



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, and to recover the filing fee.

The landlord and the female tenant, CF, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenant testified that she received the evidence of the landlord and had the opportunity to review the landlord’s evidence prior to the hearing. The tenants’ evidence was excluded from the hearing as the tenants’ evidence was submitted late and not in accordance with the Rules of Procedure. I find the tenants were served with the landlord’s evidence in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, I amended the landlord’s Application pursuant to section 64 of the *Act* to include a request for authorization to keep all or part of the tenants’ security deposit, as I find the landlord’s application details clearly indicated that it was the intention of the landlord to include that in their Application.

During the hearing, the tenant requested an adjournment to allow time for the other tenant, CP, to attend as he was “away for work”. The landlord did not agree to an adjournment as the landlord was prepared to proceed and did not want to suffer a further delay. I denied tenant CF’s request for an adjournment, as I find that the tenants had the opportunity prior to the hearing to review the landlord’s claim and prepare a response from tenant CP prior to the hearing but failed to do so. Furthermore, there was

no documentary evidence from the tenants that supported that tenant CP was unable to call into the teleconference hearing from his work location. As a result, the hearing proceeded with tenant CF representing both tenants during the hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

Although a copy of the written tenancy agreement was not submitted in evidence the parties agreed that a month to month tenancy began on December 17, 2011, and ended on August 17, 2013, when the tenants vacated the rental unit. Monthly rent in the amount of \$1,250.00 was due on the first day of each month. A security deposit of \$625.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$9,619.00 comprised of \$6,000.00 in unpaid rent and loss of rent, plus \$3,619.00 in damages. Regarding the landlord's claim for damages, the landlord has claimed \$1,633.36 in materials plus \$1,866.00 in labour to repair the alleged damages, for a total damages claim of \$3,619.00.

Regarding the landlord's claim for unpaid rent, the tenant testified in the hearing that she had "no comment" regarding the landlord's claim regarding rent owed. The landlord submitted a detailed ledger in evidence which supports that a total of \$6,000.00 in rent remains owing, including \$1,250.00 for loss of rent for September 2013.

Settlement Agreement

During the hearing, the only portion of the landlord's claim for damages that the tenant agreed to was regarding the carpets. The landlord originally claimed \$718.70 for carpet replacement. The parties mutually agreed that the landlord is entitled to \$400.00 for the damage to the carpets caused during the tenancy. As a result, I will not consider this portion of the landlord's claim for damages further in this Decision.

Remainder of Evidence - Landlord's Claim for Damages

The parties agreed that the landlord did not complete an incoming or an outgoing condition inspection report. The landlord submitted in evidence a list of materials required to repair alleged damage to the rental unit. Most of the items in the list were marked as having a receipt, which were included in the landlord's evidence. The landlord also submitted in evidence a list of labour costs by item and the associated date including the rate the landlord was claiming per hour, the number of hours involved to repair the specific item and the total cost per item. The total amount of hours for labour is 124 and the total amount of labour being claimed is \$1,633.00 plus \$120.00 for "gas" for the landlord to make several trips to the dump, some to dispose of garbage left behind by the tenants, and others to dispose of rugs left behind by the tenants. The landlord submitted approximately 87 colour photographs in evidence in support of his monetary claim. The landlord testified that the photographs were taken "a day or two after the tenants vacated" the rental unit.

The landlord confirmed that he did not provide documentary evidence to support the condition of the rental unit at the start of the tenancy, and did not present any witnesses during the hearing to support the condition of the rental unit prior to the tenants moving into the rental unit in December of 2011. \$546.00 of the \$1,633.00 was for cleaning the rental unit after the tenants vacated. The tenant testified that the rental unit was left in a "clean" condition at the end of the tenancy, which the landlord disputed. The landlord testified that the photographic evidence submitted in evidence supports that the rental unit was not left in a "clean" condition at the end of the tenancy.

The landlord writes in his evidence that the repairs and cleaning took the landlord a total of six weeks to complete which is why he is also claiming for loss of September 2013 rent in the amount of \$1,250.00. Other than the carpet costs, which resulted in a settlement agreement between the parties described earlier in this Decision, the tenant testified that she did not agree to any of the damages costs including cleaning costs being claimed by the landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or 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 *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Claim for unpaid rent and loss of rent – The landlord has claimed \$6,000.00 for unpaid rent and loss of rent. The landlord submitted a detailed ledger which I find supports this portion of the landlord's monetary claim. During the hearing, the tenant stated that she had "no comment" regarding the landlord's claim for unpaid rent. Section 26 of the *Act* states that a tenant must pay rent when it is due whether or not the landlord complies with the *Act*. Therefore, based on the tenant having "no comment" and the documentary evidence supporting that the tenants owe \$6,000.00 for unpaid rent and loss of rent, **I find** the landlord has met the burden of proof and has established a monetary claim in the amount of **\$6,000.00** comprised unpaid rent and loss of rent. **I accept** that the landlord's photographs submitted in evidence show a rental unit that was not left in "reasonably clean" condition by the tenants at the end of the tenancy as required by section 37 of the *Act*. As a result, **I find** the landlord's request for loss of rent for the month of September 2013 due to the cleaning required is reasonable under the *Act*.

Claim for damages – **I find** the landlord failed to complete an incoming condition inspection report, and as a result, the landlord has provided insufficient evidence to support what the condition of the rental unit was at the start of the tenancy. However, under section 37 of the *Act*, when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. **I find** that the landlord's photographic evidence is sufficient evidence that the rental unit

was not left “reasonably clean” as required by section 37 of the *Act*. As a result, **I find** the landlord is entitled to **\$546.00** in compensation for cleaning expenses plus **\$400.00** for carpets as described in the settlement agreement between the parties above, and **I dismiss** the remainder of the landlord’s claim for damages due to insufficient evidence, without leave to reapply.

As the landlord’s claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$7,046.00** comprised of \$6,000.00 in unpaid rent and loss of rent, \$546.00 for cleaning costs, \$400.00 for carpets, plus the \$100.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants’ security deposit of \$625.00. **I order** the landlord to retain the tenants’ full security deposit of \$625.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$6,421.00**.

Conclusion

The landlord is entitled to \$7,046.00. The landlord has been ordered to retain the tenants’ full security deposit of \$625.00 in partial satisfaction of the claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenants in the amount of \$6,421.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 3, 2013

Residential Tenancy Branch