credit for returned items in the sum of \$69.87; for a total of \$675.49. The invoices included the cost of items such as paint trays, brushes, rolls of tape, a trowel, tape knife, sponges and sand paper; some items included on the receipts could not be identified. The landlord did not charge for the cost of time spent painting the unit.

The landlord said that the tenant ruined some wall paper that was approximately 3 years old. That paper had to be removed and was replaced.

On March 10, 2013 the tenant provided the landlord with a forwarding address; sent via text message.

On March 13, 2013 the tenant sent the landlord a text message, agreeing that his property should be placed in storage. The landlord and 3 others then packed and moved the tenant's property to a storage unit. The landlord claimed the time it took he and 3 friends to move the tenants property to the storage unit; approximately 12 kilometers from the rental unit.

A receipt issued on March 14, 2013 for storage, as claimed, was supplied as evidence. The landlord paid for the 1st month of the storage and since that time he checked and discovered that someone else has now paid the costs. The tenant had been told where his property was stored.

On March 13, 2013 the landlord had the locks to the unit changed; an invoice issued in that sum was supplied as evidence. The tenant did not return the keys and it was apparent he had given the keys to his brother. The landlord did not know who else might be accessing the unit.

The landlord claimed the loss of ½ April rent revenue. A text message sent to the tenant on March 3, 2013 indicated that the landlord had a potential renter for April 1, 2013. The tenant replied on March 4, 2013 indicating that no one was living in the unit

and he would arrange to move his belongings out by the weekend. By March 5, 2013 the tenant had paid the rent, but no utility costs. On March 10, 2013 the landlord sent the tenant a message telling him the hydro had been cut off. The tenant was told that unit was not clean and that a dead mouse was rotting in the freezer. The tenant was also told that the Notice ending tenancy had been posted to the door.

The landlord advertised the unit on 3 popular web sites and was able to locate a new occupant effective April 15, 2013.

The tenant then became upset and said he not abandoned the rental unit.

On March 10, 2013 the tenant sent the landlord his forwarding address and on March 12, 2013 the tenant said he just wanted ½ of the rent and he would vacate so the unit could be rented. The tenant sent a text on March 13, 2013 saying he not been sent a copy of the hydro bill; the landlord said the tenant had been sent the amount owed, the billing information and a contact number so he could confirm the sum owed.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the parties used text messaging as a form of written communication; many messages were sent between the parties. Text messages formed the basis of much of the landlord's evidence.

Based on the evidence before me I find that the landlord is entitled to the late fees as claimed. The term of the tenancy included a fee for late payments and I have accepted the landlord's submission in relation to late payment.

The tenancy agreement required the tenant to place the hydro account in his name; the tenant failed to do so which resulted in the hydro service being terminated. Some of the hydro cost was applied to the landlord's property tax and paid as taxes; the balance of the hydro bill was paid by the landlord. The tenant knew he was to place the account in his name and was not blocked from making an enquiry with the City of Kelowna to find

out what costs he had incurred. As the tenant breached a term of the tenancy agreement, resulting in a cost to the landlord, I find that the landlord is entitled to compensation for the hydro utilized by the tenant.

In the absence of the tenant, I accept the landlord's affirmed testimony that the strata electronic record of entry to the hot tub area showed that the tenant's key was used to enter the hot tub at the time damage was caused. A tenant is responsible for any damage caused by their guests and in the absence of any report by the tenant that his key had been stolen, I find that the tenant or his guest was responsible for the damage caused to the hot tub. In the absence of evidence that the tenant was informed of the possibility of strata fines, I dismiss the claim for the strata fine claimed.

From the evidence before me I find that the rental unit required cleaning; the tenant did not return to the unit to clean or remove his belongings. When the 10 day Notice to end tenancy was posted to the tenant's door on March 3, 2013 the tenant had 5 days to pay the rent and utility costs in full. The tenant paid the rent but not the utilities. The tenant did not dispute the Notice. In the absence of any effort by the tenant to return to the unit to have it cleaned and left in a reasonably clean state, as required by the Act, I find that the sum claimed by the landlord is reasonable and that the landlord is entitled to compensation as claimed for cleaning.

