



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNDC, 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, damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that the tenant vacated at the end of July 2014. Approximately 1 week later the tenant left a note on the window sill; providing his forwarding address.

The landlord stated that on August 21, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail, to the address provided by the tenant. A Canada Post tracking number was provided as evidence of service. The mail was returned marked by Canada Post as unclaimed.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing. A failure to claim registered mail does not allow a party to avoid service.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$3,160.29 for damage to the rental unit and compensation for damage or loss?

Background and Evidence

The tenancy commenced on July 1, 2011; rent was \$800.00 per month; a security deposit in the sum of \$400.00 was paid. The tenant was prohibited from smoking in the unit; as notated on page 2 of the tenancy agreement. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was not completed. The unit is 6 years old and had been painted just prior to the start of the tenancy.

The landlord has made the following claim:

Contractor – cleaning, painting, repair	\$2,782.00
Cleaning 4 hours	40.00
Blinds	291.20

Light bulbs	17.98
Cleaning supplies	12.32
Cleaning supplies	16.79
TOTAL	\$3,160.29

After the tenant vacated he returned to the unit and left a hand-written note, providing his forwarding address. The landlord received the note some time toward the end of the 1st week of August 2014. On August 21, 2014 the landlord mailed the tenant the deposit; sent via registered mail. That mail was returned, marked return to sender. The landlord provided a Canada Post tracking number for that mail. The landlord attempted to return the deposit as he realized he did not have a right to retain it; given the absence of condition inspection reports.

When the tenant left the unit he removed everything and there was no damage; outside of a considerable damage caused by smoking. During the tenancy the landlord became aware the tenant had been smoking and told the tenant he must cease.

The landlord supplied photographs of the interior of the rental unit. Yellowed walls, ceiling, doors, baseboards, and blinds are clearly visible. The cords to the blinds were so yellowed and smoke saturated, they were stiff. The air vent by the fridge and the white thermostat were yellow. The vents on the dishwasher and oven vents were dirty. The electrical faceplates were covered in a yellow substance.

The landlord submitted an August 6, 2014 quote to rehabilitate the unit. The unit required washing with cleaner and degreaser; walls and mouldings required painting; the ceiling needed to be sanded to remove the texture, before re-spraying and do-odorizing was needed. The work was completed by early September. The landlord said he can obtain an invoice and that he paid cash to the contractor.

The landlord said that every inch of the unit had to be cleaned; the stove looked like it had not been cleaned since the start of the tenancy. The blinds were replaced as the residue could not be removed; they were saturated. The landlord purchased some cleaners and some cleaning was completed, outside of that of the contractor.

Even after the work in the unit was completed the smell of smoke was so strong that potential renters would not rent the unit. The landlord located a smoker who said he could not smell smoke in the unit; this new tenant smokes outside of the unit. the landlord did not claim any loss of revenue; even though it took some time to have the work completed in the unit.

The bathroom halogen light bulbs needed to be replaced.

The landlord submitted receipts for the blinds, cleaning supplies and light bulbs.

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.

In the absence of the tenant, who was served with notice of this hearing, I find that the tenant breached the Act and that the landlord's claim is valid and supported by verification.

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.

From the evidence before me, despite the prohibition on smoking and being told not to smoke in the unit, the tenant did smoke. The evidence points to what must have been extremely heavy smoking throughout the tenancy. From the evidence before me I find that the tenant did not leave the unit reasonably clean and that his efforts to clean would have needed to equal the effort made by the landlord, to rehabilitate the unit as a result of cigarette smoke damage.

A tenant is required to replace any burnt out light bulbs; the landlord had to replace the bulbs in the bathroom.

I have taken into account Residential Tenancy Branch policy (#40) which sets out the useful life of items. Blinds are considered to have a useful life of 10 years. I have calculated the replacement cost, taking into account depreciation over the 3 years of the tenancy. Therefore, I find that the value of the blinds as \$203.84.

Therefore, I find that the landlord is entitled to compensation in the sums claimed for cleaning, repair, cleaning supplies, blinds and light bulbs; less depreciation for the blinds.

Paint in a rental unit is normally expected to have a life of 4 years. I have considered this policy and find, from the evidence before me that the cost of painting is supported and should not be depreciated; as the damage has clearly been caused by the tenant's actions. If the tenant had cleaned the unit and removed the smoke residue, any normally required painting would be the responsibility of the landlord.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Contractor – cleaning, painting, repair	\$2,782.00	\$2,782.00
Cleaning 4 hours	40.00	40.00
Blinds	291.20	203.84
Light bulbs	17.98	17.98
Cleaning supplies	12.32	12.32
Cleaning supplies	16.79	16.79
TOTAL	\$3,160.29	\$3,072.93

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord attempted to return the deposit to the tenant; that mail was not accepted and the cheque was returned to the landlord. Section 72(2) of the Act provides an arbitrator with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's \$400.00 security deposit, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,722.93. 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.

Conclusion

The landlord is entitled to compensation as claimed; less depreciation for the blinds.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit in partial satisfaction of the claim.

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 18, 2015

Residential Tenancy Branch

