



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The landlord claims for compensation in the amount of \$3,550.00 in relation to damage to a carpet.

This hearing was originally set to be heard at the end of May. This decision should be read in conjunction with the interim decision dated 29 May 2015.

The hearing was adjourned to provide the landlord with time to serve her evidence to the tenant. In this situation the Court's comments in *Owers v Viskaris*, 2012 BCSC 1534 was particularly helpful in understanding my obligations to the parties:

[42] Of course, applicants must file their materials and be prepared. But litigants, especially self-represented ones, sometimes make a mistake that calls for some reasonable accommodation where it does not cause significant prejudice to the other party or to the fairness of the hearing process.

The tenant did not attend this hearing, although I waited until 0951 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by her translator.

Preliminary Issue – Service

At the first hearing in May, the tenant's agent attended on her behalf. The landlord testified that the tenant had given a false forwarding address. The agent alleged that the landlord was harassing the tenant by attempting to personally serve her with the documents for this proceeding.

The agent reported that he would accept service on behalf of the tenant and ensure that documents delivered to the agent were provided to the tenant. The agent submitted that he checks his email every two hours and would be able to accept service through email. The agent also submitted that his mailing address could be used for service. On the basis of these assurances from the agent, I made the following order for substituted service:

1. The landlord may serve any document required to be given in accordance with sections 88 or 89 of the Act by email to the email address provided at this hearing. Documents served in this manner will be deemed served within three days of delivery.
2. The landlord may serve any document required to be given in accordance with sections 88 or 89 of the Act by registered mail to the agent's address provided at this hearing. Documents served in this manner will be deemed served within five days of delivery.

The landlord testified that her translator served the tenant with the dispute resolution package on 12 June 2015 email. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to the 29 May 2015 order for substituted service. The tenant was deemed to have received this email and its attachments on 15 June 2015.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here.

The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 2014 and ended 15 July 2014. The parties entered into a written tenancy agreement on 28 February 2014. Monthly rent of \$1,650.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$825.00, which was collected at the beginning of the tenancy.

The landlord provided me with a copy of the condition move-in inspection report. There is no damage noted to the carpet. The report is signed by the tenant.

I was provided with a certified translation of the end to tenancy. The end to tenancy agreement sets out the following in relation to the carpet damage:

The carpet has been damaged seriously and in a large size area. The tenant...promises to solve this problem within fifteen days.

The landlord testified that the tenant stained the carpet. The landlord testified that the stain is approximately the size of an A4 piece of paper. The landlord provided me with a photograph of the damaged area. A portion of the carpet is noticeably stained.

The landlord testified that she sought alternative remedies for the stain short of replacing the entire carpet. The landlord testified that the area of the carpet that was stained could not be removed and patched as it was in the middle of the flooring in a high profile area. The landlord testified that it was not possible to find a colour or material match for that area. The landlord testified that it was necessary to replace the entire carpet.

The landlord testified that the carpet was two years old.

The landlord provided me with two quotes for the cost of the repairs. One estimate is dated 1 August 2014. The estimate sets out a total estimated cost in the amount of \$2,822.44. The second estimate is undated. The second estimate sets out a total estimated cost in the amount of \$3,791.01.

Analysis

Section 21 of the *Residential Tenancy Regulation* (the Regulation) establishes that the condition move in inspection report is strong evidence to the state of the rental unit at the time the tenancy began. On the basis of the condition move-in inspection report

provided by the landlord, I find that the carpet was not damaged at the beginning of the tenancy.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the nature of the damage is such that it could have only been caused by the tenant's actions or neglect. As such, the tenant was responsible for repairing the damage to the carpet. By failing to repair this damage, the tenant has breached subsection 32(3) of the Act.

I accept the landlord's evidence by way of quotations provide that the minimum cost of repairing the carpet is \$2,822.44. I accept the landlord's sworn and uncontested testimony that the carpet could not be patched and had to be fully replaced. As such, I find that the landlord has mitigated her damages.

I am mindful of *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements". This guideline provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of carpet is ten years. As the carpet was two years old, the value of the carpet had diminished by 20%. On this basis, I find that the landlord is entitled to recover 80% of the cost of replacing the carpet: \$2,257.95.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, she is entitled to recover the filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,482.95 under the following terms:

Item	Amount
Compensation for Carpet Damage	\$2,257.95
Offset Security Deposit Amount	-825.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,482.95

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: July 30, 2015

Residential Tenancy Branch

