



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord on May 12, 2014 and amended on August 26, 2014. The Landlord filed to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the Act, sent via registered mail on May 12, 2014 and the amended documents and evidence were sent August 26, 2014 by registered mail. Mail receipts and tracking numbers were provided in the Landlord's documentary evidence.

Based on the submissions of the Landlord I find that the Tenant was deemed served the original application and hearing documents on May 17, 2014 and the amended application and evidence on August 31, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded with the hearing in the absence of the Tenant.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence in support of their claim which included, but was not limited to, copies of; the move in and move out condition inspection report forms, receipts for bailiff and court fees, receipts for work performed on the unit, and photographs of the rental unit.

The Landlord testified that the Tenant moved back into the unit on July 1, 2005, after the unit had been completely renovated after a recent fire. The Tenant signed a new tenancy agreement and paid another security deposit. The Landlord stated that on February 19, 2014, they were granted an Order of Possession effective two days upon service. The Order was posted to the Tenant's door on March 4, 2014.

The Landlord submitted that when the Tenant kept refusing to vacate the rental unit, the Landlord obtained a writ of possession from Supreme Court and hired a bailiff to remove the Tenant and her possessions. The Landlord regained possession of the rental unit on March 20, 2014, which they found to be damaged, dirty, and had been partially painted with dark colors.

The Landlord stated that the Tenant had provided them with her forwarding address on April 25, 2014. As the forwarding address was received prior to the Landlord compiling their evidence for their application for dispute resolution the Landlord returned the Tenant's security deposit and refunded the balance of the monies that had been received for use and occupancy, at a daily prorated amount for the period of March 21 to March 31, 2014.

The Landlord now submits their monetary claim of \$8,107.66 which consists of the following:

\$5,297.42	Bailiff charges incurred to have the Tenant and her possessions removed from the rental unit;
\$1,436.26	A depreciated amount (30%) of the total cost to replace the stained, burned, and pet soiled carpets;
\$511.70	Costs incurred to clean and remove debris from the rental unit;
\$413.25	A portion of the cost to repaint the unit. The Tenant had repainted several walls with a dark color, and partially painted other walls and did not prime or paint the walls a neutral color at the end of the tenancy, as required
\$ 99.79	The cost to replace two damaged / broken interior doors
\$229.24	A portion of the cost to replace the drapes that were removed by the Tenant and not replaced
\$120.00	Supreme Court fees to obtain a writ of possession

In closing the Landlord noted that their documentary evidence included copies all receipts which support that the Landlord was claiming amounts lower than actual costs.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant who did not appear, despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case the Tenant was required to provide the Landlord with vacant possession of the rental unit two days upon being served with the Order of Possession. The Order was posted to the Tenant's door on March 4, 2014 and was deemed to be received on March 7, 2014, three days after it was posted. I accept the Landlord's submissions that the Tenant refused to comply with the Order so they obtained a writ of possession and suffered the costs of hiring a bailiff to remove the Tenant.

Based on the above, I accept the evidence that the Tenant failed to comply with an Order issued by the Director in accordance with section 55 of the Act, which caused the Landlord to suffer a loss. Accordingly, I award the Landlord compensation for the fee to obtain the writ of possession and for the bailiff fees in the amount of **\$5,417.42** (\$5,297.42 + \$120.00).

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy. Accordingly, I find the Landlord has met the burden of proof and I award them damages in the amount of **\$2,690.24** (\$1,436.26 + \$511.70 + \$413.25 + \$99.79 + \$229.24).

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$8,207.66** (\$5,417.42 + \$2,690.24 + \$100.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: September 16, 2014

Residential Tenancy Branch

