



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

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 damage or loss under the Act and damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 23, 2015 the tenant left a voice mail message providing his address. On March 27, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. That mail was not claimed by the tenant.

On June 19, 2015 the landlord again served the hearing documents to the address provided by the tenant. That registered mail was returned as unclaimed.

On May 26, 2015 the landlord served the tenant with evidence, sent to the address provided by the tenant. The tenant signed accepting the registered mail on June 9, 2015.

A Canada Post tracking number was provided as evidence of service for the three service attempts. A copy of the registered mail receipt was provided for the mail sent on March 27 and May 26, 2015.

I find that the hearing documents are deemed to have been served in accordance with section 89 and 90 of the Act on the fifth day after mailing; March 30, 2015. A refusal to claim registered mail does not allow a party to avoid service.

I find that the evidence was served on June 9, 2015. As the tenant accepted the evidence sent to the address provided to the landlord I find that the address used for service of the hearing documents was correct.

The tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage and damage or loss totalling \$782.00?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on July 1, 2014. Rent was \$600.00 due on the first day of each month. A security deposit in the sum of \$300.00 was paid on May 4, 2014. A copy of the tenancy agreement was supplied as evidence.

Clause K of the agreement required the tenant to pay \$50.00 plus \$50.00 for each day or portion of a day the tenant failed to vacate the premises after the last day of the tenancy.

A move-in condition inspection report was completed and signed by the tenant. The date of the report is March 4, 2014. The landlord said that date must be a clerical error.

The tenant gave the landlord proper notice to end the tenancy effective February 28, 2015. The landlord attended at the unit to complete a move-out inspection with the tenant on February 28, 2015 but he was not ready. The landlord agreed to give the tenant more time as the unit had not been re-rented. When the landlord returned on the agreed date the tenant was still not ready to vacate.

The tenant then left a voice mail message that he had vacated on March 7, 2015.

The landlord completed the move-out inspection report in the absence of the tenant. The report indicated the need for cleaning, blind repair, removal of a microwave, reattachment of a heat vent and the cost of over-holding for seven days.

The landlord initially made a claim totalling \$782.00. The claim was reduced as follows:

Cleaning	120.00
Carpet cleaning	68.25
Blind replacement and heating vent re-attachment	180.51
Over-holding February 1 – 7, 2015 - \$50.00 per day	350.00
TOTAL	\$718.76

The landlord provided invoices in support of the claims made.

The carpets were cleaned on March 30, 2015.

Cleaning services were provided on March 12, 2015. Cleaning services included the fridge, oven, cupboards, bathroom, walls, baseboards, vacuuming, washing floors, windows and light fixtures.

On March 31, 2015 an invoice was issued for blind materials, labour and reattachment of the heater. The invoice also included other costs; the landlord reduced the invoice by \$50.00 in recognition of that cost, for air conditioner trim, which was not the responsibility of the tenant.

The landlord said that the tenant did not vacate until March 7, 2015. This was based on a voice mail message left by the tenant on that date. The landlord has claimed over-holding in the sum of \$50.00 per day based on clause K of the tenancy agreement.

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 and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenancy ended effective February 28, 2015 in accordance with section 45 of the Act.

Section 37 of the Act provides:

Leaving the rental unit at the end of a tenancy

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(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 I find that the tenant left the unit in a state that required cleaning and some repairs. The carpets were not clean, the unit needed cleaning and the blinds were damaged. The tenant did not attend the hearing to dispute the claim.

The tenancy agreement signed by the parties required payment of \$50.00 per day for each day the tenant over-held in the rental unit. Rent was paid for the February 2015

and the tenant remained in the unit until March 7, 2015. Therefore, I find that the landlord is entitled to a total of \$350.00 for the seven days the tenant over-held in the rental unit, from March 1 to 7, 2015 inclusive.

Therefore, the landlord is entitled to compensation in the sums claimed.

As the landlords' claim has merit I find that the landlord is entitled to recover the \$50.00 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 security deposit in the amount of \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$468.76. 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.

The landlord may retain the security deposit.

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: July 30, 2015

Residential Tenancy Branch

