



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 filed on May 20, 2014, by the Landlord 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.

The hearing was conducted via teleconference and was attended by the Landlord's Agent. The Agent identified herself as being trained as a lawyer and noted that she was not representing the Landlord in a legal capacity during this proceeding. The Agent is herein after referred to as Landlord.

The Landlord submitted that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing documents, on May 22, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on May 27, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence in support of their claim which included a copy of the tenancy agreement, the move in and move out condition inspection report forms, photographs of the rental unit; receipts for work performed on the unit prior to and after the tenancy, and a letter from the flooring installer who witnessed the condition of the hardwood floor at the start of the tenancy.

The evidence provided that the parties executed a written tenancy agreement for a month to month tenancy that commenced on March 1 2004, for the monthly rent of \$2,000.00. The rent was subsequently increased to \$2,193.00 per month. On February 17, 2004 Tenant paid \$1,000.00 as the security deposit. The parties conducted a walk through inspection and completed condition inspection report form at move in on February 17, 2004 and at move out on June 12, 2012 at which time the Tenant refused to sign the condition report.

The Landlord testified that the Tenant left the rental unit dirty and requiring extensive damage. The Landlord noted that the Tenant failed to inform them that a water main was broken on the property and the Tenant had altered the construction of the back porch. The required repairs and cleaning caused delay in when the Landlord could re-rent the unit. The Landlord now claims for damage of **\$8,795.89** comprised of the following:

\$ 150.00	Carpet cleaning for six rooms that were dirty and had pet odor
\$2,900.00	Refinishing of hardwood floors that were damaged beyond normal wear
\$3,915.52	Costs to repair the kitchen ceiling that was water damaged after someone let the bathtub over flow and run down into the kitchen
\$ 575.62	Repair and repaint walls that the Tenant had painted dark colors without the Landlord's written permission and in breach of the tenancy addendum Rules and Regulation Agreement
\$ 308.00	Repair / replace stair runner carpet that was removed by the Tenant without permission
\$ 262.50	Replacement of Master Bedroom carpet that was brand new at the start of the tenancy and which had to be replaced due to pet urine, odors, and stains
\$ 448.00	Repairs to the pantry door that was forced past the normal opening and broken and repairs to two closet doors
\$ 236.25	Pest Control treatments required due to the uncleanly condition left by the Tenant

The Landlord argued that they were not able to re-rent the unit until October 1, 2013 because of delays caused by waiting for contractors to complete the work. The Landlord stated that she could not say for certain when they began to advertise or for how much but she was certain they were seeking around \$2,500.00 per month rent or more.

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.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act* which stipulates that the party making the application must have done whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and

condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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 Tenants have 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.

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.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find the Landlord has met the burden of proof and I award them damages in the amount of **\$8,795.89**.

Section 7 of the Act and the *Residential Tenancy Policy Guideline # 3* provides that in all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises as soon as possible and at a reasonable economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation.

The Landlord seeks \$10,000.00 for 4 months lost revenue calculated at \$2,500.00 per month. The evidence supports that the Tenant was paying \$2,193.00 per month rent by the end of the tenancy which ended in June 2012. The unit was not advertised until sometime in the summer of 2013 at which time it was advertised for an amount around or above \$2,500.00. The Landlord argued that the unit could not be re-rented until all the repairs were completed, which were delayed due to trying to get contractors to perform the work.

After careful consideration of the above, I find that the Tenant left the rental unit damaged and in a condition that it could not be re-rented until it was cleaned and repaired. That being said, I do not accept that the required work would take four months to complete. While there may be contractor delays, the unit could have been re-rented when the majority of the work was completed and the remaining repairs completed as new tenants occupied the property. Accordingly, I award the Landlord compensation for loss of rent in the amount equal to one month of rent that would have been payable by the Tenant in the amount of **\$2,193.00**.

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

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:

Damages & cleaning	\$ 8,795.89
Loss of Rent	2,193.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$11,088.89
LESS: Security Deposit \$1,000.00 + Interest 35.39	<u>-1,035.39</u>
Offset amount due to the Landlord	<u>\$10,053.50</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$10,053.50**. 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 24, 2014

Residential Tenancy Branch

