



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit and pet damage deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the term of tenancy is from June 01, 2013 to May 31, 2014. Monthly rent of \$850.00 is due and payable in advance on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$425.00 were both collected. A move-in condition inspection report was completed with the participation of both parties.

In response to applications by both parties a previous hearing was held on April 22, 2014, with a decision issued by that same date. Pursuant to that decision an order of possession was issued in favour of the landlord. The order of possession was served on the tenant on April 28, 2014. Subsequently, the landlord obtained a Writ of Possession after filing the order of possession in the Supreme Court of British Columbia. Thereafter, the court bailiff removed the tenant and his belongings from the unit on or about June 04, 2014. While the tenant provided the landlord with a forwarding address at some stage near or after the end of tenancy, he acknowledged that it was incorrect, and during the hearing he confirmed his current address.

Upon entering the unit after tenancy ended, the landlord found that considerable cleaning and certain repairs were required. While the landlord took numerous photographs within the unit, a move-out condition inspection report was not completed.

There was on-line advertising for new renters in June 2014, and the landlord anticipated that the unit would be suitable for new renters effective from July 01, 2014 after cleaning and repairs were completed. However, new renters were not ultimately found until effective from November 01, 2014.

The landlord's application for dispute resolution was filed on June 26, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Additionally, Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises."

No documentary evidence was submitted by the tenant. Based on the affirmed testimony of the parties and the documentary evidence submitted by the landlord which includes, but is not limited to, photographs taken within the unit, the various aspects of the application and my findings around each are set out below.

\$850.00: *unpaid rent / loss of rental income for June 2014*

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, in part:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There is no dispute that rent was paid in full only up until the end of May 2014. Neither is there any dispute that the tenant continued to have possession of the unit until on or about June 04, 2014 when the court bailiff became involved. I find it is more likely than not that necessary cleaning and repairs rendered the unit unsuitable for new renters prior to the end of June 2014. I am also satisfied that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion after the tenant was removed and the cleanup had begun. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$805.00: *(23 hours x \$35.00 per hour) miscellaneous cleaning*

In the absence of comparative results of move-in and move-out condition inspection reports, I find that the landlord has established entitlement to compensation limited to **\$402.50**, or half the amount claimed.

\$140.00: *removal of 4 pieces of furniture at a rate of \$35.00 each (4 x \$35.00)*

It is not apparent that the landlord's calculation reflects an hourly rate but, rather, a "per piece" rate for removal. On a balance of probabilities I find that the landlord has established entitlement limited to **\$70.00**, which is calculated on the basis of 1 hour of labour for 2 persons at a rate of \$35.00 per hour.

\$240.00: *replacement of curtains in the living room and small bedroom*

The landlord claims that the actual cost incurred is \$400.00, but that the amount claimed was reduced by 40% (\$160.00) to reflect “depreciation.” There is conflicting testimony around how old the curtains were when this tenancy began. The parties also presented conflicting perspectives around the condition of the curtains at the start of tenancy. Further, the move-in condition inspection report appears to indicate that there were no “window coverings” in the living room, and that the condition of the “window coverings” in bedroom # 2 was “G” (good).

In the absence of comparative results of move-in and move-out condition inspection reports or a receipt in support of the actual cost incurred, I find on a balance of probabilities that the landlord has established entitlement limited to **\$50.00**.

\$100.00: *carpet cleaning*

Under the heading – CARPETS, Residential Tenancy Guideline # 1 provides in part:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenant testified that he undertook to clean the carpets near the end of tenancy. While the photographs submitted in evidence appear to show a carpet still in need of a thorough cleaning, in the absence of comparative results of move-in and move-out condition inspection reports, I find that the landlord has established entitlement limited to **\$50.00**, or half the amount claimed.

\$135.00: *flea spray*

The landlord testified that this amount was “pre-agreed” by the parties near the start of tenancy by way of a specific provision in the “rental application.” A copy of the “rental

application" which bears the tenant's signature is before me in evidence. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$35.00: *replacement of smoke detector*

Photographs taken within the unit at the end of tenancy show a smoke detector missing from a wall within the unit. Both agents for the landlord testified that the smoke detector was missing following removal of the tenant from the unit on or about June 04, 2014. For his part, the tenant denied any responsibility for the missing smoke detector. In light of the photographs in evidence which appear to show a unit in need of considerable cleaning and certain repairs, I prefer the evidence of the landlord's agents that the smoke detector was missing. However, in the absence of a receipt in support of the cost claimed, or documentation of the missing smoke detector by way of a move-out condition inspection report, I find that the landlord has established entitlement limited to **\$17.50**, or half the amount claimed.

\$50.00: *deadbolt replacement*

As the tenant does not dispute this aspect of the landlord's application, I find that the landlord has established entitlement to the full amount claimed.

\$120.00: *fee for writ of possession*

\$1,814.29: *court bailiff costs*

As both of the above costs were incurred by the landlord as a result of the tenancy, and in concert with enforcement of an order of possession issued by the Branch pursuant to a decision dated April 22, 2014, I find that the landlord has established entitlement to the full amount claimed.

\$50.00: *filing fee*

As the landlord has generally succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total: \$3,609.29

I order that the landlord retain the security deposit and pet damage deposit in the combined total amount of **\$850.00** (\$425.00 + \$425.00), and I grant the landlord a **monetary order** for the balance owed of **\$2,759.29** (\$3,609.29 - \$850.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,759.29**. This order may be served on the tenant, filed in the 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: October 29, 2014

Residential Tenancy Branch

