



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

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

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, 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 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 monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this one year, fixed term tenancy began August 1, 2012, ended on May 28, 2013, when the tenant vacated the rental unit, monthly rent was \$695, and the tenant paid a security deposit of \$347.50 on or about July 17, 2012.

The landlord's monetary claim is \$845, comprised of cleaning/repairs for \$185, carpet cleaning for \$160, and liquidated damages for \$500.

The tenant's advocate agreed that the liquidated damages were owed to the landlord.

As to the remaining claim, the landlord's agent stated that due to the tenant smoking in the rental unit, it was necessary to repaint and then to apply a second coat to rid the rental unit of a smoke smell. Additionally, due to the tenant's smoking, the carpet required extra cleaning, including an enzymatic and deodorizing treatment.

The landlord's agent submitted that a cost was also incurred for debris removal.

The landlord's relevant documentary evidence included a copy of the tenancy agreement, the condition inspection report, an invoice from the manager for carpet cleaning, painting and debris removal. The condition inspection report lists a total tenant charge of \$845 under the move-out inspection portion and the landlord's agent said the resident manager conducted the inspection for the landlord.

Tenant's response-

The tenant's advocate stated that the tenant should not be charged for painting or carpet cleaning as the landlord was well informed that the tenant smoked in the rental unit and that smoking was allowed.

The tenant's advocate also contended the heating thermostat never worked during the duration of the tenancy, and that the tenant was required to leave his doors and windows open at all times.

The tenant's advocate, when questioned, stated that although they attended the move-out inspection, they refused to sign the document as there was no agreement to any charges. The tenant's advocate further stated that the specific move-out charges were not included with their copy of the condition inspection report and that the document was altered at a later date listing the move-out charges.

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.

Liquidated damages-As the tenant's advocate agreed to this charge, I award the landlord monetary compensation of \$500 as requested.

Carpet cleaning and treatment-I accept the tenant's submission that the move-out charges were not listed when presented with the condition inspection report to sign. The resident manager attending the inspection was not present for the hearing to otherwise refute the tenant's evidence. I therefore could not rely on this document as find I it had been altered after the inspection had taken place and a copy given to the tenant, and as such, I looked to the further documentary evidence of the landlord.

The tenancy agreement requires the tenant to pay the landlord any costs associated with the professional cleaning of any carpets supplied by the landlord. I therefore find the landlord is entitled to a monetary award of \$157.50 as shown by their receipt.

Cleaning & repairs-Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In considering this request of the landlord, I took into account that the tenant was allowed to smoke in his rental unit. I find it logical under these circumstances that any issues with a smoking odour in the rental unit were as a result of reasonable wear and tear by the tenant and therefore I do not find that the tenant has breached his requirement under the Act.

I therefore dismiss the landlord's request for cleaning and repairs.

I find that the landlord's application contained merit and I award them to recover the filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$707.50, comprised of the liquidated damages of \$500, carpet cleaning for \$157.50 and the filing fee of \$50.

Conclusion

The landlords' application for monetary compensation is granted in part.

At the landlord's request, I direct them to retain the tenant's security deposit of \$347.50 in partial satisfaction of their monetary award of \$707.50 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$360, 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 are recoverable 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: August 2, 2013

Residential Tenancy Branch

