



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

At the start of the hearing the landlord was asked to provide detailed information setting out service of the hearing documents and evidence. The landlord was not prepared to provide details, given service occurred earlier in the year. The landlord was given a considerable amount of time to search her documents for an affidavit of service. The landlord believed a process server delivered the documents to the tenant. The landlord said she had used the process server when serving documents for a previous hearing with the same tenant. The landlord also searched for registered mail receipts.

After more than 30 minute the landlord said she had the contact details for the process server. The process server, G.C. was called and agreed to enter the hearing as a witness.

G.C. was affirmed. When given the tenants name G.C. said he clearly recalled serving the respondent on two different occasions. The witness was not in his office but agreed to provide the landlord with a written summary of service details.

The landlord was provided until October 11, 2016 to submit the service report issued by G.C. It was explained that service report would be assessed and if found to be sufficient, the landlords' claim was be considered.

The hearing proceeded; the landlord set out the claim.

The landlord supplied evidence of service as requested. The landlord discovered that the process server had not been used to serve the hearing documents. The tenant was served with the hearing documents and evidence via registered mail. The landlord submitted a receipt and tracking number for registered mail sent on February 22, 2016. The landlord supplied the Canada Post tracking information that showed the tenant had signed on February 23, 2016 accepting the mail.

Therefore, I find that the tenant was served the hearing documents and evidence on February 23, 2016; the date the tenant signed accepting the mail.

The tenant did not attend the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$16,774.94 for damage to the rental property?

Background and Evidence

The tenancy commenced on August 1, 2012. The tenant was evicted as the result of non-payment of rent and on January 29, 2015 the landlord obtained possession of the unit.

Condition inspection reports were not scheduled by the landlord. The landlord provided a copy of the original sale listing for the 1,366 square foot townhome that was built in 2011. The home had upgrades such as hardwood floors. The original owner and then the landlord each lived in the unit for six months. The unit was then rented to the tenant.

Once the landlord was able to enter the home after the tenant was evicted the landlord said she was “dumbstruck” at the state it had been left in. When the landlord had purchased the home it was reported on the real estate listing as “better-than new.” After the tenant vacated there was not a single surface in the entire home that did not have holes in the walls; they were damaged, water-stained, chipped, and filthy.

The landlord provided 67 photographs taken of the home after the tenant vacated. The photos show a home that is dirty and damaged. Photos were taken during painting which showed many areas that had been patched. The carpets appear brown, when they were white. The landlord has made the following claim:

Parking passes, fob, key	\$120.00
Rekey 2 mailbox keys	120.75
Junk removal from garage	488.30
Cleaning prep supplies	22.66
Cleaning prep supplies	103.96
Screen repair kit/paint/weather-strip	334.04
Primer	797.21
Draino/light bulbs/window cleaner	23.24
Misc. cleaning and wall prep tools/supplies	158.32
Redo garden and turf area	1,153.60
Carpet installation	3,707.47
Fuel	165.00
Cleaning	2,288.50
Drape replacement	180.66
Prep/finish and paint interior	6,300.00
Paint	514.89
Photos	56.34
Previous filing fee not paid	50.00
Garage remote	55.00
Gas fireplace remote	175.00
TOTAL	\$16,814.94

This sum differs from that included as claimed on the application by \$40.00.

The costs claimed by the landlord were reviewed and the claim for photographs and fuel were denied. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act.

It was explained that a filing fee ordered paid as part of a previous decision could not again be claimed; that matter has been previously decided. The landlord has a monetary order for that sum that can be enforced.

The landlord provided receipts for each item claimed. The claim for the fireplace remote was obtained from the internet. The landlord has yet to find the correct replacement remote. The landlord could not locate the receipt for the garage remote but paid in the range of \$40.00 to \$55.00 to replace that remote.

The landlord supplied a detailed breakdown of the damage to each area of the home and the need for cleaning. That narrative matched the items claimed and the supporting documents for costs incurred.

Analysis

In the absence of evidence to the contrary and the tenant, who was served with Notice of this hearing, I find that the landlord is entitled to compensation as claimed, with the exception of the garage fob. The tenant did not attend to oppose the claim.

I have reduced the sum claimed for the garage fob to \$40.00. The landlord could not recall the sum paid but testified that it was at least \$40.00. The balance of this claim is dismissed.

I have not applied depreciation as the fixtures in the home were like new and could have been expected to last beyond the expected life span. It appeared the need for painting and carpeting was caused by factors well outside of normal wear and tear, caused by the negligence of the tenant.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary order in the sum of \$16,584.94. 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 in the sum of \$16,584.94.

The balance of the claim is dismissed (portion of garage fob), declined (fuel and photographs) and previously decided (filing fee from past hearing.)

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: October 13, 2016

Residential Tenancy Branch