



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL; MND; MNSD; FF

Introduction

This is the Landlords' application for an Order of Possession; a Monetary Order for damages; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord SB gave affirmed testimony at the Hearing.

Preliminary Matters

1. The Landlords' request for an Order of Possession

At the outset of the Hearing, SB stated that the Landlords did not require an Order of Possession because the tenancy ended in September, 2013. Therefore this portion of the Landlords' application is dismissed.

2. Was the Tenant a "tenant" or an occupant?

There was a previous hearing with respect to this tenancy on October 23, 2013 and a decision was rendered on October 24, 2013 (the "Previous Hearing"). The Previous Hearing dealt with the Tenant's application for compensation for damage or loss; return of the security deposit; an Order of Possession for the Tenant; and an Order that the Landlords return the Tenant's personal property. The parties disagreed with respect to whether or not the Tenant was a "tenant" as defined by the Act, or merely an occupant with no rights or responsibilities under the Act.

Although the arbitrator did not make a finding with respect to this issue, she made the following comment, "I have no corroborating evidence to the contrary that this tenant was the original tenant and not just the roommate". The arbitrator also made an Order with respect to return of the Tenant's belongings, noting that the parties agreed that the Tenant would remove his possessions on November 18, 2013. The remainder of the Tenant's application was dismissed without leave to reapply. The Tenant filed an Application for Dispute Resolution, acknowledging that he was a "tenant" and the arbitrator found no corroborating evidence to the contrary. Therefore, absent any evidence to the contrary, I find that the Tenant was the Landlords' "tenant" and that I have jurisdiction under the Act to determine this matter.

3. Service of documents

SB testified that he mailed the Notice of Hearing documents to the Tenant, via registered mail, on December 2, 2013. He stated that he sent the documents to the address that the Tenant gave for service on the Tenant's application for dispute resolution which was heard on October 23, 2013. SB stated that the documents were returned to him, unclaimed, on January 8, 2014. SB provided the tracking numbers for the registered documents.

I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail, further to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

SB gave the following testimony:

The Tenant paid a security deposit in the amount of \$300.00.

SB stated that the Tenant broke the door to the rental unit attempting to gain access after he abandoned the rental unit. The door, door jamb and deadbolt had to be replaced. The Landlords seek a monetary award in the total amount of **\$247.22** for the cost of replacement, which includes the Landlords' labour. The Landlords provided receipts in evidence.

SB testified that the Tenant also broke a closet door and rack, blinds and a mirror. The Landlords seek a total of **\$355.25** for these items. A receipt for the cost of replacing the mirror was provided, but no receipt for the blinds or closet door and rack.

SB testified that the carpet was ruined and had to be replaced. The Landlords seek an award in the amount of **\$1,400.00** for this portion of their claim. No receipt or estimate was provided in evidence. SB stated that the carpet was approximately 10 years old.

SB testified that the Tenant damaged the interior walls and that they had to be repaired and repainted. The Landlords seek an award for the cost of the materials only, in the amount of **\$67.42**. A copy of the receipt was provided.

SB stated that the Tenant did not clean the rental unit and abandoned many possessions, which the Landlords had to store in accordance with the provisions of Part 5 of the regulation. SB testified that it took 2 people approximately 4 hours to move the Tenant's belongings into the Landlords' garage. The Landlords also spent a weekend cleaning the suite. The Landlords seek an award of **\$200.00** for their labour with respect to the initial moving of the Tenant's belongings and cleaning the rental unit.

SB testified that the Tenant did not collect his belongings on November 18, 2013, as he had agreed to do. He stated that the belongings were worth less than \$500.00 and therefore he took them to the dump. The Landlords seek compensation in the amount of **\$350.00** for storage fees from September 5 – November 19, 2013, together with another 3 hours labour and dumping fees in the amount of **\$150.00**.

Analysis

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlords 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.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy.

I find that the Landlords did not provide sufficient evidence to prove their claim with respect to the carpet, mirror, blind and closet door. I find that there was insufficient evidence to satisfy parts 1 and 3 of the test for damages. This portion of their claim is dismissed without leave to reapply.

I find that the Landlords did not provide sufficient evidence to support their claim in the amount of \$350.00 in compensation for storage (for example, no evidence of the cost of local storage fees); however, I accept that the Landlords stored the Tenant's belongings in their own garage for more than two months. I award the Landlords a nominal amount of \$50.00 for this portion of their claim.

I find that the Landlords' request for compensation for their labour is a reasonable one and that the amounts claimed are also reasonable with respect to storing and cleaning.

The Landlords seek an award of \$150.00 for the cost of dumping the Tenant's belongings. This includes a claim for 3 hours of labour. I find that the Landlords did not provide sufficient evidence of the cost of dumping fees (for example a copy of the receipt). However, I find that the Landlords are entitled to compensation for their labour in the amount of \$60.00 (3 hours @\$20.00 per hour).

Based on SB's undisputed affirmed testimony and documentary evidence, I find that the Landlords have satisfied the test for damages with respect to the following portions of their claim:

Door, door jamb, deadbolt	\$247.22
Cost of repairing and painting walls	\$67.42
Landlords' labour for storing and cleaning	\$200.00
Compensation for storage fees	\$50.00
Landlords' labour for dumping	<u>\$60.00</u>
TOTAL MONETARY AWARD	\$624.64

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award.

The Landlords has been partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

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

Monetary award	\$624.64
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Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$674.64
Less security deposit	- \$300.00
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$374.64

Conclusion

I hereby grant the Landlords a Monetary Order in the amount of **\$374.64** 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: March 31, 2014

Residential Tenancy Branch

