



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on March 10, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for unpaid rent or utilities;
- an order permitting the Landlord to retain all or part of the security and pet damage deposits;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement; and
- an order granting recovery of the filing fee.

Both parties attended the hearing on their own behalf. Both provided a solemn affirmation.

The Landlord's documentary evidence packages, was received at the Residential Tenancy Branch on October 3 and 4, 2016. The Tenant acknowledged receipt on October 4, 2016. As noted above, the Application was filed on March 10, 2016 – roughly seven months before the hearing.

Residential Tenancy Branch Rule of Procedure 3.14 states:

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

Further, Residential Tenancy Branch Rule of Procedure 3.17 states:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office...may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonable prejudice one party or result in a breach of the principles of natural justice.

In this case, the Landlord failed to submit his evidence to the Residential Tenancy Branch and to serve it on the Tenant in accordance with Rule of Procedure 3.14. The Tenant objects to the admission of the Landlord's evidence. Pursuant to the Rules of Procedure noted above, I find that the evidence submitted by the Landlord is not new, and that accepting it would unreasonably prejudice the Tenant, who has not had an opportunity to consider and respond to it. I am assisted in my conclusion by the amount of time that passed between filing the Application and service of the Landlord's evidence. Accordingly, I decline to accept the Landlord's documentary evidence. It has not been considered further in this Decision.

The Tenant submitted one package of documentary evidence. According to the Tenant, this evidence, consisting of 35 photographs, was served on the Landlord on or about September 28, 2016. The Landlord acknowledged receipt. I find the Tenant's evidence was received by the Landlord on that date.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, 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 a monetary order for damage to the unit, site, or property?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order permitting the Landlord to retain all or part of the security and pet damage deposits?
4. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on August 1, 2013, and ended on February 28, 2016. Rent in the amount of \$2,250.00 per month was due on the first day of each month. The Landlord confirmed he received and retains security and pet damage deposits in the amount of \$2,250.00.

The Landlord seeks to recover expenses incurred to clean and repair the rental unit, and for lost rental revenue. The parties provided oral testimony with respect to these expenses, as follows:

Carpet (Den). The Landlord's agent stated the carpet in the den in the rental unit was stained by the Tenant's dog and cat. W.B. submitted the rental unit was only superficially clean, and that an unpleasant odour lingered even after the carpets were professionally cleaned. On behalf of the Landlord, W.B. testified that the cost to replace the carpet and underlay was \$1,050.00.

The Tenant agreed he had pets in the rental unit but stated his dog was kept in a kennel. He testified the rental unit was left "in phenomenal shape". The Tenant submitted photographic evidence in support showing the carpets had been professionally cleaned. The rental unit otherwise appeared to be clean.

Blinds. The Landlord's agent testified the blinds in the rental unit required cleaning and testified he paid \$336.00 to have them professionally cleaned.

The Tenant testified that the rental unit was left in as good or better condition than when he moved in. However, he acknowledged the blinds might have been overlooked and agreed with this expense.

Hole in Wall. The Landlord sought to be compensated \$150.00 for the cost to repair a hole in the wall of the rental unit.

The Tenant acknowledged the hole was created during the tenancy when a gust of wind blew the door open. However, the Tenant submitted there was no door stop to prevent the damage.

General Cleaning. The Landlord sought to be compensated \$360.00 for cleaning the decks and railings, siding, and mold.

The Tenant disagreed with this expense. Although he acknowledged the presence of mold where the garbage was stored and that he spilled paint, the Tenant submitted the Landlord is in a conflict by completing the work and charging for it.

Washer and Dryer. The Landlord sought \$75.00 for work completed by the Landlord's agent to remove the washer and dryer and vacuum the dryer vents.

The Tenant stated that he disagreed with this expense.

Shower Head. W.B. testified the Landlord replaced a broken shower head in the rental unit at a cost of \$50.00 for parts and labour. According to W.B., the shower head "blew apart" when he inspected it after the Tenant vacated the rental unit.

The Tenant acknowledged the shower head likely needed to be replaced but highlighted the lack of receipts to confirm the final expense.

Carpet and Underlay. The Landlord wished to be reimbursed \$1,375.00 for the cost to replace carpets and underlay in the bedrooms, dining room and living room. W.B. testified it was due to a persistent cat smell even after the carpets were professionally cleaned.

Again, the Tenant agreed he had the pets but stated his dog was kept in a kennel, and that the rental unit was left in as good or better condition than when he moved in. The Tenant relied on his photographic evidence in support.

Lost revenue. W.B. submitted the Landlord has lost revenue as a result of the time required to make the repairs to the rental unit. W.B. testified the Landlord was unable to rent the rental unit until March 15, 2016. The Landlord has claimed two weeks of lost rent, or \$1,125.00.

