



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for 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 tenants' security deposit and pet damage deposit, and for recovery of the filing fee.

The landlord and tenant AM attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the beginning of the proceedings, neither party raised an issue or objection regarding service of the application or the evidence.

Thereafter both parties 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, 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.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord stated that this month to month tenancy began on July 1, 2013, ended on and unknown date, when the tenants vacated the rental unit, monthly rent was \$600, and the tenants paid a pet damage deposit and security deposit of \$300 each.

The landlord's monetary claim is as follows:

January 2014 unpaid rent	\$1350
Deadbolt locks and key	\$250
Removal of fecal matter/yard repair	\$300
Garbage removal	\$750
Removal of hazardous material	\$800
Cleaning/sanitizing all surfaces	\$300
Damaged curtains/blinds	\$400
TOTAL	\$3400

The landlord's relevant evidence included the tenancy agreement, a document from an alleged cleaning and restoration service, an invoice from a landscaping company, a condition inspection report, and photographs of the rental unit and property.

The parties provided the following testimony in support of and in response to the landlord's application.

January rent-

The landlord stated she gave the tenants a 24 hour notice to inspect the rental unit on December 31, 2014, and that the male tenant ripped up the notice and called the police.

The landlord submitted that she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 4, and that she is entitled to unpaid rent for January as the tenants vacated without providing notice to the landlord.

The landlord confirmed that a caretaker moved into the rental unit on January 10, as the tenants phoned the local municipality about an illegal suite.

In response, the tenant submitted that they received a 10 Day Notice before Christmas and moved out of the rental unit as a result.

Deadbolt locks and key-

The landlord submitted that it was necessary to change the deadbolt and locks, as the tenants refused to return the key. Additionally, 2 interior doors were kicked in by the tenants.

In response, the tenant submitted that the keys were stolen from their car.

Removal of fecal matter/yard repair-

The landlord submitted that the tenants failed to pick up the fecal matter from both the interior of the rental unit and on the premises, which made it necessary to hire someone to clean-up this fecal matter.

In response, the tenant submitted that their dogs only had a 3' x 6' section on the side of the home for their use.

Garbage removal-

The landlord submitted that the tenants had allowed garbage to pile up both inside and outside the rental unit, which required removal. Included in the garbage were dead animals, such as whole chickens, lizards and birds. It was also necessary to incur a cost for recycling.

In response, the tenant submitted that the landlord's photos were taken while they were in the process of moving out and cleaning.

The tenant further submitted that their dogs ate the chickens and they would not leave the chickens.

Removal of hazardous material; Cleaning/sanitizing all surfaces-

The landlord submitted that the hazardous material left by the tenants were needles and dead animals, which required removal.

In response, the tenant submitted that the only needles left behind were for use for their diabetes.

Damaged curtains/blinds-

The landlord submitted that she had to replace the curtains, due to tenant damage, and that the curtains were brand new at the beginning of the tenancy.

The landlord confirmed there was no receipt for the curtain replacement, but she paid \$100 for them.

In response, the tenant denied using the bamboo blinds and that the aluminum blinds were just slightly bent at the corner, which would not require their replacement.

In response to my question, the landlord stated she attempted to schedule a move-out inspection by phoning the tenants, but that they never showed for the inspection.

In response to my question, the tenant submitted that they had completely moved out by January 8 or 9.

Analysis

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.

January unpaid rent-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find that the tenants owed rent for the month of January 2014, under the terms of the tenancy agreement, as they remained in the rental unit on January 1, 2014, and did not pay.

The evidence of the tenants is that they moved out by the 9th of January 2014, and the evidence of the landlord is that a caretaker moved into the rental unit on January 10, 2014. I therefore find that the landlord is entitled an award for unpaid rent for January 1-9, in the amount of \$177.57 ($\$600 \text{ monthly rent} \times 12 \text{ months} = \$7200 \text{ yearly rent} \div 365 \text{ days} = \$19.73 \text{ daily rate} \times 9 \text{ days} = \177.57) and I grant her a monetary award in the amount.

I have not awarded the landlord loss of rent revenue for the entire month of January, as the landlord had a caretaker move into the rental unit on January 10, which would mean that the landlord would not have been able to prove that she took reasonable steps to minimize her loss of rent revenue by advertising and finding a new tenant.

Deadbolt locks and key; Garbage removal; Removal of hazardous material; Cleaning/sanitizing all surfaces-

In reviewing the landlord's evidence, these items were all listed on one document as separate charges. This document was on a standardized form, titled "Sales Order", with a company name handwritten at the top of the form, no letterhead. There was no contact name, no address for this alleged company, no signature of any representative, and no complete date. Additionally, there was a charge listed for GST; however, this alleged company did not provide a tax number on this form.

The items of claimed damage repair listed separate hourly rates, for instance, one job was at the rate of \$40 per hour and other jobs listed a rate of \$80 per hour. There was no explanation as to why there were hourly separate charges or an indication as to whether or not this company, if it was a company, had a particular expertise in a biohazard field.

I also could not tell from the form itself if it was an invoice or estimate, and there was no proof that the amount listed was ever paid by the landlord.

Due to the above, I could not rely upon the landlord's documentary evidence to support her claim for a monetary award as listed. I, however, was convinced by the landlord's photographic evidence that the rental unit required cleaning and repair at the hands of the tenants, and under the circumstances, I find a reasonable amount to be \$500. I therefore grant the landlord a monetary award in that amount.

Removal of fecal matter/yard repair-

I was convinced by the landlord's evidence, the receipt provided by a landscaping company, and the photographic evidence, that the tenants failed to properly clean and repair the yard, as is their requirement. I therefore approve the landlord's claim for \$300.

Damaged curtains/blinds-

I find the landlord submitted insufficient evidence that she sustained a loss in this amount, due to a lack of receipt, or step 3 of her burden of proof, and I therefore dismiss the landlord's claim for \$400.

I grant the landlord recovery of her filing fee of \$50 due to her partially successful application.

Due to the above, I grant the landlord a total monetary award of \$1027.57, comprised of unpaid rent of \$177.57 for January 1-9, 2014, cleaning and garbage removal of \$500, yard clean up of \$300, and the filing fee of \$50.

Conclusion

The landlord's application for dispute resolution has been successful in part and I have awarded her monetary compensation in the amount of \$1027.57.

At the landlords' request, I allow her to retain the tenants' security deposit and pet damage deposit of \$300 each, or a total of \$600, in partial satisfaction of her monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$427.57, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord 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 tenants are advised that costs of such enforcement may be recovered from the tenants.

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 applicants and the respondents.

Dated: July 14, 2014

Residential Tenancy Branch

