



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, compensation for loss of rent revenue, to retain the pet and security deposits and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on November 19, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail. The tenant did not provide a forwarding address so the hearing package was mailed to the tenant's place of employment. A Canada Post tracking number and receipt was provided as evidence of service.

The registered mail was delivered on November 20, 2014. On November 20, 2014 the tenant communicated with the landlord, via text message. The tenant acknowledged damage to the unit and told the landlord she did not have \$7,000.00. The landlord responded to the tenant that she should gather evidence. The landlord read from the text messages that confirmed the tenant had seen the hearing package.

The landlord supplied a copy of an email sent to the tenant on November 25, 2014; asking the tenant if she had received the USB and viewed the photographs. The tenant responded on the same date, confirming she saw them. The landlord said that the USB was included with the evidence sent on November 20, 2014; confirming the tenant had received the registered mail package sent to her place of employment.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

*(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

As the landlord has provided evidence that the tenant confirmed receipt of the hearing documents and evidence, I find, pursuant to section 71(2)(b) of the Act, that the documents are deemed to have been sufficiently served effective November 20, 2014; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$6,463.52?

Is the landlord entitled to compensation in the sum of \$1,300.00 in unpaid rent and rent revenue?

May the landlord retain the pet and security deposits?

Background and Evidence

The fixed-term tenancy agreement commenced on October 1, 2013 and was to end September 30, 2014; converting to a month-to-month term. Rent was \$1,300.00 due on the 1st day of each month. A security deposit of \$650.00 and pet deposit in the sum of \$300.00 were paid. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was not completed.

The tenant did not pay September 2014 rent and on several occasions she told the landlord she would pay. The landlord posted a Notice of entry and entered the unit on September 9, 2014 to find the tenant had vacated. The tenant did not provide a forwarding address or pay September 2014 rent owed.

The landlord located a new tenant effective October 1, 2014.

The landlord has made the following claim:

Remove and replace floors in upstairs hallway	\$2,500.00
Remove and replace carpet in 2 bedrooms and living room	2,637.83
Replace baseboard, fix cracks in door, fix walls	682.50
Carpet cleaning	136.50
House cleaning	210.00

Blinds and light bulbs	79.49
Remove debris	7.20
September 2014 rent	1,300.00
Remove weeds, debris	210.00
TOTAL	\$7,763.52

The landlord provided photographs taken of the unit prior to the tenancy and after the tenant vacated. The landlord purchased the home 3 years ago and estimated the vinyl flooring was approximately 10 years old and that the carpeting was not more than 5 years old. The landlord said that despite the age of the items, if the tenant had not damaged them replacement would not have been required.

Photos showed gouges that had been made in the flooring, leading up a set of stairs and in the hallway of the upper floor. Some tears had occurred on the stairs and floor. The tenant had installed carpet runners on the stairs. The landlord supplied a copy of a September 18, 2014 work order and September 29, 2014 invoice for payment of \$3,500.00 for carpet replacement. The landlord claimed the cost for the upper level flooring only, in the sum of \$2,115.895; plus \$105.80 GST.

The landlord's new tenant supplied an October 19, 2014 letter outlining issues in the unit at the start of her tenancy. The new tenant submitted that the landlord had professionally cleaned the carpets, but she had asked the landlord to replace the carpets. As soon as the tenant moved into the unit the carpet smelled like wet dog and dog and cat feces. The landlord had hoped the smell would be eliminated after cleaning, but it was not. The tenant told the landlord she would not remain in the home unless the carpets were removed.

Photographs supplied of the carpeting showed flooring that was not cleaned. The carpet had been professionally cleaned at the start of the tenancy. A September 24, 2014 invoice in the sum of \$136.50 was supplied as evidence. The landlord had the carpets professionally cleaned after the tenant vacated but had to replace them due to lingering problems with smell. The tenant had had pets; apparently they had damaged the carpeting. A September 29, 2014 work order and October 6, 2014 invoice in the sum of \$2,637.83, was supplied as evidence. The invoice indicated the 2 bedrooms and living room carpet was to be replaced.

