



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement and to recover the filing fee.

Only the Landlord's agents, S.P., and R.C., appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's agent, S.P. testified that she personally served the Tenants with the Notice of Hearing and their Application on March 16, 2016. R.C. also testified that he was present when both Tenants were served. Based on the testimony of S.P. and R.C. I find the Tenants were duly served as of March 16, 2016 and I proceeded in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the Residential Tenancy Agreement was provided in evidence and which confirmed that the tenancy began July 1, 2007. At the start of the tenancy the rent was \$790.00 per month and the Tenants paid a security deposit in the amount of \$395.00.

An Order of Possession was granted by the Residential Tenancy Branch on April 2, 2015. The Tenants appealed the decision to the B.C. Supreme Court who by Decision dated November 23, 2015 dismissed the Tenants' appeal.

S.P. confirmed that the Landlord allowed the Tenants to remain in the rental unit until January 31, 2016. Introduced in evidence was a letter dated January 6, 2016 to the Tenants wherein the Landlord confirms this arrangement.

S.P. testified that the Tenants did not move out as agreed. She confirmed that on February 10, 2016 the Bailiff executed the Order of Possession.

In the within hearing the Landlord sought monetary compensation in the amount of \$4,221.14. She confirmed that this figure included the cost of the bailiff in the amount of \$2,081.58 as well as the cost of five loads of rubbish removal in the approximate amount of \$2,100.00.

Notably, the invoice for the Bailiff and the invoice for the rubbish removal were not in the evidence before me at the time of the hearing. S.P. testified that when she served the Tenants with the hearing package, those invoices were included in the package. I accept S.P.'s evidence that she provided these documents to the Tenant.

At the conclusion of the hearing I directed the Landlord to fax copies to the Branch by no later than one week from the date of the hearing; namely: November 3, 2016. I further informed S.P. that should she not provide these documents to me by November 3, 2016 that I would not consider them in my Decision.

I confirm that on October 28, 2016 these documents were received by the Branch and therefore considered in this my Decision.

The documents submitted in evidence confirm that the amount paid for removal of the Tenants' rubbish was \$2,166.17

S.P. testified that the interest payable on the security deposit is \$8.92 such that the Landlord holds the sum of \$403.92. The Landlord seeks authority to retain these funds towards the amounts requested.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

After careful consideration of the evidence before me, the undisputed testimony of the Landlord's agents and on a balance of probabilities, I find as follows.

I find that the Landlord has proven their claim for compensation for expenses related to removing the Tenants and their belongings from the rental unit. I accept the Landlord's evidence that the Tenants failed to vacate the rental unit as agreed, and that as a result, the Landlord incurred the **\$2,081.58** cost of hiring the professional services of a bailiff to enforce the Order of Possession. I therefore award them recovery of this sum. I further

find that the Tenants failed to clean the rental unit and remove their belongings as required by the *Act*. The Landlords are therefore entitled to be compensated for the **\$2,166.17** cost to have the Tenants' rubbish removed.

In total I award the Landlord the sum of **\$4,247.75**. I authorize the Landlord to retain the Tenants security deposit and interest in the amount of **\$403.92** towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,843.83**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court as an Order of that Court.

Conclusion

The Landlord is granted monetary compensation for the cost of removing the Tenants and their belongings in the amount of \$4,247.75. The Landlord may retain the Tenants' security deposit, as well as the interest accrued, and is granted a Monetary Order for the balance due in the amount of **\$3,843.83**.

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 28, 2016

Residential Tenancy Branch

