



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were initially mailed to the Tenant at the forwarding address she provided after the tenancy ended. She stated that this package was returned to the Landlord by Canada Post, with a notation that the address was incomplete. The Landlord submitted documentation that corroborates this statement.

The Landlord stated that she contacted the Tenant and obtained an alternate mailing address. She stated that the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Landlord wishes to rely upon as evidence were served to the alternate mailing address, via registered mail, on November 12, 2013. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit; and is the Landlord entitled to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord stated that this tenancy began on December 15, 2012; that the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month; and that the Tenant paid a security deposit of \$400.00.

The Landlord stated that this tenancy was the subject of a dispute resolution hearing on September 30, 2013, in which an arbitrator determined that the Tenant must vacate the rental unit by October 31, 2013.

The Landlord stated that the Tenant vacated the rental unit on October 15, 2013 without providing the Landlord with notice of her intent to vacate and without paying rent for October. The Tenant is seeking compensation, in the amount of \$800.00, for unpaid rent from October.

The Landlord is seeking compensation, in the amount of \$1,295.78, for replacing the carpet in the rental unit. The Landlord stated that the carpet was in good condition at the start of the tenancy and was soiled beyond repair at the end of the tenancy. The Landlord submitted a photograph of the carpet, which was taken in February of 2012, which shows the carpet was in good condition at that time.

The Landlord stated that the carpet was replaced with laminate flooring at the end of the tenancy, as the carpet was too dirty to be cleaned. The Landlord submitted photographs of the carpet at the end of the tenancy, which corroborates the Landlord's testimony that the carpet was very dirty.

The Landlord submitted an invoice to show that the Landlords were charged \$1,295.78 to replace the carpets with laminate flooring. The Landlord stated that she does not know how old the carpets were, as they were in place when they purchased the rental unit in 2009.

The Landlord is seeking compensation, in the amount of \$150.00, for cleaning the rental unit, which included touching up areas on the wall. The Landlord submitted photographs of the rental unit that show the walls and unit needed cleaning. The Landlord stated that she spent approximately 8 hours cleaning the rental unit and repairing minor damage to the walls.

The Landlord is seeking compensation, in the amount of \$100.00, for removing two Telus boxes that the Tenant installed in the residential complex without permission from the Landlord. The Landlord submitted photographs of the two boxes. The Landlord stated that Telus will not remove the boxes as the accounts for both boxes are still active, one of which is in the Tenants name and the other is in the name of the occupant in the upper rental unit. She stated that she spoke to a representative at Telus who estimated that it will cost \$100.00 to remove the boxes.

Analysis

On the basis of the undisputed evidence, I find that the Tenant failed to pay the rent of \$800.00 that was due on October 01, 2013. Section 26 of the *Act* requires a Tenant to pay rent when it is due and I therefore find that the Tenant must pay \$800.00 in rent to the Landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpets in good condition at the end of the tenancy. On the basis of the photographs submitted in evidence, which show that the carpet is extremely dirty, I find it reasonable that the Landlord replaced the carpets rather than cleaning them.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpets is ten years. The evidence shows that the carpet was in the rental unit when the unit was purchased in 2009 and that the carpet was not new at that time. I therefore find it reasonable to conclude that the carpet was at least 6 years old at the end of the tenancy and had depreciated by at least 60%. I therefore find that the Landlord is entitled to 40% of the cost of replacing the carpet, which in these circumstances is \$518.31.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition. On the basis of the photographs submitted in evidence, I find that the claim for 8 hours for cleaning is reasonable and I find that the Landlord should be compensated for the 8 hours she spent cleaning the unit and repairing minor wall damage. I find that the claim of \$150.00 is more than reasonable and I find the Tenant must pay this amount to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove the Telus box that was installed in her rental unit. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused

by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of removing the Telus box. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's estimate that it will cost \$100.00 to remove the Telus box. On this basis, I award nominal damages in the amount of \$1.00, which is merely intended to demonstrate that the Tenant failed to comply with her obligation to remove the box.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,519.31, which is comprised of \$800.00 in unpaid rent, \$668.31 in damage to the rental unit, \$1.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$400.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,119.31. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: February 04, 2014

Residential Tenancy Branch

