



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, MNR, MNDC, MNSD, CNC, MT, DRI, RR, FF.*

Introduction

This hearing dealt with cross applications by the tenant and landlord and was reconvened from July 31, 2013. Both parties were present at the first hearing held on July 31, 2013.

I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

However, after hearing a portion of the landlord's claims for damages and loss, it was determined that more time was required to hear the remainder of both applications. The hearing was therefore adjourned and reconvened on October 2, 2013.

In the original cross application made by the landlord pursuant to the *Residential Tenancy Act*, the landlord applied for the following:

- An order of possession pursuant to Section 55 of the Act;
- A monetary order for rent owed and damages, pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38 of the Act.

In the original cross application made by the tenant pursuant to the *Residential Tenancy Act*, the tenant applied for the following:

- An order granting the tenant more time to dispute Notice to End Tenancy;
- An order to cancel a 1-Month Notice for Cause, pursuant to Section 47;
- An order to cancel an Additional Rent Increase;
- An order to compensate the tenant for the cost of emergency repairs;
- An order for monetary compensation under section 67 of the Act;
- An order to reduce rent for repairs and services agreed-upon, but not provided.

Before the first hearing on July 31, 2013, the tenant had already vacated on July 15, 2013. Therefore, it is not necessary to hear, nor determine, the landlord's request for more time, the tenant's request for an Order of Possession, and the tenant's request to cancel the One-Month Notice to End Tenancy for Cause.

Only the monetary claims of each party remain to be heard. The landlord had amended the application to add a damage claim for cleaning and repairs.

Preliminary Matter: Tenant's Application

The reconvened hearing did not start at the scheduled time of 9:00 a.m. as the arbitrator mistakenly entered an incorrect access code. Although the situation was rectified, the hearing did not commence until 9:45 a.m. At this time, only the landlord was present.

Accordingly, only the landlord's claims will be heard at this second hearing today, on October 2, 2013.

Because it is unknown whether or not the tenant actually did attend at the scheduled time for this reconvened hearing, which was supposed to start at 9:00 a.m., October 2, 2013, I find it necessary to dismiss the tenant's application for monetary compensation. However, the tenant's application is dismissed **with leave to reapply**.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find that the tenant's application seeking a retro-active rent abatement and compensation for loss of value to the tenancy during their tenancy, is not directly related to the landlord's claim of rent, cleaning and repairs at the end of the tenancy.

Given the above, I decline to proceed with the tenant's application at this time. I emphasize that **no findings were made with respect to the tenant's monetary claims and the tenant is still at liberty to make a new application**. Should the tenant still wish to pursue the claims, I am not seized of this matter, and the hearing may be scheduled to be heard at the earliest date available.

Only the landlord's monetary claim will be heard at the reconvened hearing today.

Remaining Issues to be decided: Landlord's Application

- Has the Landlord established monetary entitlement to compensation for rent?
- Is the landlord entitled to monetary compensation for damages?

- Is the Landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The tenancy began on June 3, 2012 and ended on July 16, 2013. Rent was \$1,250.00. A security deposit of \$625.00 was paid.

During the first hearing, the landlord gave testimony about damages to the suite left by the tenant and made reference to a move-out condition inspection report. The landlord testified that the tenant vacated the rental unit on July 16, 2013 pursuant to the One Month Notice to End Tenancy for Cause issued by the landlord. The landlord is claiming \$1,250.00 rent for July 2013.

The landlord testified that the tenant owes late fees for late payments of rent made during the tenancy in the accrued amount of \$200.00. However, the landlord did acknowledge that the tenancy agreement did not contain any term that permitted the charging of late fees.

The landlord testified that the rental unit was not left reasonably clean and the landlord incurred costs of \$400.00 for the cleaning. A receipt was submitted into evidence. The landlord also made reference to the move-out condition inspection report and photos of some areas of the rental unit.

During the first hearing, the tenant disputed the landlord's move-out condition inspection report and the landlord's claim for the cleaning costs. The tenant testified that the house was cleaned by the tenant prior to vacating. The tenant pointed out that the carbonized soot on the older model stove was impossible to remove and that the other areas in question had been sufficiently cleaned.

The landlord testified that the carpet was so badly damaged that it could not be restored and required replacement. According to the landlord the carpets had been installed in 1998. The tenant argued that the carpets were cleaned by the tenants as well could be done, given pre-existing stains that had been there since the start of their tenancy.

The landlord testified that the rental unit required repainting due to damage caused by the tenant, mostly in the upper area of the home. The landlord testified that the estimated cost of total and touch-up painting is \$2,565.87, based on the lowest of 3 estimates. The landlord acknowledged that the paint finishes are approximately 2 years old. The landlord also acknowledged that the work has not yet been done.