The Tenant stated that during a conversation with the new tenants in passing, they advised they were prepared to move into the rental unit on March 1, 2016. However, through negotiation with the Landlord, they agreed to move into the rental unit at a later date. The Tenant submitted he should not be responsible for revenue lost as a result of negotiations to commence the new tenancy later than March 1, 2016.

Taps and Sink. The Landlord asked to be reimbursed \$100.00 for the cost to repair the kitchen taps and sink. W.B. stated that, on inspecting the kitchen taps and sink, it looked like someone had overtightened them.

The Tenant denied ever making any alterations to the plumbing.

Utilities. The Landlord sought to be reimbursed \$383.42 for unpaid utilities, based on payment of 4/5 of the cost.

The Tenant disagreed with the Landlord's calculation but agreed to pay \$290.85, based on his own calculation provided during the hearing.

Deductible. According to W.B. a leak originating in the Tenant's rental unit caused extensive water damage to the rental property, including the basement rental unit occupied by W.B. According to W.B., the water entered his unit through the walls and a pot light. The cost to repair the water damage was approximately \$20,000.00. On behalf of the Landlord, W.B. testified to his belief that the leak was caused by the Tenant, and seeks to be reimbursed for the \$1,000.00 deductible.

The Tenant disagreed with this aspect of the Landlord's claim. He noted that the leak originated under the sink and that there had been no alterations to the plumbing. He advised he was unaware of the leak until notified by the Landlord. In addition, he noted that none of the occupants of the rental unit were home when the leak occurred, and that that plumbing was subsequently found to be corroded.

Cleaning

The Landlord seeks to be reimbursed \$80.00 for cleaning that was required in the rental unit after the tenancy ended. B.W. testified that the cleaning was required after the new tenants moved into the rental unit.

The Tenant disagreed with this expense. He stated his wife and two cleaners thoroughly cleaned the house at the end of the tenancy. Again, photographic evidence submitted by the Tenant confirms the condition of the rental unit at the end of the tenancy.

Filing Fee. The Landlord also sought to recover the filing fee of \$100.00 paid to bring the Application.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord provided oral testimony describing the repairs that were needed at the end of the tenancy. As indicated above, the documentary evidence provided by the Landlord was not submitted in accordance with Residential Tenancy Branch Rule of Procedure 3.14 and has not been considered in this Decision.

The Landlord claimed \$360.00 to professionally clean the blinds in the rental unit. During his oral testimony, the Tenant agreed with this expense. I find the Landlord is entitled to recover \$360.00 from the Tenant.

The Landlord sought to recover \$635.00 from the Tenant for repairs to a hole in the wall, cleaning of mold and paint, cleaning of the washer and dryer, and replacement of a shower head. The Tenant acknowledged these repairs were needed but questioned whether or not the cost of the repair should be borne by the Tenants, particularly in light of the lack of documentary evidence. The Tenant also suggested the Landlord was in a conflict by performing the repairs. In light of the Tenant's acknowledgment, I find the repairs described were necessary. However, I find that a more reasonable sum for completing this work would be \$400.00. I find the Landlord is entitled to recover \$400.00 from the Tenant.

Finally, the Landlord claimed \$383.42 for unpaid utility invoices. According to the Tenant's calculation, the amount owing is \$290.85, which he agreed to pay. I find the Landlord is entitled to recover \$290.85 from the Tenant.

However, I find there is insufficient evidence before me to conclude, on a balance of probabilities, that the Landlord is entitled to the remainder of the expenses claimed. Accordingly, the balance of the Landlord's claim is dismissed, without leave to reapply.

Having been only partially successful with the Application, I find the Landlord is not entitled to recover the filing fee from the Tenant.

In light of the above, and pursuant to section 67 of the *Act*, I find the Landlord has demonstrated an entitlement to recover \$1,050.85 (\$360.00+\$400.00+\$290.85) from the Tenant.

Pursuant to section 38 of the *Act*, the Landlord wishes to apply the security and pet damage deposits in partial satisfaction of the claim, which I allow. However, I order that

the balance of the security and pet damage deposits, which amounts to \$1,199.15 (\$2,250.00 - \$1050.85), be paid by the Landlord to the Tenant forthwith.

Conclusion

The Landlord has demonstrated an entitlement to recover \$1,050.85 from the Tenant. I order that this amount be retained from the security and pet damage deposits held by the Landlord. The Landlord is ordered to repay the balance of the deposits, \$1,199.15, to the Tenant forthwith.

In the event the Landlord does not comply with the above order, I grant the Tenant a monetary order in the amount of \$1,199.15. The monetary order will be of no force or effect if the Landlord complies with this order. If necessary, the monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2016

Residential Tenancy Branch

