



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the rental unit and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence, however the tenant did not attend. The landlord gave evidence that he served the tenant with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on April 16, 2014. I find the tenant was properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy agreement signed by the parties on August 31, 2012 indicates the tenancy started on September 1, 2012 and was initially for a one-year term. The tenant was obligated to pay rent of \$1,200.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$600.00 and a pet deposit of \$600.00.

The landlord gave evidence that the tenancy ended March 31, 2014. He claims the following:

Rental loss for April 2014	1,200.00
Painting and repairs (labour)	300.00
Paint and supplies	263.79
Cleaning	150.00
Garbage removal	43.00
Courier charges	29.25

RTB filing fee	<u>50.00</u>
<i>Total Claim</i>	<i>\$ 2,036.04</i>

Rental Loss – The landlord gave evidence that the tenant verbally gave notice on approximately February 27 or 28, 2014. The landlord says they advertised the vacancy and put a sign outside the building on approximately March 2 or 3, 2014. He says there was interest from potential new tenants, however the landlord was not able to confirm a time and date for showing the rental unit with the tenant. The landlord gave evidence that the tenant would not respond to any communication from the landlord. Also the tenant works shift work and so it was difficult to predict when she would be home.

The landlord gave evidence that, although the tenant had given notice, the tenant had also previously applied to dispute a notice to end tenancy and a hearing was scheduled for March 12, 2014. The tenant had also applied for an order restricting the landlord from entering the rental unit. An arbitrator's decision from the March 12th hearing states the tenant did not proceed with her application to restrict the landlord's entry because the tenancy was shortly coming to an end.

Asked why the landlord did not simply provide the tenant with 24-hour notice of entry to show the suite, the landlord said they did not want to cause a confrontation with the tenant. He said their past experience was that the tenant would become angry and "lash out" if there was something she didn't like. They did not want to look bad in front of prospective tenants.

The landlord provided evidence of past dealings with the tenant. He provided a letter from a contracting company who came to the building in June 2013 to make repairs to the tenant's suite and another suite. The letter reads, in part:

"... We did not have any scheduling concerns or problems with either [the other suite] or any of the common areas however we did run into scheduling problems as well as additional problems in [the rental unit] due to [the tenant], such as the following:

1. [Tenant] had specific dates and times that she wanted us to come in at however she would cancel or change those times once we arrived on site or the evening prior. She then became very agitated and verbally abusive towards our employees as well as [building caretaker]. This happened on numerous occasions."

The landlord gave evidence that the tenant returned the keys late on March 31, 2014. The landlord then had to do cleaning and some repairs. That work was complete around April 10, 2014 and the rental unit was then shown to prospective tenants.

Painting and Repairs – The landlord gave evidence that the tenant had painted a wall dark grey. She attempted to return it to an off-white colour, but the dark grey still showed through. She had also spot-painted, but the painted areas were visible. The landlord gave evidence that the tenant had put a putty-like substance in many areas, which had to be removed. The landlord gave evidence that the building and rental unit were last painted about five years ago.

The landlord provided a receipt for painting/repair labour which lists removal of silicone, removal of putty, removal of paint splatters from the tenant's painting, and repainting; a total of \$300.00 (half of the cost is attributed to repainting). The landlord also provided two receipts for paint and painting supplies totalling \$263.79.

Cleaning – The landlord gave evidence that the tenant did not clean adequately when she moved out. He provided an invoice from his caretaker for \$150.00 for a total of 10 hours work at \$15.00 per hour. The invoice lists removal of putty, silicone, and paint from various surfaces such as blinds; and cleaning the oven, windows, and other areas.

Garbage removal – The landlord gave evidence that the tenant left a large quantity of unwanted possessions in the building garbage bin, and this filled about three-quarters of a four cubic yard bin. He said there was not enough room for other tenants to dispose of garbage, and so he asked the City of Burnaby to do an extra garbage pickup. The landlord supplied a copy of a \$43.00 invoice from the City of Burnaby for an extra garbage pickup.

Courier charges – The landlord gave evidence that he incurred costs of \$29.25 for Canada Post charges for delivering documents related to this hearing to the tenant.

Analysis

Rental Loss – I accept the landlord's evidence that the tenant would not respond to the landlord's requests to show the suite during March 2014 and the landlord was concerned there would be a confrontation if they showed the suite without her consent. Also, there was some confusion about whether the tenant really intended to move out since she had a hearing scheduled for March 12, 2014 seeking to cancel a notice to end tenancy. The tenant was also seeking to restrict the landlord's access to the rental unit.

Given the landlord's past experience with the tenant and the atmosphere of conflict between the parties, it seems reasonable that the landlord did not attempt to show the rental unit to prospective tenants without the tenant's consent for showings.

That said, a landlord has a legal right to enter a suite by providing 24-hours written notice (per Section 29(1)(b)). The landlord also has an obligation to mitigate his losses, by making a reasonable effort to find new tenants. Considering all this, I find the landlord met his obligation to mitigate his losses by repeatedly asking the tenant if they could show the suite. When the tenant did not respond, it was reasonable for the landlord to not proceed with showings (based on the tenant's previous behaviour).

Since the landlord met his obligation to mitigate his losses, I find he is entitled to claim a rental loss of \$1,200.00 for the month of April 2014.

I accept the landlord's evidence that the tenant painted a wall dark grey and inadequately repainted it at the end of tenancy. According to the Residential Tenancy Branch Policy Guideline 40 "Useful Life of Building Elements", the useful life of interior painting is four years. In this case, the interior paint was five years old at the end of the tenancy and therefore past the end of its useful life. For that reason, I do not award compensation for repainting.

I accept the landlord's evidence that the tenant spilled paint, and applied silicone and putty inappropriately. I find the landlord is entitled to his costs of removing these substances, and I award compensation of \$150.00 (half the receipt amount for painting and substance removal labour).

I accept the landlord's evidence that the rental unit required cleaning. I find the landlord is entitled to be compensated for \$150.00 cleaning costs.

I accept the landlord's evidence that the tenant left a large quantity of unwanted possessions in the building garbage bin, necessitating an extra garbage pickup. I find the landlord is entitled to be compensated for the \$43.00 cost.

The Act permits that a party may recover their RTB filing fee, but it does not make provision for a party to recover any other costs of participating in an RTB hearing. For that reason, I dismiss the landlord's claim for courier costs. The landlord is, however, entitled to recover his RTB filing fee of \$50.00.

The total amount due the landlord is \$1,443.00, comprised of \$1,200.00 rental loss for April 2014, \$150.00 substance removal costs, \$150.00 cleaning costs, \$43.00 garbage removal costs, and the \$50.00 RTB filing fee.

I order that the landlord retain the security deposit of \$600.00 and the pet deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$243.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$243.00. The landlord is also entitled to retain the security deposit and pet deposit.

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: August 21, 2014

Residential Tenancy Branch

