



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MND, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage or loss under the Act, damage to the rental unit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that each tenant was served copies of the Application for Dispute Resolution and Notice of Hearing that were sent to the tenant's new rental unit. The tenants moved into a unit very close to the landlord's rental unit. The landlord provided tracking numbers for each registered mail package sent to the tenants. The packages included a copy of the evidence.

On March 8, 2014 the male respondent signed, accepting the registered mail for both tenants.

These documents are deemed to have been served in accordance with section 89 and 90 of the *Act*; however the tenants did not appear at the hearing.

Preliminary Matters

The application was amended to include a claim against the security deposit which the landlord is holding. Any sum due to a landlord may be set off against the deposit, in accordance with section 72 of the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act for bailiff fees and loss of rent revenue?

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced in May 2013. Rent was \$1,600.00 due on the 1st day of each month. A security deposit in the sum of \$800.00 was paid.

The landlord has made the following claim:

Bailiff	\$1,800.00
October rent	1,600.00
Garbage removal	65.00
Carpet cleaning	423.90
Window	74.20
Thermostat	21.26
Paint	168.00
Blinds	177.60
Carpet	688.03
Locks	126.00
Registered mail	90.51
TOTAL	\$5,234.50

In 2013 the landlord obtained an Order of possession. On the day a bailiff attended at the home to remove the tenants the tenants obtained a stay of the Order. The Court then allowed the tenants to remain in the home until the end of September 2013.

When the tenants failed to vacate the unit at the end of September the landlord again hired a bailiff service and the tenants were removed from the rental unit. The tenants were removed on October 2; the landlord paid the bailiff on October 1, 2013.

The landlord supplied evidence of 4 trips to a Surrey waste transfer station made between October 5 and November 6, 2013, to dispose of garbage left by the tenants.

The tenants did not leave the 2 year old carpets clean. The carpet cleaning invoice issued on October 12, 2013 indicated the cleaner had to “work extra hard on stains caused by previous tenants, burn marks and heavily soiled due to mistreatment of carpets.”

The tenants broke a basement window in the home; the landlord purchased a replacement.

The thermostat was removed by the tenants and could not be located; it was replaced.

The unit had been painted within the last 2 years. The landlord has claimed the cost of paint only for walls and a ceiling that had been damaged.

The tenants took the living room and bedroom blinds; they were replaced.

The carpet in the rec room was left with burns and had to be replaced. The landlord suspects that this damage occurred during the last month the tenants were in the home. It looked like they had lit cigarettes and then left them on the carpet. An invoice for the carpet and an estimate for the cost of installation were supplied as evidence. The landlord testified that the carpet installation costs were incurred.

The tenants did not return the keys to the unit; new locks were installed.

The landlord claimed the cost of registered mail that was sent to the tenants.

The landlord said that the unit was in good condition at the start of the tenancy. The paint and carpets were recent and had been well cared for by the previous tenants.

The landlord said that it took him time to clean the unit to prepare it for new occupants. He advertised the unit later in October, as it was not in any condition to show before that time. The landlord located new occupants effective mid-November 2013. The landlord works full-time so it took him time to clean and prepare the unit as he could only work on it during the evenings. The landlord has claimed the loss of rent revenue for the month of October 2013 as the unit was not fit for new occupants.

Copies of invoices and/or receipts for all items claimed were supplied as verification of the costs claimed.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of evidence to the contrary, and in the absence of the tenants who were served with Notice of this hearing, I find that the landlord is entitled to the costs claimed for repair and cleaning. Section 37(2) requires a tenant to leave a unit reasonable clean and free from damage, outside of wear and tear. A tenant is also required to return the keys to a unit. Therefore, I find that the landlord has, on the balance of probabilities, proven the tenants failed to comply with the Act. I find that the unit was not left reasonably clean and that items and fixtures were damaged and missing. Based on the evidence before me I find that the landlord has provided verification of the costs claimed for cleaning, repair and replacement of items and is entitled to compensation for costs claimed. I have not applied any depreciation for paint and carpet as those items were in good condition at the start of the tenancy and have been damaged as a result of negligence on the part of the tenants.

In relation to the claim for loss of October 2013 rent revenue Residential Tenancy Branch policy suggests that if tenants leave a rental unit un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. If a landlord does not minimize the loss policy suggests the claim may be reduced by the amount that might have been saved.

From the evidence before me I find that the rental unit could have reasonably been ready for renting again by October 15, 2013. There was a delay in making repair as the landlord works full-time; not for any other reason that may have delayed preparing the unit for occupation. Therefore, I find that the landlord is entitled to compensation for the loss of October 2013 rent revenue in the sum of \$789.00. The balance of the claim for loss of rent revenue is dismissed.

The landlord has claimed the cost of registered mail. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Bailiff	\$1,800.00	\$1,800.00
October rent	1,600.00	800.00
Garbage removal	65.00	65.00
Carpet cleaning	423.90	423.90
Window	74.20	74.20
Thermostat	21.26	21.26
Paint	168.00	168.00
Blinds	177.60	177.60
Carpet	688.03	688.03
Locks	126.00	126.00
Registered mail	90.51	0
TOTAL	\$5,234.50	\$4,343.99

I find that the landlord’s application has merit, and I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant’s security deposit in the amount of \$800.00, in partial satisfaction of the monetary claim.

I find that the landlord has established a monetary claim, in the amount of \$, which is comprised of \$4,343.99 plus \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$3,643.99. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$4,343.99. The balance of the claim is dismissed.

The landlord is entitled to retain the security deposit.

The landlord is entitled to filing fee costs.

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: June 18, 2014

Residential Tenancy Branch

