



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
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 unpaid rent, damage to the rental unit, compensation for damage or loss under the Act and recover the filing fee from the estate of the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The hearing process was explained and the parties were given the opportunity to ask questions about the process. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$240.00 for unpaid rent?

Is the landlord entitled to compensation in the sum of \$702.45 for hauling of personal items and removal of carpeting?

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

Background and Evidence

The tenancy commenced on September 15, 2006. In the last year of the tenancy the subsidized rent was \$366.00.

On June 8, 2015 the landlord was informed that the tenant had deceased. Within a short period of time the landlord met with the tenant's daughter and son at the rental unit. The landlord said she met with the family members as representatives of the estate for the tenant.

The landlord stated that the family members removed some personal effects from the rental unit. The family members agreed that the balance of the belongings should be hauled away and that the landlord could use their hauling service and bill the estate.

The landlord supplied a copy of an invoice issued on May 21, 2015 for the cost of removing 1.5 loads from the fourth floor unit at a cost of \$504.00. The cost of removing the carpet and underlay was \$165.00 and total taxes were \$33.45. The landlord did not

know the age of the carpet but thought it might be nine years old. The carpet was damaged beyond repair.

The landlord submitted a ledger setting out rent payments made in January 2015. The tenant paid a total of \$126.00. Rent owed was \$366.00. The tenant did not pay the outstanding \$240.00, which the landlord has claimed.

A.M. responded that he could not recall the date his father passed away or the date he met with the landlord. When he entered the rental unit he was very upset as there was evidence of his father's passing. When A.M. agreed to the hauling costs he was in a state of shock and should not have agreed to the cost. A.M. returned the keys to the landlord approximately three weeks later. No other arrangements were attempted in relation to the personal property that had remained in the rental unit.

A.M. had no knowledge of any rent that might be owed by his father.

A.M. clarified that this claim was made against the estate and not individual family members. The application names the estate as respondent.

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.

The landlord could explain the difference between the date she believes she met with the family members and the date on the invoice for hauling. I have accepted that the invoice supplied as evidence represents the cost of hauling items from the tenants' rental unit. The fact the property had been removed was not in dispute.

There is no doubt that the family members would have been upset on the date they attended at their fathers' rental unit. The family members removed personal items and agreed to hauling costs, to be arranged by the landlord. If the estate representatives were under any duress on the date they went to the rental unit they were free to make other arrangements for property removal, by contacting the landlord on a later date. They did not do so and understood that permission had been given to the landlord that the items be hauled away. If the estate representatives had wished to alter this arrangement they were free to do so, but failed to make any other arrangements. Therefore, I find on the balance of probabilities that there was agreement that the estate would pay the cost of hauling.

Residential Tenancy Branch policy suggests a landlord should provide evidence of the age of any fixture. The suggested useful life of carpeting in a rental unit is 10 years. There was no evidence before me supporting installation of new carpets since 2006. Therefore, the carpets would have been at least nine years of age. As the landlord could only guess at the age of the carpets I find that the claim for carpet removal and hauling is dismissed as the age of the carpets was not established.

Therefore, the landlord is entitled to compensation in the sum of \$529.20 for hauling and tax paid. The balance of the claim for hauling is dismissed.

Based on the rent ledger setting out payments made in January 2015 I find that the landlord is entitled to compensation in the sum of \$240.00 for unpaid rent.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the estate of the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's \$292.00 security deposit plus \$9.28 interest, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$517.92. In the event that the estate of the tenant does not comply with this Order, it may be served on the estate of 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 hauling costs and unpaid rent totaling \$769.20.

The balance of claim is dismissed.

The landlord may retain the security deposit and interest.

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: April 05, 2016

Residential Tenancy Branch