The tenant testified that most of the chipped and damaged paint was already in the that same state when they took possession. The tenant stated that they considered other alleged damage to be in the category of normal wear and tear.

The landlord testified that the vinyl flooring in the lower area of the home was badly scraped. The landlord acknowledged that the floor surface was approximately 15 years old. The tenant did not dispute the damage to the vinyl flooring.

In regard to the exterior of the rental unit, the landlord stated that the yard had been permitted to become over-grown and there was a substantial amount of garbage and items left to be removed. The landlord testified that this took several hours and the landlord is claiming \$100.00.

Analysis – Landlord’s Claims

Rent

In regard to the rental arrears being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due on July 1, 2013. I find that the tenant had received a Notice to End Tenancy terminating the tenancy effective July 16, 2013 and the tenant evidently chose to vacate on the date set by the landlord. Accordingly, I find that the tenant is responsible to pay one-half a month rent for the period from July 1, 2013 until July 16, 2013 in the amount of \$625.00.

Late Fees

In regard to the claimed late fees, I find that section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 per month for late fees, but only if a clear term in the tenancy agreement provides that this fee must be paid.

I find that the tenancy agreement between these two parties does not contain an agreed-upon tenancy term that imposes a requirement to pay late fees. Accordingly I find that the landlord’s claim for late fees must be dismissed.

Damages

With respect to the remaining claims, I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof the claimant took steps pursuant to section 7(2) of the Act to minimize the loss.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Cleaning

In regard to the claim for the cleaning costs, I find that Section 37 (2) of the Act states 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.

I find that the move-out condition inspection report indicates that the tenant did not agree with the landlord's notations on the report including the allegation that the unit was not left reasonably clean. I find that, while the landlord submitted estimates of the proposed cost of cleaning, no documentary proof was submitted to confirm that the landlord had actually incurred the \$400.00 expenditure being claimed. However, the standard under the Act is that the rental unit must be left "reasonably" clean and I find that there are several areas that appear not to meet that standard. Accordingly, I find that a portion of the claim will be granted in the amount of \$80.00, representing 4 hours of labour, valued at \$20.00 per hour.

Carpets & Flooring

With respect to the landlord's claim for the cost of replacing the carpets, I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures. On the question of whether or not the damage to the carpeting could be considered as normal wear and tear, I find that this carpet had already reached the end of its useful life, which is set at 10 years. I find that this would also apply to the vinyl flooring located in the lower area of the home.

Given the above, I find that the landlord is not entitled to be compensated for the cost of a new carpet or other flooring as the evidence submitted is not sufficient to meet all elements of the test for damages.

Painting

With respect to the landlord's claim for \$2,565.87 for the estimated costs of repainting, I find that the landlord's assessment of the condition was challenged by the tenant who testified that some of the damage had pre-existed their tenancy and some of the paint was prone to flaking off. As the painted surfaces were two years old, I find that there is some expectation of normal wear and tear. In any case, the landlord did not prove that they have actually incurred this expense. Therefore I find that element 3 of the test for damages has not been sufficiently satisfied by the landlord's evidence to justify the claim.

Exterior

In regard to the exterior of the rental unit I find that the landlord's photo shows grass that is likely ready to be mowed, but not significantly over-grown. Therefore, I find that the landlord is not entitled to compensation. With respect to the items left for garbage, I find that the landlord is entitled to compensation of \$30.00 for the time taken to dispose of these items.

Other

With respect to the landlord's claims relating to other damage left, such as light fixtures, shower doors, shower head, door knob and damaged cabinets and trim, I find that, if the landlord did replace or repair these, the landlord has not provided sufficient documentary evidence to verify the costs.

I find that the landlord is entitled to total compensation of \$735.00, comprised of \$625.00 pro-rated rent for July 2013, \$80.00 for cleaning and \$30.00 for the cost of disposal of garbage left on the property. I order that the landlord retain the tenant's \$625.00 security deposit in partial satisfaction of the claim, leaving \$110.00 still outstanding.

I hereby grant the landlord a monetary order in the amount of \$110.00. This order must be served on the tenant and may be enforced through small Claims Court if necessary.

I hereby order that the tenant's application be severed from the landlord's application and I dismiss the tenant's application **with leave to reapply**. No findings have been made with respect to the merits of the tenant's application and I find that I am not seized of this matter.

Each participant is responsible for the cost of their own application.

Conclusion

The landlord is partly successful in the application and is granted a Monetary Order. The tenant's application was not heard as it was severed from the joined hearings and dismissed with leave to reapply, without any findings being made.

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 2, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* (**Please Note: Legislated deadlines apply**)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca

Residential Tenancy Branch

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