



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MND, MNR, MNSD, 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 unpaid rent, loss of rent revenue, damage to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord also applied requesting an Order of possession for unpaid rent, but he obtained possession in 2012. The landlord said that a Notice ending tenancy was not issued.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The tenant was served via her employment address; a forwarding address was not given to the landlord.

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided; the tenant confirmed receipt of the landlord's evidence and her readiness to proceed with the hearing.

Issue(s) to be Decided

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

Is the landlord entitled to compensation for loss of rent revenue from August 2012 to February 2013?

May the landlord retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

This 1 year fixed-term tenancy commenced on May 1, 2012 and was to end on April 30, 2013. Rent was \$800.00 per month, due on the 1st day of each month. A security deposit in the sum of \$400.00 was paid.

A move-in condition inspection report was completed; a copy was supplied as evidence. The report indicated that the bedroom carpet had an iron burn. The landlord did not, in the absence of the tenant, complete a move-out condition inspection report at the end of the tenancy.

There was no dispute that the tenant paid July 2012 rent; she said that she vacated at the beginning of July. The landlord could not recall receiving a letter the tenant said she left in his mailbox in mid-July, 2012; giving notice that she was going to vacate.

The landlord testified that he took possession of the unit in early August; he could not recall the date. The application for dispute resolution was made on July 4 2013; and included a request for an Order of possession, even though the tenancy had ended in mid-2012.

The landlord said he sent the tenant email messages but did not hear from the tenant. The tenant pointed out that the 2 emails submitted as evidence, dated October 2 and 16, 2013 included a .com vs. .ca suffix; so she did not receive the emails, as the email address was incorrect.

The landlord has made the following claim:

Loss of rent revenue August 2012 to February 2013	\$5,950.00
Cleaning	240.00
Installation of support post	380.00
Carpet replacement	373.30
Carpet installation labour	150.00
Extension cord	61.59
Key lock	50.00
TOTAL	\$7,204.89

The landlord supplied copies of rental advertisements placed on 1 popular web site, as follows:

- September 9, 2012;
- October 22, 2012;
- December 4, 2012;
- December 11, 2012; and
- January 11, 2013.

The landlord said he might have placed ads on another popular web site, but he could not be sure. The ads indicated the unit was bright, spacious, had a separate entrance, shared washer dryer and that a lease was required. The ads requested \$800.00 per month; at no point during the period of advertising was the rent reduced, as the landlord wished to have another 1 year lease signed at the same level of rent. The landlord was able to rent the unit effective March 1, 2013.

The landlord stated the tenant did not clean the unit; items were left in the fridge and some bags of garbage were left. The oven had to be cleaned. Two photographs showed a small number of items left by the tenant; a blanket, magazines, several items from the fridge; a photo of those items placed in a garbage bag was also supplied. The landlord provided a copy of an undated hand-written note signed by K.D., indicating he was paid \$240.00 for rental unit cleaning. The landlord said that 4 to 5 hours were spent (\$48.00 to \$60.00 per hour.)

The landlord supplied a photograph of an area under the deck at the back of the house, where a wood support post was missing. The portion of the deck where the post would meet the deck showed a jagged hole running into the decking. The landlord said he and the tenant had talked about this post after the tenant had moved into the unit; she had damaged the post and it needed to be replaced. The landlord stated he had talked to the tenant about this damage that had occurred when the tenant moved into the unit. A January 12, 2013 invoice was supplied as evidence of the repair; the repairperson, L.K. was paid in cash.

The landlord has claimed replacement of the bedroom carpet; the tenant stained the carpet. The landlord said the carpet was approximately 5 years old. A January 10, 2013 invoice for carpet and an undated invoice for installation were supplied as evidence.

The landlord said that the tenant took an extension cord that was used to plug the fridge into the wall. A September 13, 2102 receipt was supplied for purchase of a 30 meter long outdoor cord.

The tenant said that the landlord knew she was vacating and that she ended the fixed-term as the result of deficiencies with the unit. The tenant felt that the ads the landlord ran did not accurately reflect the state of the home. There was a washing machine and dryer, but she was not given a key to access those machines; the unit was not quiet, her bathroom window looked out into a garage and the bedroom did not have a window.

The tenant stated she did not use the oven during her short stay in the unit. The tenant agreed that when she vacated some items were left in the unit but that the claim for cleaning costs was excessive and that a claim for 5 hours was also unreasonable. The tenant's mother had a cleaning business and indicated to the tenant that the sum claimed was not reasonable.

The tenant disputed the carpet claim; she said the carpet was of very poor quality, was at least 5 years old and she had placed her own rugs on top of the carpet. The tenant denied that she had stained the rugs.

The tenant said she did not recognize the area where the photo of the post had been taken; she always used the front entry of the home. The tenant did not recall having a conversation with the landlord about this post and said she did not damage the post.

