



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNDC, MNSD; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking a Monetary Order for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents and copies of his documentary evidence were mailed to each of the Tenants, via registered mail, to the address the Tenants provided to the Landlord at the end of the tenancy, on May 12, 2015. The Landlord provided the tracking numbers for the registered documents. The Landlord testified that the registered documents were returned to him, unclaimed.

Based on the Landlord's affirmed testimony, I am satisfied that all of the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being duly served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord gave the following testimony:

A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,020.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$515.00 on April 27, 2012. The tenancy ended on April 30, 2015.

The Landlord testified that Condition Inspection Reports were completed at the beginning and the end of the tenancy.

The Landlord stated that the Tenants did not clean the rental unit at the end of the tenancy. He testified that the Tenants damaged the carpet in the master bedroom, by leaving a large orange stain which did not come out after two attempts to remove it. The Landlord stated that he replaced the carpet with a similar quality carpet. The Landlord testified that the carpet was approximately 10 years old, but was in good shape at the beginning of the tenancy. He stated that the Tenants also punched numerous 1 inch holes in the walls to accommodate computer wires, and that they hung pictures which left large holes in the walls. The Landlord stated that the walls had to be repaired and repainted and that they were painted just before the Tenants moved into the rental unit.

The Landlord testified that the rental unit could not be re-rented for May 1, 2015, because of the damage that had to be repaired. The Landlord seeks compensation for loss of revenue for the month of May, 2015.

The Landlord provided copies of invoices in evidence.

The Landlord requested a monetary award, calculated as follows:

Loss of revenue for May, 2015	\$1,020.00
Cost to repair and paint walls	\$577.50
Cost of attempt to remove carpet stain	\$299.90
Cost to remove old carpet and replace it	\$824.75
Cost of cleaning the rental unit	<u>\$150.00</u>
TOTAL AMOUNT CLAIMED	\$2,872.15

Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me, the Landlord has the burden of proving his claim on the balance of probabilities.

Based on the Landlord's affirmed testimony and the documentary evidence provided, I make the following findings:

1. Cost to repair and paint walls. Section 37(2) of the Act requires tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. I accept the Landlord's undisputed testimony that the walls in the rental unit required repair and paint caused by the Tenants' failure to comply with Section 37(2) of the Act. The Residential Tenancy Branch Policy Guidelines provide a useful life for indoor paint of 4 years. Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Pursuant to the provisions of Section 67 of the Act, I award the Landlord 50% of his costs for labour and materials to repaint the rental unit, in the amount of **\$288.75**.
2. Cost of attempting to remove the carpet stain. I accept the Landlord's undisputed testimony that the bedroom carpet was damaged by the Tenants. The Landlord had a duty to attempt to mitigate his loss by attempting to remove the stain. I allow this portion of the Landlord's claim in the amount of **\$299.90**.
3. Cost of removing and replacing the carpet. The Residential Tenancy Branch Policy Guidelines provide a useful life for carpet of 10 years. I accept the Landlord's undisputed testimony that the existing carpet could not be restored and that it was in otherwise good shape. Pursuant to the provisions of Section 67 of the Act, I award the Landlord 10% of his costs for materials to replace the carpet, in the amount of **\$56.47**. I allow the total cost for labour in the amount of **\$260.04**.
4. Cost of cleaning the rental unit. I accept the Landlord's undisputed testimony that the Tenants did not clean the rental unit, contrary to the provisions of Section 37(2) of the Act. I allow the Landlord's claim for the cost of cleaning in the amount of **\$125.00**.
5. Loss of revenue. I accept the Landlord's evidence that he could not re-rent the rental unit without making repairs to the walls and replacing the carpet. However, I find that the Landlord did not provide sufficient evidence of the attempts he made to mitigate his loss. For example, when he advertised the rental unit and what interest was expressed by potential tenants. Therefore, this portion of his claim is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the his monetary award.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Repair and paint walls	\$288.75
Attempted removal of carpet stain	\$299.90
Remove and replace stained carpet (\$260.04 + \$56.47)	\$316.51
Cleaning costs	\$125.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,080.16
Less security deposit	<u>- \$515.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$565.16

Conclusion

I hereby grant the Landlord with a Monetary Order in the amount of **\$565.16** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 26, 2015

Residential Tenancy Branch

