



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, damage to the rental unit, compensation for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing; legal counsel attended for the tenant, as agent. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing. The parties were allowed to present affirmed oral testimony and to make submissions during the hearing.

I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant's legal counsel confirmed receipt of the Notice of hearing and evidence, with the exception of the photographs the landlord submitted to the Residential Tenancy Branch on August 8, 2013. The landlord's evidence submission had included reference to the photographs. The landlord confirmed that on October 2, 2013 he received a letter, included with evidence, from the tenant's counsel requesting copies of the photographs. The photographs were supplied to the tenant's counsel 4 days prior to the hearing.

As the photographs were not supplied to the tenant at least 5 days prior to the hearing, as required by the Residential Tenancy Rules of Procedure, the tenant indicated they were not provided adequate opportunity to respond to those photographs. Therefore, as the evidence submission did not meet the requirements of the Rules of Procedure, and were given to the tenant only 4 days prior to the hearing, the photographs were set aside; the landlord was at liberty to make oral submissions in relation to the photographs.

At the start of the hearing the landlord indicated that he would record the hearing. Section 9.1 of the Rules of Procedure prohibit private recording of a hearing. The landlord was informed that if he wished to record the hearing he could request official recording and pay for that service. The landlord did not wish to proceed with a request for recording.

The landlord had several witnesses available to provide testimony; he chose to not call his witnesses.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$350.00 for the cost of cleaning the rental unit?

Is the landlord entitled to the cost of carpet replacement in the sum of \$6,290.70?

Is the landlord entitled to the cost for removal of the old carpet in the sum of \$3,000.00?

Is the landlord entitled to compensation for loss of rent revenue and unpaid rent in the sum of \$1,100.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced in November 2011; rent was \$550.00 per month. The parties did not agree on the specific start date of the tenancy, but there was a history of rent payments having always been made on the 15th day of each month. The landlord said he had wanted rent on the 1st day of each month and that the tenants had moved in on November 5, 2011. The parties did not sign a tenancy agreement.

The tenant submitted that the tenancy commenced on November 15, 2011 and that rent was due on the fifteenth day of each month.

A move-in condition inspection report was not completed.

The parties agreed that the tenant paid rent owed on May 15, 2013 and that no further rent was paid.

The parties described a decline in their relationship, commencing in December 2012. The tenant vacated once a new home was located and the winter season had ended.

The landlord has claimed compensation for the loss of June and July 2013 rent. The landlord stated that rent was in fact due on the 1st day of each month. The landlord

testified that the tenants paid May 2013 rent late and owed rent for occupation in June and for July, as they did not provide notice ending the tenancy.

The landlord took possession of the rental unit on June 15, 2013. Because the unit was in such poor condition the landlord did not attempt to re-rent the home. On June 22, 2013 the landlord did clean out the home, but further cleaning and removal of the carpets has yet to take place. The landlord has claimed \$350.00 for the time it took he and several helpers to remove items from the home on June 22, 2013. The unit has not been advertised for rent since the tenants vacated.

The landlord said that the tenants left the unit in such bad condition it would have taken all of the month of July to clean it properly. The tenant left papers, toys and a basement full of garbage. The landlord used a dump truck to remove the items; which included some furniture that had been left by the previous occupants.

The landlord supplied a July 2, 2013 estimate for replacement of the thirty year old carpets; the quote did not include removal of the existing carpet, underlay, baseboards and doors. The landlord said that the tenants left the carpet full of stains from cat urine and that it must now be replaced. Even though the carpets were thirty years old the landlord felt that if the tenants had taken care of them, the carpets would have continued to be useable.

The landlord has yet to remove the old carpets and has claimed the sum he estimates it will cost to remove the carpet, clean and seal, the floor. The floors require sealing as the result of cat urine. The landlord has estimated it would cost him \$3,000.00 to prepare the floors for new carpeting.