Photographs showed damage to the drywall and doors. An invoice issued on October 16, 2014 in the sum of \$682.50 was supplied for installation of baseboard in the bedrooms and hallway, for fixing cracks in 2 doors and drywall mud. The trim and doors were spray painted.

The new tenant's letter mentioned that when she viewed the home in September the unit looked like it had not been cleaned in months. The home was filthy and she was told that the previous tenant had abandoned the unit and had not cleaned. Photographs supplied showed the unit in a state that required cleaning.

The landlord supplied a November 2014 invoice for cleaning the unit in the sum of \$210.00.

A blind was damaged and had to be replaced; multiple light bulbs were burnt out and not replaced. A receipt for the blind and bulbs was supplied, in the sum of \$79.49.

The new tenant wrote a November 6, 2014 letter outlining problems her pet had as the result of dead fish that had been left in the yard. The tenant's dog became sick as a result of the previous tenant's failure to clean the yard.

Photographs of the yard showed some debris left by the tenant and the need for weeding. A photo taken at the start of the tenancy showed the yard neat and clean. The landlord hired a company to remove the fish heads and debris. An invoice supplied showed the sum of \$210.00 was paid on November 8, 2014.

The landlord hauled items to the landfill and supplied a receipt in the sum of \$7.20 dated September 28, 2014.

The landlord said that the tenant has acknowledged she caused damage and has made 1 payment toward repairs, in the sum of \$100.00. The landlord said the respondent had been a good tenant and that she was surprised when she failed to pay rent and to find the damages that had occurred.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch (RTB) policy suggests that a tenant is responsible for paying the cost of damages caused beyond normal wear and tear.

Section 37(2) of the Act provides:

(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.

In the absence of a condition inspection report completed at the start of the tenancy I have considered the evidence before me presented by the landlord in support of the claim for compensation.

The tenant was given notice of the hearing but chose not to attend. In the absence of the tenant I find, on the balance of probabilities that the claim made by the landlord is the result of a breach of the Act by the tenant. From the evidence before me the unit was damaged, beyond wear and tear, it was not cleaned, the blind was damaged and bulbs were not replaced and the yard required cleaning. The unit was not cleaned. The claim is supported by verification of costs incurred.

RTB policy suggests that a claim for repair and replacement costs should take into account the useful life of building elements (policy #40.) Policy suggests that non-wood flooring and carpet has a useful life of 10 years. Therefore, I have reduced the sums claimed, taking into account depreciation based on the estimated age of the lino and carpet. If damage had not occurred the landlord would not have had to replace the flooring; however, the life of the fixtures has been taken into account. The landlord now has the benefit of flooring that should now be expected to last at least 10 years in a rental unit; with compensation for the portion of useful life estimated to have remained.

In the absence of a breakdown of costs for the baseboards, I have reduced the sum for replacement, taking into account the apparent age of the baseboards.

I find that the landlord is entitled to compensation for unpaid rent to September 9, 2014; the date she obtained possession of the unit, in the sum of \$385.00. As the landlord was not given notice ending the tenancy I find that the landlord is entitled to compensation for loss of rent revenue in the sum of \$915.00, to September 31, 2014. The landlord was able to mitigate any further loss by locating a new tenant effective October 1, 2014.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's pet security deposits in partial satisfaction of the monetary claim.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Remove and replace floors in upstairs hallway	\$2,500.00	\$444.35 (20%)
Remove and replace carpet in 2 bedrooms and living room	2,637.83	1,318.92 (50%)

Replace baseboard, fix cracks in door, fix walls	682.50	632.50
Carpet cleaning	136.50	136.50
House cleaning	210.00	210.00
Blinds and light bulbs	79.49	79.49
Remove debris	7.20	7.20
September 2014 rent	1,300.00	1,300.00
Remove weeds, debris	210.00	210.00
SUB - TOTAL	\$7,763.52	4,338.96
Less sum paid by tenant - \$100.00		4,238.96
Less pet and security deposits - \$950.00		\$,288.96
Filing fee cost - \$100.00	TOTAL:	\$3,388.96

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,388.96. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation for unpaid rent, loss of rent revenue and damage to the unit.

The landlord may retain the pet and security deposits.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: February 03, 2015

Residential Tenancy Branch

