



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 11, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site, or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a written month to month tenancy that officially began on June 1, 2011. The Tenant was granted early possession of the unit as of May 25, 2011 and on May 19, 2011, the Tenant paid \$650.00 as the security deposit. Rent began at \$650.00 per month and was increased to \$680.00 effective May 1, 2013.

The parties confirmed that they mutually agreed to a deduction of \$229.04 from the security deposit to cover the cost of a window repair that was completed in March 2013.

The Landlord and Agent provided testimony which indicated the Tenant had given notice to end her tenancy both verbally and in text messages at which time they requested proper written notice. The notice to end tenancy was received on June 6, 2013, to end the tenancy effective July 1, 2013.

The Landlord submitted that their attempts to schedule a move out inspection were unsuccessful as the Tenant would not agree to any dates and times and later stopped answering her phone. The Landlord's Agent attended the unit on July 1, 2013, and saw through the windows that the unit had been vacated. No keys were left behind so she acquired the spare keys from the realtor and accessed the unit on July 2, 2013, which is when she conducted the move out inspection, in the absence of the Tenant. Their photos were taken between July 2, 2013, and July 31, 2013 when the repairs and cleaning were being performed by the property manager.

The Landlord testified that his claim is comprised of two months loss of rent for July and August 2013; \$660.00 paid to his property manager for cleaning, painting, and repairing the unit; \$510.00 for an estimated cost to repair the bathroom door and frame; and \$199.50 for carpet cleaning.

The Landlord argued that he was not able to get the carpets cleaned until August 31, 2013, because contractors are hard to hire in their town because of the available work offered by the gas company. He also indicated that the work on the bathroom door is an estimate determined by him because they cannot get a contractor to provide a quote on such as small job. He suspects that he will have to sell the house "as is" because no one wants to do the repairs for him.

The Tenant testified and admitted that she did not leave the rental unit clean. She indicated that she was having a difficult time and that she told the Landlord he could simply keep her security deposit. She accepts responsibility for about two thirds of the cleaning list but certainly not all of it.

The Tenant accepted responsibility for the broken bathroom door, door frame, and for the carpet cleaning. She did not accept responsibility for the mold treatment and argued that the rental unit had mold in it throughout her tenancy; therefore, she should not have to pay for the treatment of the mold. The Tenant confirmed that she did advise the Landlord of a mold problem until after the tenancy had been ended. She questioned the billing for the smoke detectors when the pictures clearly show that she left two smoke detectors on the counter.

In closing, the Landlord argued that there was never a mold problem prior to this tenancy. His Agent confirmed that two smoke detectors were left on the counter and that she purchased four new detectors because she was instructed to do so by the Landlord.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

After careful consideration of the evidence before me, and on a balance of probabilities, I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing, and notwithstanding the Tenant's arguments that she should not have to pay to clean and repair the entire unit or pay for mold treatments, I find the Landlord has met the burden of proof for damages and I award them monetary compensation of **\$1,329.50**. This award consists of: \$620.00 for cleaning, painting, and repairs billed by the property manager less \$40.00 for two smoke detectors; \$510.00 estimate for bathroom door and door frame damage; and \$199.50 carpet cleaning.

The Landlord's application indicates he is seeking unpaid rent. Upon review of the evidence I find there was no claim for unpaid rent, rather it was for loss of rent for July and August 2013. Accordingly, I dismiss the claim for unpaid rent, without leave to reapply.

While considering the claim for loss of rent I accept that the Tenant provided late notice to end her tenancy and the Landlord was not able to re-rent the unit for July 1, 2013 due to the condition the condition of the rental property. That being said, I do not accept the Landlord's submission that the property could not be re-rented in August because the carpet cleaning was delayed. The onus is on the Landlord to do what is reasonable to

re-rent the unit as soon as possible to prevent further loss. Furthermore, there is evidence that the Landlord, who lives in another city, is attempting to sell the property instead of re-renting it, which may have contributed to the delay in carpet cleaning. Accordingly, I find there to be sufficient evidence to award the Landlord loss of rent for July 2013 in the amount of **\$680.00** and I dismiss his claim for loss of rent for August, without leave to reapply.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages, repairs, cleaning	\$1,329.50
Loss of July 2013 rent	680.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,059.50
LESS: Security Deposit \$650.00 - \$229.04	
window repair + Interest 0.00	<u>-420.96</u>
Offset amount due to the Landlord	<u>\$1,638.54</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,638.54**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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*.
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Dated: October 08, 2013

Residential Tenancy Branch

