



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 MND, MNDC, MNR, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed August 17, 2016 wherein the Landlord sought a Monetary Order for:

- unpaid rent;
- damage to the rental unit;
- money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement; and,
- recovery of the filing fee

The Landlord also sought authority to retain the Tenant's security deposit towards any amount awarded.

The hearing convened by telephone conference on February 21, 2017 and was adjourned to March 23, 2017. Both parties called into both hearings.

At the hearing on February 21, 2017 the Landlord confirmed that they had not served their evidence to the Tenant nor had they submitted this evidence to the Branch. The hearing was adjourned to permit service of the materials.

At the hearing on March 23, 2017 the Landlord's representative, Y.B., confirmed that the evidence had been sent to the Tenant c/o General Delivery in the community in which he resides. She further stated that he did not retrieve the evidence package. Y.B. also confirmed that the Notice of Hearing and the Landlord's application for dispute resolution had been sent to the Tenant via General Delivery.

The Tenant confirmed he received the Notice of Hearing. He denied receiving the Landlord's evidence package. He confirmed that he had moved, yet failed to provide his address to the Landlord and the Branch.

The evidence submitted by the Landlord included:

1. the amended tenancy agreement;
2. the original tenancy agreement;
3. a prior Decision of the Residential Tenancy Branch confirming the parties' mutual agreement on the issue of smoking in the rental unit;
4. internal document relating to ending a tenancy;
5. the move out Condition Inspection Report;
6. the list of costs on move out—estimated and actual costs;
7. a security deposit statement; and,
8. the tenant ledger.

Documents 1 and 2 were signed by the Tenant and provided to him at the start of the tenancy. The Tenant appeared at the hearing which resulted in the Decision included as document 3. Document 4 simply indicates that the Tenant abandoned the rental unit. Document 5 was the move out condition inspection report which was completed in the Tenant's absence as he had abandoned the rental unit. Documents 6, 7 and 8, were internal documents create by the Landlord detailing the amounts sought at the hearing. I confirm that during the hearing I reviewed documents 5-8 with the Tenant.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

As noted, introduced in evidence was a document titled "Security Deposit Statement" (Document 7 on the Landlord's list) which indicates the move in date of December 15, 2009, that the Tenant paid a security deposit in the amount of \$286.50 and the move out date of June 14, 2016.

The amount sought by the Landlord were also detailed on this Statement and provided as follows:

| | |
|---|------------|
| DEDUCTIONS | |
| Cleaning | \$415.00 |
| Carpet Cleaning | \$110.00 |
| Hauling fees | \$75.00 |
| Rent arrears | \$487.00 |
| Unreturned keys (building, rental unit, and the mail) | \$55.00 |
| TOTAL CLAIMED: | \$1,142.00 |

Y.B. stated that R.M. spoke to the Tenant before he had moved; she claimed that the Tenant stated that he was leaving, but did not give formal notice to end the tenancy.

R.M. stated that on or around June 14, 2016 the Landlords found that the rental unit had been abandoned. He stated that while the Tenant's personal items were removed, he left some large furniture items, including a couch and some other items. He stated that the Tenant also left the unit without cleaning. He also stated that the Tenant had smoked in the unit for several years, including smoking marijuana and that the majority of the cleaning expenses related to addressing removing the effects of smoking. R.M. stated that the caretakers did the cleaning, and one of the caretakers did the hauling themselves to reduce the amount of hauling fees (notably they originally claimed \$200.00 for the hauling but confirmed at the hearing they were only asking for \$75.00).

R.M. confirmed that from the way the rental unit looked it appeared there was no cleaning done by the Tenant as the rental unit was not even vacuumed. He stated that it looked like a "midnight move" in that the Tenant just up and left.

Y.B. confirmed that the Tenant put a stop payment on the rent cheque for June 2016 and as such the Landlord sought the sum of \$487.00 for the June 2016 rent. Y.B. noted that they could have claimed rent for part of July 2016 but the tenancy had become so toxic at that point that they only sought compensation for June 2016.

Y.B. confirmed that the Tenant failed to return any of the keys. R.M. stated that there is a mail slot at the caretakers unit where the Tenant could have returned the keys, but he did not do so.

In response to the Landlord's claim for cleaning of the rental unit, the Tenant stated that he cleaned the stove, the fridge and the bathroom. He stated that he spent a week moving out and did not move out in the middle of the night as alleged by R.M. He further stated that he has chronic back issues and was therefore not able to move all of his items or finish the cleaning and claimed that he was not able to complete the cleaning as his doctor told him not to continue.

The stated that he did not understand the \$415.00 claimed for a tiny one bedroom apartment particularly as he had done a significant amount of cleaning. I read to the Tenant the detailed list provided by the cleaners and again the Tenant stated that he believed the amount claimed was too much considering how much cleaning he had done.

The Tenant confirmed that he did not clean the carpets at the end of the tenancy.

The Tenant claimed that he did drop the keys off in the caretaker's slot.

In terms of the June 2016 rent the Tenant confirmed that he did not pay rent for June and that he moved out June 8, 2016.

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 section 37 of the *Act* as follows:

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

After consideration of the testimony of the parties and the evidence filed, and on a balance of probabilities I find as follows.

The Tenant confirmed that he was not able to finish the cleaning of the rental unit, or remove all of his items as a result of his back issues. He also confirmed that he did not clean the carpets as required.

I accept the Landlord's evidence that the Landlord incurred the cost of \$415.00 to clean the rental unit. While the rental unit may be small, the Landlord provided a detailed list from the cleaners and I find the amounts claimed to be consistent with the work performed by the cleaners. Further, I accept R.M.'s testimony that a significant portion of the cleaning was required as the Tenant smoked in the rental unit. The Tenant did not dispute the Landlord's claim that he smoked in the rental unit. Further, it is notable that clause 38 of the tenancy agreement specifically prohibited smoking within the rental unit.

The Tenant further conceded that he was not able to remove all of his items because of his back issues. I accept R.M.'s testimony that the Landlord minimized the cost of disposal of the Tenant's items by paying staff, rather than third parties to remove these items.

The Tenant further acknowledged that he failed to pay rent for June 2016, having put a stop payment on his cheque. As he was in occupation of the rental unit for a period of time in June of 2016, the Landlord was not able to rent to another. Accordingly, I award the Landlord the amount claimed for the June rent.

The Landlord also sought compensation for the cost to replace keys which they claim were not returned by the Tenant. The Tenant testified that he returned the keys to the rental unit, the rental building and the mail by placing them in the appropriate mail slot. The Landlord bears the burden of proving this loss, and I am unable, based on the disputed testimony of the parties, and without any further corroborating evidence to find that he Tenant failed to return these keys. Accordingly, I deny the Landlord related compensation.

As the Landlord initially failed to submit any evidence in support of their claim, and failed to serve this evidence on the Tenant, thereby resulting in an adjournment of these proceedings, I deny the Landlord recovery of the filing fee pursuant to section 72 of the *Residential Tenancy Act*.

In total I award the Landlord compensation in the amount of \$1,087.00 for the following:

| | |
|------------------------------------|------------|
| Cleaning of the rental unit | \$415.00 |
| Carpet Cleaning of the rental unit | \$110.00 |
| Hauling fees | \$75.00 |
| Unpaid rent for June 2016 | \$487.00 |
| TOTAL AWARDED | \$1,087.00 |

Conclusion

The Landlord is entitled to the sum of \$1,087.00 in compensation from the Tenant.

I authorize the Landlord to retain the Tenant's security deposit of \$286.50 towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$800.50**. This Monetary Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) 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: April 7, 2017

Residential Tenancy Branch