



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 unpaid rent, compensation for damage or loss under the Act, to retain the security deposit 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 March 20, 2015 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were hand-delivered to the tenant at her place of employment. Service took place at approximately 11:15 a.m. with the tenant's employment manager present. The tenant had not given the landlord a forwarding address.

These documents are deemed to have been served on the day of personal delivery in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord has possession of the rental unit and does not require an Order of possession.

The claim for unpaid rent was considered, rather than loss of rent revenue.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$897.14 for damage to the rental unit?

Is the landlord entitled to compensation in the sum of \$300.00 for January 2015 rent?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced on September 3, 2014 when the parties signed a tenancy agreement. Rent was \$1,000.00 per month due on the first day of the month. The tenant had been residing in the unit for the past two years with her boyfriend; the boyfriend vacated and a tenancy then commenced with the tenant only. The landlord transferred the previously paid security deposit in the sum of \$325.00 to this tenancy.

The landlord has made the following claim:

Flooring	\$820.71
Underlay	50.38
Dump fees	26.05
January 2015 rent	300.00
TOTAL	\$1197.14

On December 6, 2014 the tenant called the landlord to tell him she had left the unit but that she had friends staying in the home. In January 2015 the tenant paid all but \$300.00 of rent owed. The landlord was able to obtain possession of the rental unit on January 20, 2015. He had been at the home to show it to prospective renters. When the landlord called the tenant to ask if she would clean the house the tenant posted a note to the door. The note said the tenant would vacate at the end of the month that no one else could view the home until the tenant vacated.

The landlord had served a 10 day Notice to end tenancy for unpaid rent.

The landlord completely renovated the rental unit five years ago. New, high quality carpeting and underlay had been installed.

When the landlord entered the home to show it to potential renters the people he was with recoiled as the result of the smell. The landlord does not have a sense of smell, so he brought his daughter to the home. He discovered that the tenant's cat had urinated on the carpets, destroying them.

The landlord had to remove all of the underlay and carpet. The landlord attempted to remove the urine but was not successful. He chose to replace the carpet with laminate, as it is easier to clean and less expensive than carpeting. The original carpeting cost over \$5,000.00. The landlord said that while the carpet was five years old it was in very good condition, high quality and should have had years of useful life remaining.

The landlord provided photographs of the carpet and other areas of the home to demonstrate the state the rental unit was left in at the end of the tenancy. Four photos of the carpeting showed what appeared to have been good quality carpeting in the living room. Stains from urine in the living room and two bedrooms were highlighted.

The landlord hired a contractor and four other people to rip out the carpet in the whole home. There was significant damage to the home but the landlord has not submitted a claim for those items.

The landlord supplied a January 24, 2015 invoice in the sum of \$820.71 for flooring and underlay; a January 28, 2015 receipt in the sum of \$50.38 for foam underlay and a February 11, 2015 dump fee receipt in the sum of \$26.05.

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 reasonable measures to mitigate their loss. Verification of loss would include submission of professional estimates of expected costs or other reasonable submissions that demonstrate costs were established through an independent party.

I have considered Section 37 of the Act, which requires a tenant to leave the rental unit reasonably clean and free from damage, outside of normal wear and tear. Residential Tenancy Branch (RTB) policy suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

RTB policy (#40) suggests that in a claim for damage to the unit caused by a tenant the arbitrator may consider the useful life of a building element and the age of the item. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In the absence of the tenant, who was served with notice of this hearing, I find that the landlord has proven the flooring was irreparably damaged by the tenant's cat. The landlord has provided photographs of the damaged carpet and verification of the cost of repair.

I find, on the balance of probabilities that the cost incurred is below that which might have been experienced if carpeting had been chosen over laminate. I have based this finding on the undisputed testimony of the landlord. The photographs showed carpet that had no apparent wear, was of good quality and could have been expected to have had more than another five years of useful life. Based on the evidence before me I have not applied the suggested depreciation to the carpet.

Therefore, I find, pursuant to section 67 of the Act, that the landlord is entitled to

compensation as claimed for damage to the rental unit carpets as claimed.

As the tenant failed to pay \$300.00 of January 2015 rent owed I find, pursuant to section 65 of the Act, that the landlord is entitled to compensation in that sum.

Pursuant to section 72 of the Act 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.

Pursuant to section 72 of the Act I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$922.14. 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 for damage to the rental unit and unpaid rent in the sum claimed.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

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: April 24, 2015

Residential Tenancy Branch

