



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND; MNDC; MNSD; FF

Introduction

This is the Landlords' Application for Dispute Resolution, made September 1, 2016, seeking a monetary award for damages and compensation for damage or loss; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlords signed into the teleconference, which remained open for 30 minutes. The Landlords gave affirmed testimony.

The Landlords testified that the Tenant's daughter advised them shortly after the Tenant moved in to the rental unit that the Tenant had recently been assessed and diagnosed with dementia. The Landlords stated that the Tenant moved out of the rental unit after being served with a One Month Notice to End Tenancy for Cause on June 6, 2016. The Tenant did not provide a forwarding address. They stated that on August 24, 2016, the Landlords received a request from the Tenant's son, seeking return of the security deposit on behalf of his father. The Landlords testified that they mailed the Notice of Hearing documents to the Tenant and his son on September 10, 2016, by registered mail, to the address the Tenant's son gave for return of the security deposit. The Landlords provided the receipt and tracking number for the registered mail.

Pursuant to the provisions of Sections 71 and 90 of the Act, I find that the Landlords sufficiently served the Tenant with the Notice of Hearing documents on September 15, 2016.

The Tenant did not sign into the teleconference and the Hearing continued in his absence.

The Dispute Resolution process is a means to determine issues between landlords and tenants. The Landlords provided a copy of the tenancy agreement in evidence. In their Application, the Landlords named the Tenant and his son as Respondents; however, I

find that the Tenant's son was not a "tenant" under the tenancy agreement and therefore, I removed his name from the Application.

Issue(s) to be Decided

Are the Landlords entitled to a monetary award for damages and to apply the security deposit towards that monetary award?

Background and Evidence

This tenancy began on May 2, 2016. Monthly rent was \$800.00, due on the 1st day of each month. The Tenant paid a security deposit in the amount of \$400.00. The Landlords agreed that the Tenant could have a cat, but the Tenant moved out before he got a cat. Therefore, the Tenant did not pay the pet damage deposit noted on the tenancy agreement. The Landlords are holding the security deposit in the amount of \$400.00.

The Landlords live in the suite above the rental unit. On May 8, 2016, the Landlord BC heard the Tenant's smoke alarms going off and went down to investigate. She was concerned because the alarms kept repeating and she was concerned for the Tenant's welfare. BC found the Tenant watching television. She entered the rental unit, with the Tenant's permission and found the rental unit filled with smoke, burning meat in a pot; and plastic melting on the burner. BC turned on the fans and removed the smoldering pot, meat and plastic from the element and placed it in the sink. She told the Tenant that he almost started a fire and he said "OK" and to "stop being a baby". BC testified that the stove burner and wall paint sustained damage.

BC testified that "a couple of weeks later", the Tenant had a fall in the rental unit. The Tenant hit his head which bled a lot, on to the carpet and soaked through the underlay.

The Landlords stated that the Tenant's daughter told the Landlords that the family was arranging to hire a cleaner and carpet cleaner to clean the rental unit at the end of the tenancy, but this was not done. No one came on behalf of the Tenant to do the Condition Inspection Report at the end of the tenancy.

The Landlords provided a copy of the Condition Inspection Report, photographs, invoices and quotations in support of their claim. The Landlords' claim is as follows:

Receipt/estimate for	Description	Amount claimed
New stove burner,	The burner and a transition strip between	\$51.73

transition strip	two rooms were damaged by the Tenant	
Shower head	The shower head was damaged by the Tenant (shower head was three years old)	\$44.79
Carpet cleaning and repair	Blood and heavy soiling. Two treatments but could not get rid of stains. Only seeking compensation for one cleaning.	\$126.00
Materials	Carpet stain remover	\$12.86
Kitchen cabinet replacement	Tenant damaged maple cabinet door beyond repair (estimate). Cabinets were 5 years old.	\$209.39
Replace living room carpet	Good quality (100% wool) carpet (estimate). Carpet was 5 years old.	\$1,710.00
Landlords' labour for cleaning the rental unit (including biohazards)	Approximately 15 hours	\$415.00
TOTAL CLAIM		\$2,569.77

The Landlords stated that they are not claiming for the cost of painting due to smoke damage.

Analysis

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the regulation or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 37 of the Act provides:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[reproduced as written]

Based on the Landlord's undisputed oral testimony and documentary evidence, I find that the Tenant breached Section 37(2)(a) of the Act. I find that the Landlords are entitled to compensation for that breach.

With respect to the kitchen cabinet, shower head, and carpets, Residential Tenancy Branch Policy Guideline 40 provides for useful life of materials. Based on the table provided within Guideline 40, I find that the carpet had an expected life of another 5 years; the cabinet of 20 years; and the shower head, 12 years.

Therefore, I have prorated those particular items. I find the Landlords' remaining claims to be reasonable and they are allowed.

I find that the Landlords have established a monetary award, calculated as follows:

Item	Calculation	Amount awarded
New stove burner, transition strip	As claimed	\$51.73
Shower head	Shower head was three years old and has useful life of 15 years ($\$44.79 \times 12 / 15$)	\$35.83
Carpet cleaning/repair	As claimed	\$126.00
Stain remover	As claimed	\$12.86
Kitchen cabinet replacement	Cabinets were 5 years old with useful life of 25 years ($\$209.39 \times 20 / 25$)	\$167.51
Replace living room carpet	Carpet was 5 years old with useful life of 10 years. ($\$1,710.00 \times 5 / 10$)	\$855.00
Landlords' labour for cleaning the rental unit	Approximately 15 hours x \$25.00 per hour	\$375.00
TOTAL AWARD		\$1,623.93

Pursuant to the provisions of Section 38 of the Act, I find that the Landlords are entitled to apply the **\$400.00** security deposit towards their monetary award.

The Landlords have been successful in their Application and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Tenant.

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$1,323.93** for service upon the Tenant, comprised of their monetary award, plus recovery of the filing fee, and less the set-off of the security deposit. 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: March 16, 2017

Residential Tenancy Branch