From the evidence before me I find that the tenant agreed the landlord could place his property in storage and, pursuant to section 44(f) of the Act, that the tenancy ended on March 14, 2013; the date the property was placed in storage. Based on the evidence before me I find that the landlord is entitled to compensation as claimed, for the storage fee incurred.

I find that the landlord made efforts to mitigate the loss claimed by advertising the unit. The tenant did not respond to the landlord's request made on March 3, 2013; an attempt to place a new occupant in the unit for April 1, 2013. The landlord did not have possession of the unit but had not been paid rent and believed that the tenancy was ending. Therefore, as the tenancy ended on March 14, 2013 and, based on efforts that resulted in location of a new occupant for April 15, 2013, I find that the landlord did mitigate the loss of rent revenue and that they are entitled to compensation for loss of ½ of April 2013 rent revenue.

Based on the invoice supplied as evidence I find that the landlord is entitled to the cost of lock replacement. The tenant did not return his keys to the landlord, resulting in the need to change the locks.

The landlord has claimed the cost of travel and photographs. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

I have reviewed the receipts provided for painting costs; the receipts have been adjusted; deducting the cost of items that could not be fully explained during the hearing and those that can be reused by the landlord. The cost of painting and wall repairs included the purchase of a mirror that was placed on the door that had a hole punched in it; what I find is a reasonable expenditure vs. door replacement. Therefore I find that the total of relevant costs, after deduction is \$494.71.

I have also deducted $\frac{1}{4}$ of the balance, as depreciation of the cost for painting. Residential Tenancy Branch policy suggests a rental unit should be painted once every 4 years. As the unit had not been painted since mid-2011, I find that the tenant is responsible for the cost of $\frac{3}{4}$ of the accepted portion of the claim, in the sum of \$371.03. The state of the home and photographs taken of the walls showed that the tenant had caused some damage, resulting in the need for painting.

As the landlord had to take time to pack the tenant’s property and move it to the storage area I find, in the absence of any receipts for fuel or evidence that anyone was paid to assist, that the landlord is entitled to nominal compensation in the sum of \$100.00. The landlord did expend time and effort to move the tenant’s property; with the tenant’s permission. The tenant cannot expect the landlord to move items without cost to the tenant.

I have then considered the disposition of the security deposit. The landlord confirmed that a move-in condition inspection report was not completed at the start of the tenancy.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant’s forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. I find that the landlord was given the tenant’s written forwarding address on March 10, 2013 and that they had fifteen days from March 14, 2013 to return the deposit.

Further, section 38 provides, in part:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

As the landlord failed to submit the application within fifteen days of the end of the tenancy, March 14, 2013, I find, pursuant to section 38(6) of the Act, that the landlord is holding a deposit in the sum of \$950.00.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Late rent fee December 2012, January 2013, March 2013 \$50.00 each	\$75.00	\$75.00
Hydro costs added to taxes	81.56	81.56
City of Kelowna hydro March 2013	399.22	399.22
Hot tub repair, strata	212.00	112.00
Electronic keys and key card	150.00	150.00
32 hours cleaning X \$20.00 per hour X 2 people	640.00	640.00
Storage costs	97.44	97.44
½ month rent	475.00	475.00
Lock replacement	44.24	44.24
Travel costs – landlord	358.28	0
Paint material, patching	675.49	371.03
Moving costs	320.00	100.00
Photographs	14.00	0
TOTAL	\$3,542.23	\$2,545.49

The balance of the landlord's claim is dismissed.

As the landlord's claim has merit I find that the landlord is entitled to the \$50.00 filing fee.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,645.49; for the amount accepted; the filing fee; less the security deposit in the sum of \$950.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$2,545.49; less double the security deposit.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: July 24, 2013

Residential Tenancy Branch