



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 for Dispute Resolution filed on May 12, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on May 14, 2014, and with copies of his evidence on June 24, 2014, by registered mail. Canada Post receipts were provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on May 19, 2014, in accordance with section 90 of the Act; and I proceeded in the Tenant's absence.

The hearing was conducted via teleconference during which the Landlord was given the opportunity to provide their evidence orally and to provide closing remarks. 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

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a month to month tenancy that commenced on September 1, 2003. The Tenant was required to pay rent of \$800.00 on the first of each month, which was subsequently increased to \$987.00 per month. On August 29, 2003 the Tenant paid \$400.00 as the security deposit. The parties conducted a walk through inspection and completed

condition inspection report forms at move in on September 8, 2003 and move out on May 1, 2014. The Tenant provided a forwarding address to the Landlord during the move out inspection.

The Landlord submitted documentary evidence that the rental unit smelled like smoke, at the end of the tenancy, which he clarified was the smell of cigarette smoke. He pointed to section 36 of the tenancy agreement where both parties had initialled the term that the unit was “non-smoking”. He is now seeking to recover costs for the special paint and his labour to clean and paint the unit to rid it of the smoke smell.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants 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.

In this case the evidence is that the rental unit was “non-smoking”, as noted at # 36 of the tenancy agreement, and at the end of the tenancy the unit smelled of smoke and had some visible discoloration which required cleaning and painting.

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 cigarette damage at the end of the tenancy.

Based on the above, I find that the Landlord is entitled to the undisputed claim for damages in the amount of **\$402.36**.

The Landlord has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Labour for cleaning	\$402.36
Filing Fee	<u>50.00</u>
SUBTOTAL	\$452.36
LESS: Security Deposit \$400.00 + Interest \$14.18	<u>-414.18</u>
Offset amount due to the Landlord	\$38.18

Conclusion

The Landlord has been awarded a Monetary Order for **\$38.18**. 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 12, 2014

Residential Tenancy Branch

