



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, by registered mail, on September 11, 2013. The Landlord's agent provided the tracking numbers for the registered mail.

The Tenant testified that she sent copies of her documentary evidence to the Landlord by registered mail on December 6, 2013. The Landlord acknowledged receipt of the Tenant's documents.

Issues to be Decided

- Is the Landlord entitled to a monetary award for loss of revenue for the month of September, 2013 and damages to the rental unit?
- May the Landlord deduct her monetary award from the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 1, 2012. Monthly rent was \$1,080.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$540.00 at the beginning of the tenancy. There was no condition inspection report completed, that complies with the requirements of the regulation, at the beginning or the end of the tenancy.

On August 11, 2013, the Tenant informed the Landlord that she would be moving out of the rental unit by August 31, 2013. A copy of the Tenant's notice to end the tenancy was provided in evidence. The Tenant's notice states, in part:

"I [Tenant] am forced to end tenancy without full notice due to risk of serious health risks. I am unable to continue residency at [the rental unit] due to a lack of maintenance of the building and property to health, safety and housing standards..... Living with mould has caused me to have respiratory problems, affected my ability to think straight, and has caused emotional stress for the well being of my pet living in suite as well as my long term health.

Under section 14.2 of the Residential Tenancy Act of Vancouver, it states; "If a landlord has breached a material term of the tenancy agreement, the tenant could decide to end the tenancy without giving full notice."

(reproduced as written)

The Landlord's agent DW gave the following testimony:

DW testified that on August 31, 2013, she and the Landlord went to the rental unit and discovered that the carpet had been removed and another inferior carpet was installed over the original underlay. She stated that closet doors were missing; the kitchen floor and some walls were damaged; and the shower head was missing.

DW stated that on August 11, 2013, the Tenant advised the Landlord on the phone that she was moving out of the rental unit and on August 12, 2013, the Tenant dropped off a letter confirming she was moving out.

DW testified that the Tenant informed the Landlord on July 31, 2013, that a tap was leaking, but that the Tenant would not allow the Landlord into the rental unit without the Tenant's permission.

DW submitted that some of the photographs that the Tenant submitted in evidence were not photographs of the rooms that they purported to be. DW submitted that she uploaded a video to YouTube, which accurately depicts the condition of the rental unit at the end of the tenancy.

DW testified that the Tenant never complained about any required repairs except in November, 2012, and on July 31, 2013. DW stated that the Tenant was in Alberta when she called the Landlord on July 31, 2013. She stated that the repairs were completed in November, 2012, but that the Tenant did not give the Landlord reasonable time to

address the Tenant's concerns in July, 2013. DW testified that the Landlord could not re-rent the rental unit for September, 2013, because of the Tenant's late notice and damages that the Tenant is responsible for, and that the Landlord has a \$7,000.00 quote for all of the required repairs.

DW stated that the original carpet was purchased in 2010 and was in very good condition. She stated that there was a 20 year warrantee on the carpet and that there was 15 years of wear remaining.

In addition to recovery of the \$50.00 filing fee, the Landlord seeks a monetary award, calculated as follows:

Adjusted value of missing carpet	
$\$2,330.00/20 \text{ years} = \$116.50. \$116.50 \times 15\text{years} =$	\$1,747.50
Closet hinge/track	\$5.00
Two missing closet doors	\$58.00
Shower head	\$7.99
Missing carpet edging	\$16.49
Missing light cover	\$3.99
Missing light fixture	\$14.99
Missing kitchen spotlight	\$29.99
Cost to remove Tenant's garbage	\$20.00
Loss of one month's rent	<u>\$1,080.00</u>
TOTAL	\$2,983.95

The Landlord provided copies of advertisements containing prices for the same carpet that the Tenant removed (@\$2.84 /sq. ft.); carpet edging; closet tracking; lighting; closet doors; and shower head. The Landlord also provided photocopies of photographs of the rental unit.

The Tenant NM gave the following testimony:

NM stated that the Landlord was not being honest. She submitted that DW has provided no proof that she removed the carpet, and stated that her roommate removed it in August, 2012, before he moved out. NM testified that she noticed mould on the carpet in August 2012, but that it improved until a leak started in October, 2012. NM stated that her roommate dealt with removing the mouldy carpet and that she had no firsthand knowledge of his communications or actions.

NM submitted that the Landlord has over-inflated the square footage that was covered by the original carpet. She stated that the actual square footage was only 553 square

feet, not 750.00 square feet as alleged by the Landlord, and that only 412 square feet was carpeted. The Tenant provided a sketch of the floor plan in evidence.

NM testified that in January, 2013, a faucet started leaking. NM stated that she did not put her concerns in writing.

NM stated that the rental unit is not a legal suite. She stated that she ended the tenancy legally, without a full month's notice, because of the mould in the rental unit.

NM testified that there was only one closet in the rental unit. She stated that the shower head was there when she moved out. The Tenant denied that there was a spot light in the kitchen. NM denied causing any damage to the rental unit.

DW gave the following reply:

DW testified that the Landlord entered the rental unit only twice during the tenancy; once in November, 2012, to fix a main drain clog and once at the end of the tenancy. She stated that the original carpet was still in the rental unit in November, 2012.

DW submitted that the Tenant's sketch is incorrect, and that the carpet covered 750 square feet.

Analysis

It is important to note that a landlord has a right to access her rental property under Section 29 of the Act, by providing 24 hour written notice for a reasonable purpose. If due notice is given, the tenant must allow the landlord access whether or not the tenant can be present during the inspection.

It is also important to note that tenants are jointly and severally responsible for damages that occur during a tenancy. In other words, a landlord can pursue one or any of the tenants for damages and it is up to the tenants to apportion any monetary award between themselves.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

A tenant may end a tenancy under Section 45(3) of the Act if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the tenant gives written notice of the failure. In this case, I find that the Tenant provided no such notice. On August 12, 2013, the Tenant provided the Landlord with written notice that the tenancy was ending, without providing the Landlord with reasonable time to correct the alleged problem. Whether or not a rental unit is a “legal suite” is not relevant.

I find that the Tenant did not provide due notice to end the tenancy and that the Landlord suffered a loss as a result of the Tenant’s breach of Section 45 of the Act. Therefore, I allow the Landlord’s claim for loss of revenue in the amount of **\$1,080.00**.

With respect to the carpet, the Tenant did not deny that it was removed without the Landlord’s consent. Therefore, I find that the Landlord suffered a loss as a result of the Tenant’s breach of the Act. I accept the Landlord’s evidence with respect to the age, quality and cost of the carpet per square foot; however, the Landlord did not provide sufficient evidence to prove the actual square footage of carpet required or the cost of installation (for example, an estimate specific to the rental unit). Therefore, based on the Tenant’s calculations, I allow this portion of the Landlord’s claim, calculated as follows:

$$\begin{aligned} 412 \text{ sq ft} \times \$2.84 \text{ per square foot} &= \$1,179.08 \\ \$1,179.08 / 20 &= \$58.50 \\ \$58.50 \times 15 \text{ years remaining} &= \mathbf{\$877.56} \end{aligned}$$

With respect to the remainder of the Landlord’s claim, I find that she did not provide sufficient evidence to satisfy the test for damages as provided above and therefore it is dismissed without leave to reapply.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of her monetary award. No interest has accrued on the security deposit.

The Landlord's application had merit and I find that she entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Loss of revenue	\$1,080.00
Carpet	\$877.56
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,007.56
Less security deposit	<u>- \$540.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,467.56

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,467.56** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 10, 2014

Residential Tenancy Branch

