



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable Association
and [tenant name suppressed to protect privacy]

DECISION

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

The landlord's agent ("landlord" hereafter) appeared; the tenant did not appear.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 29, 2013. The landlord supplied the registered mail receipt showing the tracking number and the Canada Post tracking history, proving that the tenant signed for and collected the hearing package on April 30, 2013.

I 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 her 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 documentary 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 retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on October 1, 2004, ended on February 28, 2013 when the tenant vacated the rental unit, and the tenant's monthly rent contribution was \$325. The tenant paid a security deposit of \$450 at the beginning of the tenancy.

The landlord's monetary claim, which was amended according to the evidentiary submissions of the landlord and served on the tenant, is as follows:

February 2013 unpaid rent	\$325
Parking fee	\$10
Painting	\$1097.60
Carpet replacement	\$455.93
Garbage removal	\$310
Replace lights	\$220
Cleaning	\$370
Fixtures	\$352.06
Locks	\$221.20
Filing fee	\$50
TOTAL	\$3411.78

The landlord's relevant documentary evidence included photos of the condition of the rental unit at the end of the tenancy, the tenancy agreement, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a pre-move out inspection, condition inspection report, move out statement, move out covering letter, tenant's notice of move out, an invoice for painting, an invoice for carpet replacement, a calculation showing the tenant portion to account for depreciation, 2 invoices for garbage removal, an invoice for light replacement, timesheet for cleaning, cost of light fixtures, and proof of lock replacement.

The landlord's relevant oral evidence included:

February rent; parking fee-The landlord stated the tenant failed to pay her rent in February and the parking fee, which caused the landlord to issue the tenant a 10 Day Notice to end the tenancy. The tenant vacated the rental unit at the end of February, without paying rent or the parking fee for that month.

Painting-The landlord stated that the rental unit required three coats of paint at the end of the tenancy, due to nail holes, wallpaper, stickers and decals, and a painted door. The landlord submitted that the tenant was not charged for the first coat of paint, but only the second and third coat as the damage could not be remedied with the first coat.

Carpet replacement-The landlord submitted that the tenant caused extraordinary damage to the flooring, due to having an untrained large dog and by laying her own laminate flooring. The landlord said that they have not asked for the full replacement costs, as the landlord depreciated the carpet according to the useful life of 10 years, and charged the tenant for 19 months. The landlord supplied the detailed calculation showing their depreciation of the carpet.

Garbage removal; cleaning-The landlord gave evidence, orally and in photographic form, that the rental unit required extensive cleaning and hauling away of the tenant's unwanted personal property and garbage after the tenant vacated the rental unit. Additionally the landlord submitted that the tenant did not attend a move-out inspection.

Replace lights; fixtures-The landlord testified that they were required to replace all the light fixtures as the tenant installed her own lights, improperly. Additionally, the landlord was required to replace other fixtures in the rental unit, due to tenant misuse, such as handrails and door knobs. The landlord submitted that due to the tenant's actions, they incurred the costs of the fixtures and the costs for labour in replacing the lights and fixtures.

Lock change-The landlord testified that the tenant vacated the rental unit, without returning the keys to the landlord.

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, which falls in sections 7 and 67, 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.

February rent; parking fee- Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

In the case before me, the undisputed evidence of the landlord shows that the tenant remained in legal possession of the rental unit through February 2013, and failed to pay

the rent and parking fee according to the terms of the tenancy agreement owed for that month.

I therefore find the landlord is entitled to a monetary award of \$325 for unpaid rent and \$10 for the parking fee.

Painting- I find the landlord provided sufficient undisputed evidence of the damage to the walls caused by the tenant which required two extra coats of paint and I therefore find the landlord is entitled to a monetary award in the amount of \$1097.60.

Carpet replacement- I find the landlord submitted sufficient undisputed evidence that the tenant caused extraordinary damage to the carpet and that the landlord depreciated the value of the carpet to account for the age, according to the Residential Tenancy Branch Policy Guideline #40 guide for the useful life of building elements. I therefore find the landlord is entitled to a monetary award of \$455.92.

Garbage removal; cleaning- I find the landlord submitted sufficient undisputed evidence that the rental unit required cleaning and that garbage left behind by the tenant required removal, and of their loss as a result of the tenants' failure to leave the rental unit reasonably clean. I therefore find the landlord is entitled to a monetary award of garbage removal of \$310 and cleaning for \$370.

Replace lights; fixtures- I find the landlord submitted sufficient undisputed evidence that the tenant removed all the light fixtures in the rental unit, and replaced them with her own. I also accept that the lights were not safely installed and that the landlord was therefore required to replace the light fixtures, as well as other fixtures, such as door knobs and handrails. I therefore find the landlord is entitled to a monetary award of \$220 for replacing the lights and \$352.06 for fixtures.

Locks- I find that the landlord submitted sufficient undisputed evidence that the tenant failed to return the keys to the rental unit at the end of the tenancy as required under section 37(2) of the Act and that the landlord therefore incurred a cost to replace the locks.

I therefore find the landlord is entitled to a monetary award of \$221.20.

I grant the landlord recovery of the filing fee due to their successful application.

Due to the above, I grant the landlord's application and find they are entitled to a total monetary award of \$3411.78, comprised of February rent for \$325, parking fee of \$10, painting for \$1097.60, carpet replacement for \$455.92, garbage removal for \$310, replace lights for \$220, cleaning for \$370, cost of fixtures for \$352.06, lock change for \$221.20, and the filing fee of \$50.

Conclusion

I have granted the landlord's application for dispute resolution and awarded them monetary compensation in the amount of \$3411.78.

At the landlord's request, I allow them to retain the tenant's security deposit and interest of \$465.94, in partial satisfaction of their monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2945.84, which I have enclosed with the landlord's Decision.

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

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: July 23, 2013

Residential Tenancy Branch

