



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Saanich Peninsula Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MND, 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, damage or loss under the Act, to retain the security and pet deposits and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 22, 2014 he went to the location where the tenants were residing and personally served each tenant with the hearing documents and evidence. Service occurred at 4:40 p.m.

I find that the documents were personally served to each tenant on November 22, 2014 in accordance with section 89 and 90 of the Act; however neither tenant attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for unpaid July 2014 rent?

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the security and pet deposits?

Background and Evidence

This one year, fixed-term tenancy commenced on November 15, 2012. Rent was \$2,550.00 per month, due on the first day of each month. A security deposit in the sum of \$1,275.00 was paid. A copy of the tenancy agreement and the move-in condition inspection report was supplied as evidence.

The tenants did not pay July 2014 rent. A 10 day Notice to end tenancy was issued on July 3, 2014 and served to the tenants. The tenants did not dispute the Notice and were to vacate on July 13, 2014. The tenants repeatedly told the landlord they would leave; first on the 13th, then the 15th, then the 18th. The tenants did not vacate until August 6, 2014. The new tenant was to move into the unit on August 1, 2014.

The tenants had agreed to meet with the landlord to complete an inspection on the agreed move-out dates but did not attend.

The landlord has made the following claim:

July 2014 rent	\$2,250.00
Cleaning	500.00
Carpet cleaning	220.50
Duct cleaning	252.00
Painting	2,195.78
Fireplace glass replacement	393.75
Yard maintenance	630.00
Water bill May 1 – July 30, 2014	273.48
Garbage removal	10.00
TOTAL	\$6,725.51

The tenants did not pay the sum claimed for July 2014 rent.

The tenants were experiencing some difficulties just prior to vacating. The male tenant's mother passed away and he developed some health issues. The tenants acknowledged they would not be able to prepare the unit for a new tenant and allowed the landlord to begin cleaning prior to the time the tenants moved out.

On July 30, 2014 a cleaner began to work in the unit. The cleaner issued two invoices totalling 19.5 hours of cleaning time completed over 2 days. A copy of the invoice was supplied, detailing the work completed and sum paid.

With the tenants permission the carpets were professionally cleaned on July 29, 2014. A copy of the invoice was supplied as evidence. The invoice indicated the carpets were very dirty, that they needed vacuuming and that stain remover was required.

The owner was at the home at the end of the tenancy and said that the duct work was littered with dirt, food, toys and cat hair and food. The ducts looked as if the tenants had swept dirt into them. The ducts had been professionally cleaned in 2012. As a result the landlord had to have the ducts cleaned again. An invoice issued on August 14, 2014 was supplied; the total included the cost of a \$20.00 filter.

The rental unit was last painted in 2010. When the tenants moved out they left glue on the two of children's bedroom walls. This could not be repaired and required painting.

The walls were scratched and had furniture damage. The landlord could not repair by touching the paint up and had to have the home repainted. One invoice issued on August 24, 2014 in the sum of \$1,313.78 was supplied. The invoice mentions the paint was faded and there was damage to the walls. Doors were also painted; the landlord said that this was done at the request of the new tenant.

The landlord had to replace the glass in the family room fireplace. The glass had been broken. The landlord paid this cost on her credit card. The invoice was not given to the agent, for submission as part of the application.

This was a single-family dwelling. The tenants were responsible for yard maintenance. At the end of the tenancy it appeared the tenants had never completed any yard work. Two estimates were obtained and the lower cost service was hired. An August 17, 2014 invoice was issued and marked as paid on September 2, 2014. The yard had tall grass, weeding was required throughout and shrubs had died.

The tenancy agreement did not include water costs. The water bills went to the rental unit and the tenants were to pay. Throughout the tenancy the landlord had to pay and then obtain payment from the tenants. The tenant did not pay the bill for May 1 to July 31, 2014. The City notified the landlord the cost would be applied to her taxes. The landlord has paid this bill.

The landlord paid a neighbour \$10.00 to haul garbage left by the tenants to the landfill.

The landlord supplied a copy of an August 1, 2014 note signed by the tenants agreeing the landlord could retain the security deposit and pet deposits. The tenancy agreement indicates that only a security deposit was paid. A ledger supplied by the landlord recorded payment of \$1,250.00 pet deposit plus the security deposit in July 2014.

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.

When a landlord makes a claim against a tenant for damage to the rental unit Residential Tenancy Branch (RTB) policy (#40) suggests an arbitrator may consider the useful life of a building element and the age of the item. Policy suggests a landlord should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. An 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.

Based on the evidence before me, in the absence of the tenants who were served with notice of this hearing, I find that July 2014 rent was not paid and that the landlord is entitled to compensation in the sum claimed.

A tenant is required to leave a rental unit reasonably clean. In this case I accept the landlord's affirmed testimony that the tenants acknowledged they would not be able to leave the unit in an acceptable state. Therefore, I find the decision to begin cleaning while the tenants remained in the unit was by mutual agreement and reasonable given the landlord's need to prepare the unit for a new tenant that was to move in on August 1, 2014.

Therefore, I find that the landlord is entitled to the cost of cleaning and carpet cleaning claimed, supported by the invoices supplied.

In relation to the duct cleaning RTB policy (#1) suggests a landlord is responsible for heating system duct cleaning and filter replacement. However, in this case I am persuaded that the ducts had to be cleaned at this stage as a result of the actions of the tenants. They had been cleaned just two years previously; it is reasonable to expect duct cleaning would not be required every two years. I accept the landlord's testimony that the tenants appeared to have swept dirt into the ducts and that they were unusually dirty. Even though duct cleaning is the responsibility of a landlord I find it is reasonable to assign this cost; less the filter, to the tenants. Therefore I find the landlord is entitled to \$231.00 and the balance is dismissed.

The rental unit was last painted in 2010. RTB policy (#41) suggests a rental unit should be painted once every four years. Therefore, as the unit was due for painting I find that the claim for painting, with the exception of \$200.00 is dismissed. I have allowed part of the claim to compensate the landlord for the damage caused by glue left on the walls.

I find that the balance of the claim is accepted. The landlord has paid to replace the fireplace glass. The yard maintenance in a single-family home falls to the tenant. I am satisfied the tenants failed to complete the required yard maintenance and that the landlord suffered a loss in bringing the yard up to an acceptable standard. The tenancy agreement required the tenants to pay the water bill. I accept the landlord's affirmed testimony that she has paid the final water bill for the property. I also accept the submission that the landlord paid a neighbour to haul items to the landfill.

Therefore the landlord is entitled to the following:

	Claimed	Accepted
July 2014 rent	\$2,250.00	\$2,250.00
Cleaning	500.00	500.00
Carpet cleaning	220.50	220.50
Duct cleaning	252.00	231.00
Painting	2,195.78	200.00
Fireplace glass replacement	393.75	393.75

Yard maintenance	630.00	630.00
Water bill May 1 – July 30, 2014	273.48	273.48
Garbage removal	10.00	10.00
TOTAL	\$6,725.51	\$4,708.73

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

I find that the landlord is entitled to retain the tenant's security and pet deposits in the amount of \$2,550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,258.73. In the event that the tenants do not comply with this Order, it may be served on the tenants, 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 set out above for damage to the rental unit and unpaid rent.

The landlord is entitled to filing fee costs.

The landlord may retain the security and pet deposits.

The balance of the claim is dismissed.

There was no claim for damage or loss under the Act.

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: July 08, 2015

Residential Tenancy Branch

