



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, for authority to retain the tenant's security deposit, an order of possession for the rental unit due to alleged cause, and for recovery of the filing fee.

The hearing process was explained to the attending parties and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence as both parties acknowledged receipt of the other's documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenancy had ended prior to the landlord's application being filed; I have therefore amended her application excluding her request for an order of possession for the rental unit.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation and to recover the filing fee?

Background and Evidence

The landlord submitted that the tenancy started on July 1, 2012, ended on October 31, 2013, monthly rent was \$685, and the tenant paid a security deposit of \$342.50 and a pet damage deposit of \$150.

The rental unit was in the basement level of a home, owned by the landlord who lived in the upper level.

The landlord's monetary claim is \$1510, comprised of the following:

Cleaning	\$150
Steam cleaning	\$50
Repair, mud and paint walls	\$500
Stove top repair	\$50
Loss of rent revenue	\$685
Replace curtains	\$40
Printing and copying	\$35

In support of her application, the landlord submitted that the tenant left the entire rental unit in a dirty and unclean state, that the rental unit was not reasonably cleaned by the tenant, and that it required a thorough cleaning. The landlord further submitted that although the tenant mentioned that there was a flood in the rental unit, she had her roommate, the witness for the hearing, attend the rental unit, who found no evidence of a flood.

Additionally the tenant damaged the walls, which required repair and repainting. The landlord submitted that she had to repair the stove top and replace the curtains due to damage by the tenant.

The landlord said that she made two attempts with the tenant to have an inspection conducted at the end of the tenancy, but the tenant failed to respond to her requests and the inspection was conducted in his absence.

The landlord submitted that the carpet required cleaning as the tenant failed to do so himself.

As to her claim for loss of rent revenue for November 2013, the landlord submitted that she received insufficient notice from the tenant that he was vacating the rental unit, as the notice was given to her on October 7, 2013, for an effective date of vacancy of October 31, 2013.

As the tenant gave as a reason that he was vacating early was due to flooding issues, the landlord submitted that she had witness MP investigate whether there was a flood. MP found a damp spot in the rental unit, but the underlay, walls, windows, and

foundation were dry and the soil outside the rental unit was dry, according to the landlord.

In response to my question, the landlord stated that she began advertising the rental unit on Craigslist and the local newspaper on October 9, 2013; however she did not obtain new tenants for November 2013, and suffered a loss of rent revenue.

The landlord's relevant documentary evidence included photographs of the rental unit, from both at the beginning and the end of the tenancy, a condition inspection report for the beginning and end of the tenancy, email communication between the parties, a cleaning invoice dated December 31, 2013, a statement from MP regarding wall repair, miscellaneous store receipts, a receipt from a generic receipt book from what appeared to be a painting company or painter, dated December 5, 2013, and another generic receipt from the same painter, dated December 10, 2013. I note that the receipts were not stamped with a company logo; rather the company named was handwritten on the receipt.

In response, the tenant submitted that when he returned home from a business trip on October 7, 2013, he discovered that the carpet was extremely wet, forcing him and his children to sleep on a mattress in the living room.

The tenant submitted that there is a larger problem in the rental unit, due to a water infiltration system, and his concerns for his children's health forced him to vacate the rental unit as soon as he did.

The tenant submitted there was a previous significant flood in the rental unit, which caused water stains to the carpet and the wooden floor to buckle.

The tenant submitted that the landlord's claim was grossly exaggerated as there was only slight drywall damage, as he had to move furniture several times due to the water issues.

The tenant submitted that he cleaned the rental unit, that there was a green algae problem due to the previous floods, that the stove top was very old and that there were no curtains as related by the landlord.

The tenant submitted that during the tenancy, MP had to replace a hot water tank, leaving marks and damage to the rental unit.

The tenant questioned the receipts, as none were produced with the landlord's original application and evidence, only starting to appear when he questioned the lack of receipts when he submitted his documentary evidence, which was a written response to the landlord's claim.

The tenant questioned the landlord's attempt to advertise the rental unit, as he checked on the online listings on a regular basis and did not see any advertisements.

MP, the landlord's witness, submitted that he cleaned up the bedroom once the tenant vacated and there were no stains to the carpet and trim. MP said he performed a lot of the work himself.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

In reviewing the landlord's evidence, I was not convinced by the landlord's photographs that the tenant left the rental unit less than reasonably clean. Many of the photographs were of such a poor clarity I could not determine the condition of the depiction in the photograph. In other photographs, I was not persuaded that any damage was beyond reasonable wear and tear.

I additionally considered that there was a previous flood in the rental unit and find that it is quite possible that some damage occurred during this flood in April 2013, of which there was no dispute and for which the tenant would bear no responsibility.

I also considered that the landlord's receipts for cleaning was for work through December 20, 2013, that MP, who was not established as an expert, performed work at the end of November through December 21, and that a painter did not start any work until December 5, 2013. The dates of work performed so far removed from the end of the tenancy on October 31, 2013, made me question whether or not the tenant was responsible for an alleged damage or cleaning.

Overall I find the landlord submitted insufficient evidence and inconclusive proof that the tenant did not leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear and I therefore dismiss her claim for cleaning of \$150,

damage repair for \$500, stove top surface repair for \$50, and curtain replacement for \$40.

I also found that I could not rely upon the fact that the tenant failed to attend the final inspection as there was no evidence that the landlord attempted to schedule a second and final inspection by providing the tenant with a notice in the approved form, as required by Residential Tenancy Regulation #17(2)(b).

As the tenant failed to submit proof that he cleaned the carpet upon his departure, I award the landlord her cost of steam cleaning of \$30 and carpet shampoo of \$14.50, as shown in her invoice from MP.

As to the landlord's claim for loss of rent revenue, the landlord failed to submit proof of the nature and frequency of the advertising and therefore I was unable to examine the evidence to ensure that the landlord met their requirement to take reasonable measures to minimize their loss. Without such proof, I find the landlord submitted insufficient evidence of step 4 of her burden of proof and I dismiss her claim for loss of revenue for November 2013 of \$685.

Even had I not dismissed the landlord's claim for loss of revenue based upon failure to submit proof of taking steps to minimize her loss, I would still make the decision to dismiss her claim based upon lack of documentary proof as to when the rental unit was re-rented and at what rate. I also find the tenant cast sufficient doubt as to whether the landlord began advertising the rental unit when she claimed.

As the landlord had at least partial merit with her application, I award her the filing fee of \$50.

Due to the above, I grant the landlord a monetary award in the amount of \$94.50, comprised of carpet cleaning and supplies of \$44.50 and the filing fee of \$50.

Conclusion

The landlord's application for dispute resolution for monetary compensation has been granted in part and dismissed in large part as I have awarded the landlord monetary compensation in the amount of \$94.50 for the reasons stated above.

I direct the landlord to retain the amount of \$94.50 from the tenant's security deposit of \$342.50, and order her to return the balance of \$248 and the pet damage deposit in full in the amount of \$150.

As I have ordered the landlord to return the balance of the security deposit of \$248 and the pet damage deposit of \$150, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$398, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: March 11, 2014

Residential Tenancy Branch