The tenant said that the fridge was plugged into an outlet that was immediately behind the fridge; she did not understand why the landlord would have purchased a 30 meter long cord; she also denied having removed the cord.

The tenant confirmed that the keys were not return to the landlord; the landlord changed the lock but no verification of that claim for replacement was provided.

Analysis

In relation to the credibility of the parties, I find the version of events provided by the tenant to be highly probable; the tenant was consistent and did accept some responsibility in relation to ending the tenancy, items left in the unit and the need for some cleaning. The landlord was unsure if he had received the tenant's letter giving notice; he could not give clear and consistent testimony in relation to when he took possession of the unit and made at least 1 claim, for the extension cord, that seemed questionable, given the conditions that existed during the tenancy. Considered in its totality, I favoured much of the evidence of the tenant over the landlord.

I find, pursuant to section 44(f) of the Act, that the tenancy ended on July 31, 2012, the date up to which the tenant paid rent.

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 (RTB) policy suggests that an arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

The Act requires a claimant to take all reasonable steps to mitigate a loss; such as a loss of rent revenue. Residential Tenancy Branch policy suggests that a landlord may sue a tenant for a sum that would put the landlord in the same position had the tenant not breached the Act.

When the tenant did not pay August 2012 rent, if the landlord had been confused about his right to possess the unit he could have issued a 10 day Notice ending tenancy for unpaid rent. When the landlord failed to issue a Notice I find this was the result of the fact that he was confident the tenant had vacated. By August 2012 the tenant had removed all of her personal effects, leaving no doubt that she had vacated the unit.

I find, given the claim for loss of 7 month's rent revenue, that the efforts to advertise the rental unit were minimal, at best. The landlord chose to use only 1 web site to advertise the unit and did not commence advertising until September 9, 2012. There was no evidence before me that the landlord attempted to upgrade his advertisement and there appeared to be a gap in advertising during the month of November 2012. The landlord did not reduce the amount of rent requested; something that could have been addressed by including a term in a tenancy agreement for short-term rent abatement. The landlord could then have requested compensation in the amount of the actual loss.

When the tenant ended the fixed-term tenancy she did so in breach of section 45 of the Act. However, a breach of the Act by the tenant does not bestow an automatic right of compensation to the landlord. When the landlord took possession of the unit in August he had a responsibility to advertise and take steps to mitigate the loss claimed; steps that I have found were insufficient for the reasons indicated above.

Therefore, in the absence of adequate attempts to mitigate the loss claimed, I find that the claim for loss of rent revenue is dismissed.

From the photographic evidence I find that the tenant did leave some items in the unit and that some cleaning was required. I find that the claim for up to 5 hours of cleaning at either \$45.00 or \$60.00 per hour was excessive, relative to the evidence before me. Therefore, I find that the landlord is entitled to nominal compensation in the sum of \$50.00 for cleaning; the balance is dismissed.

From the evidence before me I could not determine how old the support post was; there was evidence of a hole in the decking, indicating that the structure was aged. In the absence of evidence of the age of the support post, and in the absence of evidence that the tenant actually caused the post to fall away from the deck, I find that the claim for a new post is dismissed. .

There was no evidence before me that the replacement of the carpets was anything more than due to the presence of a burn caused by an iron prior to the start of this tenancy. The carpets were at least ½ way through what RTB policy would consider their useful lifespan of 10 years and were further depreciated as a result of the iron burn. In the absence of any photographic evidence in support of the claim that the tenant stained the carpets I find that this claim is dismissed.

I found the landlord's explanation for purchase of a 30 meter long outdoor extension cord, to be used to plug in a fridge that was against an interior wall that had an electrical outlet was unreasonable. I have accepted, on the balance of probabilities, that the

tenant did not pull out the fridge in order to remove an extension cord; the tenant's testimony was credible and believable when considered against a claim for a 30 meter outdoor cord. Therefore, I find that this claim is dismissed.

As the tenant did not return the keys I find that the landlord is entitled to nominal compensation for rekeying in the sum of \$20.00; the balance of this claim for locks is dismissed.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Loss of rent revenue August 2012 to February 2013	\$5,950.00	0
Cleaning	240.00	50.00
Installation of support post	380.00	0
Carpet replacement	373.30	0
Carpet installation labour	150.00	0
Extension cord	61.59	0
Key lock	50.00	20.00
TOTAL	\$7,204.89	70.00

As the landlord's application has some merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I Order the landlord to return the \$400.00 security deposit to the tenant, less the \$70.00 in compensation and the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order for the balance of \$280.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 \$70.00; the balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the amount owed from the security deposit.

The tenant is entitled to return of the balance of the security deposit.

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 08, 2013

Residential Tenancy Branch

