



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR O FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by claiming rent for March 2013 and by writing "*they maintained control and custody of the suite until sometime in March 2013.*"

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearing indicated his intention of seeking to recover the payment for March loss of rent. Therefore I amend their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 12, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit site or property; for unpaid rent or utilities; 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 Tenants for this application.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing on August 12, 2013, by registered mail. Canada Post tracking information was provided in the Landlord's evidence which indicates the packages were signed received on August 15, 2013. Based on the submissions of the Landlord I find each Tenant was served notice of this proceeding on August 15, 2013, in accordance with the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties entered into a written fixed term tenancy agreement that began on May 1, 2011 and switched to a month to month tenancy after one year. The Tenants were allowed to occupy the unit as of April 20, 2011 and were required to pay \$900.00 on or before the first of each month as rent. On April 20, 2011 the parties attended the move in condition inspection and the Tenants paid \$450.00 as the security deposit.

The Landlord advised that his wife has owned this property since 2007. It is a condo building that was built in 1979 which underwent renovations in 2006 / 2007 to switch the building from rental units to strata owned units. Their unit is a two bedroom condo which was remodeled with new appliances, new washer and dryer, new flooring throughout, new paint and a new toilet just prior to them purchasing it in 2007. The original tub/shower and sinks remained. After they purchased this unit they have always used it as a rental property.

The Landlord testified that on January 28, 2013, the Tenants provided written notice that they would be ending their tenancy effective February 28, 2013. The Landlord accepted the notice and said they made no effort to inspect the unit or advertise the unit to get it re-rented as soon as possible. Instead, the Landlord waited until near the end of February to try and schedule a move out inspection. He said he attempted on three occasions to schedule the move out and after the third time the Tenants responded saying they did not need to attend the move out because they would not be getting their deposit back because of the carpet. The Landlord then attempted to arrange to get the keys back from the Tenants but they seemed to keep stalling. He confirmed that he did not attend the unit on February 28, 2013 to meet up with the Tenants and retrieve the keys. He indicated that he did not have a set of keys to enter the unit so he finally called a lock smith on March 6, 2013 so he could gain entry and change the locks. He found the unit vacant, dirty, with some damage to the walls, and with some excessive staining on the carpets.

The Landlord indicated that he attempted to clean the carpets with stain remover but he could not get the large pink stains out. The entire carpet was stained and was subsequently replace. They are seeking monetary compensation of \$5,405.96, less the security deposit, as supported by the receipts they provided in evidence. This claim consists of: \$900.00 February 2013 rent; \$900.00 March 2013 loss of rent; \$117.60 locksmith fees; \$405.30 for skip trace locator fees; \$523.06 to repair holes in the walls and repaint the living room, kitchen, hallway and two bedrooms; \$2,160.00 to replace the carpets; and \$400.00 for 20 hours of cleaning and debris removal at \$20.00 per hour.

In closing, the Landlord submitted that the Tenants did not provide a forwarding address so they chose to hire a skip tracer to locate them for this claim. He also indicated that

the unit was freshly painted in March or April 2011, just prior to the start of this tenancy. They did not begin to advertise the unit until towards the end of March 2013 and were able to re-rent it effective April 1, 2013.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

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 26 of the Act stipulates that a tenant must be rent when it is due in accordance with the tenancy agreement.

In this case rent was payable on or before the first of each month in the amount of \$900.00. The Tenants tenancy did not end until February 28, 2013, based on their notice to end tenancy. Therefore, I find the Tenants were required to pay February rent in accordance with the tenancy agreement and section 26 of the Act. Accordingly, I award the Landlord unpaid February 2013 rent in the amount of **\$900.00**.

The Landlord has filed seeking compensation for loss of March 2013 rent because the Tenants had not returned the keys. The evidence proves the Landlord received the Tenants' notice to end tenancy on January 28, 2013, yet they made no effort to inspect the unit, acquire a second set of keys, or to advertise the unit to begin seeking a replacement tenant. Therefore, I find the Landlord has provided insufficient evidence to prove they did whatever was reasonable to minimize their loss of rent for March 2013. Accordingly, I dismiss their claim for loss of March 2013 rent, without leave to reapply.

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; and return all keys.

Based on the aforementioned I find the Tenants have 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.

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. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Residential Tenancy Policy Guideline 40 provides that the normal useful life of interior paint is 4 years while the normal useful life of carpet is 10 years.

As per the foregoing I find the Landlord has met the burden of proof to claim damages and I award them **\$1,643.13** which consists of:

\$261.53	Painting and wall touch ups which is 50% of the original cost as the existing paint was already two years old
\$864.00	carpet which is 4/10 of the cost as there were only 4 years remaining in the useful life of the carpet.
\$117.60	Locksmith fees to rekey unit
\$400.00	cleaning and debris removal

In regards to \$405.30 of skip trace fees claimed, I find that the Landlord has chosen to incur these costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. The Act does not stipulate that a tenant must provide a landlord a forwarding address. Therefore, failure to provide the Landlord with their new address is not a breach of the Act. Accordingly, I find the claim for skip trace fees does not meet the requirements for damages, as listed above, and it is dismissed, without leave to reapply.

The Landlord has been partially 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:

Unpaid February 2013 rent	\$ 900.00
Award for Damages	1,643.13
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,593.13
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$2,143.13</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,143.13**. This Order is legally binding and must be served upon the Tenants. In the event the Tenants fail to comply with this Order it may be filed in BC Provincial 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*.

Dated: November 13, 2013

Residential Tenancy Branch

