



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 401949 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

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

The landlord provided affirmed testimony that on October 17, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail to the rental unit address. A Canada Post tracking number and receipt was provided as evidence of service to each tenant. Both tenants refused to claim the registered mail and it was returned to the landlord.

These documents are deemed to have been served on the 5th day after mailing in accordance with section 89 and 90 of the Act. Refusal to claim registered mail does not allow a party to avoid service. Neither tenant attended the hearing.

Preliminary Matters

On November 20, 2013 the landlord personally served each tenant with the evidence package. The landlord went to the female tenant's place of work, where he knew the male tenant would be picking her up. At approximately 7:30 p.m., outside of the place of work, the landlord handed each tenant a copy of the evidence. This evidence was given at least 5 days prior to the hearing.

As part of the evidence submission the landlord submitted invoices for costs incurred but not claimed as part of the application. Consideration was given only to those specific losses that formed part of the detailed calculation contained in the application for dispute resolution. Unless an application is amended, to reflect additional costs, those additional items may not be considered.

The landlord withdrew the claim requesting compensation for damaged siding and removal of a wall in the basement.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid October and November, 2013 rent and a NSF fee?

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

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

Is the landlord entitled to filing fee costs?

Background and Evidence

A copy of the signed tenancy agreement supplied as evidence indicated that the 1 year fixed term tenancy commenced on October 1, 2013; rent was \$1,200.00 per month, due by the 1st day of each month. A security deposit in the sum of \$600.00 was paid.

The tenancy agreement included a term imposing a late or NSF fee in the sum of \$25.00.

A move-in and move-out condition inspection report was completed. A copy of the report was supplied as evidence. Outside of several areas that needed cleaning and several small repairs, at the start of the tenancy the unit was recorded to be in good condition.

The landlord issued a 10 day Notice to end tenancy for unpaid rent which had an effective date of October 19, 2013. The tenants vacated on October 30, 2013. The tenants did not attend the condition inspection report that had been scheduled for October 31, 2013 at 1 p.m. A copy of a written notice of inspection given to the tenant, was supplied as evidence.

The landlord has made the following claim:

Unpaid October and November 2013 rent	\$2,400.00
NSF fee for October 2013 payment	50.00
Damaged door	250.00
Paint and drywall repair	1,000.00
Carpet cleaning	250.00
TOTAL	\$3,950.00

The tenants rent cheque for October 2013 was returned as NSF; the landlord has claimed a \$50.00 fee, included as a term of the tenancy agreement. The tenants did not pay November 2013 rent; totalling \$2,400.00 owed for rent.

The landlord supplied photographs and copies of invoices for the items claimed.

A November 8, 2013 invoice indicated that \$297.00 was paid for a number of repairs including drywall and paint. Photographs showed multiple areas of walls and corners of wall that required repair. The landlord said that \$200.00 of this portion of the invoice was for painting and drywall costs.

The November 8, 2013 repair invoice included a charge of \$157.68 to repair the master bedroom door. A photograph of the door showed that the panel had been cracked. The door was replaced. The invoice indicated a duplicate of costs; the landlord confirmed that the door cost \$157.68 to replace and install; plus \$7.88 GST.

The landlord supplied an invoice for carpet cleaning in completed on November 8, 2013 in the sum of \$332.13. Photographs showed that the carpets had not been cleaned at the end of the tenancy.

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.

In the absence of evidence to the contrary and, in the absence of the tenants who refused service of notice of this hearing, I find that the landlord's claim has merit.

From the evidence before me I find that the tenants failed to pay October and November 2013 rent in the sum of \$2,400.00 and that the landlord is entitled to compensation in that sum.

I find that the October 2013 rent payment was returned as NSF and at the very least late. Therefore, in support of the clause of the tenancy agreement for arrears, I find that the landlord is entitled to compensation in the sum of \$25.00; the fee included as a term of the tenancy agreement.

I find that the master bedroom door was undamaged at the start of the tenancy and that the damage caused could not have been the result of normal wear and tear. The door had a significant crack in the mid-section. Therefore, I find that the landlord is entitled to compensation in the sum supported by the invoice; \$165.56.

The photographs show areas of the walls that required repair. From the evidence before me I find that there was an unreasonable amount of damage; beyond that allowed for hanging of art. Therefore, I find that the landlord is entitled to compensation in the sum of \$210.00 for the cost of repair, supported by the invoice supplied as evidence.

The landlord submitted a claim for carpet cleaning in the sum of \$250.00; the actual cost was \$332.13, supported by an invoice supplied as evidence. As the total sum claimed by the landlord is well below the overall claim indicated on the application I find that the landlord is entitled to compensation for carpet cleaning; as reflected in the invoice.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Unpaid October and November 2013 rent	\$2,400.00	\$2,400.00
NSF fee for October 2013 payment	50.00	25.00
Damaged door	250.00	165.56
Paint and drywall repair	1,000.00	210.00
Carpet cleaning	250.00	332.13
TOTAL	\$3,950.00	\$3,132.69

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

I find that the landlord is entitled to retain the tenant's security deposit in the sum of 600.00, in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,582.69. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 \$3,132.69.

The landlord may retain the security deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

The balance of the claim is dismissed or has been withdrawn.

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: November 27, 2013

Residential Tenancy Branch