The tenant responded that they ended the tenancy as a result of conflict with the landlord and that from June 1, 2013 onward the landlord had seen them moving out of the home and knew they were vacating. Written notice ending the tenancy was not given to the landlord. The tenant had issued the landlord a letter in December 2012, in relation to allegations of illegal entry to the home, but no other written communication had occurred.

The tenant's written submission indicated that their cat did not urinate on the floors and had a litter box in the uncarpeted basement. The tenant submitted that the carpets required replacement due to wear and tear.

The tenant confirmed that the home was not left in a clean state; however, the tenant believes that only 1 to 2 hours of cleaning was required.

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.

Residential Tenancy Branch policy suggests that the useful lifespan of carpets in a rental unit is 10 years; I find this is a reasonable stance. Therefore, as the carpets in the home were at least thirty years old I find they were well beyond their useful lifespan and, despite any alleged damage caused by the tenants, that the carpets were due for replacement at the start of the tenancy. Therefore, I find that the claim for carpet replacement is dismissed.

The landlord has claimed a further \$3,000.00 for the time it will take to prepare the floors for new carpeting. As with the age of the carpets, I find that any preparation to replace thirty year old carpet is not the responsibility of the tenant, but the landlord. There was no evidence before me that the tenant's cat had urinated on the carpets and, if a cat had urinated on the carpet, that the sub-flooring was damaged. Therefore, based on the age of the carpets alone, I find that the claim for the potential cost of carpet removal is dismissed.

I have considered the disputed testimony in relation to the day of the month that rent was due. The landlord did not sign a written tenancy agreement and he has confirmed that from the start of the tenancy he accepted rent payments on the fifteenth day of each month. When the landlord failed to act in a timely manner, from the start of the tenancy, to correct the rent due date, I find that he waived any right to receive rent on the 1st day of each month and he accepted rent was in fact due on the fifteenth day. This reasoning would be applied, as suggested by policy, when considering claim of repeated late rent payments. Therefore, pursuant to section 62(3) of the Act I find that rent was due on the fifteenth day of each month.

Therefore, I find that the tenants rent paid on May 15, 2013 for rent owed to June 14, 2013.

The landlord has claimed the loss of rent for June, 2013 which I find in fact, formed a claim for loss of rent revenue from June 15 to July 14, 2013. The landlord claimed a 2nd month of loss of revenue, which I find was for July 15 to August 14, 2013.

In relation to the ending of the tenancy, I find that the tenants failed to provide the landlord with written notice ending the periodic tenancy; contrary to section 45 of the Act. Even though the tenants felt estranged from landlord they were required to give proper written notice they were ending the tenancy. This did not occur.

I have then considered the landlord's claim for loss of rent revenue. In all cases, despite any breach of the Act by the respondent, the claimant must show they took steps to minimize the loss they have claimed.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

(Emphasis added)

The tenant has acknowledged that some cleaning was required to the unit but there was no evidence before me that the landlord could not have cleaned the unit and had the carpets replaced within a very short period of time. Further, there was no intention displayed by the landlord that he attempted to re-rent the unit. To the date of this hearing the landlord had not attempted to install new carpets and locate occupants.

Therefore, in the absence of evidence that the landlord took some steps to mitigate the loss he is claiming for rent revenue, I find that the landlord failed to mitigate, as required by section 7 of the Act and that the claim is dismissed. A breach of the Act by the tenant, by failing to give proper notice ending the tenancy, does not bestow an automatic right to compensation.

There was acknowledgement by the tenant that the home was not left in a reasonably clean state at the end of the tenancy. In the absence of verification of the claim for cleaning costs I find, based on the acknowledgement of the tenant, that the landlord is entitled to nominal compensation in the sum of \$75.00 for cleaning; the balance of the claim is dismissed.

As the landlord's claim has some merit I find the landlord is entitled to a portion of the filing fee, in the sum of \$50.00.

Based on these determinations I grant the landlord a monetary Order in the sum of \$125.00. 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 \$75.00 for cleaning; the balance of the claim is dismissed.

The landlord is entitled to filing fee costs in the sum of \$50.00.

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: October 10, 2013

Residential Tenancy Branch

