



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution she requested return of her security and pet damage deposit and recovery of the filing fee. In the Landlords' Application for Dispute Resolution, the Landlords sought monetary compensation from the Tenant for damage to the rental unit or property, unpaid rent or utilities authority to retain the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on April 20, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 respective 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. What should happen with the Tenant's security and pet damage deposit?
2. Should either party recover the filing fee paid?
3. Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Tenant testified that the one year fixed term tenancy began April 1, 2015; monthly rent was payable in the amount of \$800.00. The Tenant confirmed she was responsible for paying for hydro. The Tenant stated that she paid \$400.00 for a security deposit and \$400.00 as a pet damage deposit both of which were paid on March 11, 2015.

The Tenant testified that the Landlord performed both a move in and move out condition inspection report.

The Tenant testified that she moved out October 1, 2016.

In the details of dispute section on the Landlords' Application for Dispute Resolution the following amounts were claimed:

Hydro	\$73.40
Carpet clean	\$105.00
Balance of damage deposit	\$466.74
Lost rent revenue	\$154.86
Compensation for harassment	\$1,000.00

The Landlord stated that in terms of her claim for the electrical utility, the Tenant paid the \$65.14 owing as of September 15, 2016 but did not pay the \$8.26 which was owing as of October 1, 2016. In evidence the Landlord provided an email from the Electrical utility company confirming this \$8.26 amount related to the time period September 15-October 1.

The Landlord stated that the carpet outside the rental door was burned by the Tenant dragging furniture out of the rental unit when she moved. She stated that at first she believed that it was stained, and as such had the carpet cleaned. Once it was cleaned the technician confirmed it was a burn mark and noted that it was a result of furniture being dragged out of the rental unit. This is confirmed in a letter dated October 21, 2016 which was provided in evidence by the Landlord.

The Landlord stated that after the move out inspection, the Landlord texted the Tenant to let her know that she had damaged the carpet.

The Landlord confirmed that she had erroneously added the balance of the Tenant's security deposit to her claim, when in fact she continues to hold \$800.00 as a security and pet damage deposit.

The Landlord sought the sum of \$154.86 representing loss of rent for October 1-6, 2016. She stated that the Tenant gave notice to end her tenancy on September 15, 2016 and while she made her best efforts to re-rent the rental unit by October 1, 2016 she was not able to secure another renter until October 7, 2016.

The Landlord also sought the sum of \$1,000.00 for “harassment”. She testified that this related to the difficulties she encountered with the new renter who moved in October 7, 2016. She stated that because she was so rushed to re-rent the rental unit she was not able to perform adequate background checks on the new renter and consequently incurred the cost of hiring a bailiff to remove this renter, as well as having other renters move out because of his behaviour. She further stated that the Tenant harassed her after the tenancy ended by sending text messages to her and her mother. The Landlord claimed this affected her ability to work.

In response to the Landlords’ claims, the Tenant testified as follows.

The Tenant confirmed that she was willing to pay the balance of \$8.26 for the outstanding hydro.

The Tenant stated that she was opposed to cleaning the carpet, as she claimed it was not stained and as the carpet was outside of the rental unit she believed it was not her responsibility. She stated that when the Landlord performed the move out condition inspection report, there was no mention of this stain as it simply didn’t exist.

In terms of loss of rent in the amount of \$154.86 the Tenant stated that the rental unit was rented as of October 7, 2016. The Tenant stated that she fulfilled her year lease and then stayed another six months and then had to move out for safety reasons. She also stated that she sent her Notice to End Tenancy on September 15, 2016.

The Tenant did not respond to the Landlord’s claim for \$1,000.00 for “harassment” for reasons which I will explain in the Analysis portion of this my Decision.

Analysis

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

The Tenant agreed to pay the outstanding **\$8.26** for the electrical utility. I therefore award the Landlord recovery of this amount.

I accept the Landlords’ evidence that the carpet was damaged by the Tenant when she moved out of the rental unit. I further accept J.B.’s testimony that she initially thought it was stained and therefore attending to its cleaning. The Tenant’s response was that the burn marks were not noted on the move out inspection and that it was not part of her rental unit. Although it is always difficult to reconcile conflicting testimony, I prefer the Landlord’s in this regard. I found her to be forthright in her testimony. I am also persuaded by the letter and invoice introduced in evidence by the carpet cleaner who wrote that the burn marks originated from the Tenant’s

rental unit. A tenant is responsible for damage to common areas and I therefore award the Landlord recovery of the **\$105.00** claimed.

As explained during the hearing, the effective date of the Tenant's notice, pursuant to section 45 of the *Act*, is October 31, 2016. I accept the Landlords' testimony that they were not able to rent the unit until October 7, 2016, they are entitled to compensation for the unpaid rent for six days in the amount of **\$154.86**.

I dismiss the Landlords' claim for compensation for "harassment". As noted above, the effective date of the Tenant's notice was October 31, 2016. Although it is commendable J.B. made her best efforts to re-rent the unit as soon as possible, the Tenant is not responsible for the behaviour of the new renter or the Landlords' failure to exercise due diligence in screening the new renter.

In written submissions provided by J.B. she writes as follows:

"I am also filing a monetary order for compensation claim against the tenant and her mother for harassment and intimidation, anxiety and stress and collusion with my ex-husband. I am asking to keep the balance of the deposit in the amount of \$466.74 plus an addition \$1,000 as their actions have escalated my health issues."

As explained during the hearing, the above claims are outside the jurisdiction of the *Residential Tenancy Act*.

Further, I find that even if I had authority to consider such claims, I find the Landlords have failed to meet the burden of proving any related losses. 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 Landlords have the burden of proof to prove their claim.

J.B.'s claims that the Tenant's texting to her and her mother constituted harassment which resulted in her missing work and income. She did not provide any proof of such losses, or any evidence or testimony as to the actual amount required to compensate her for these alleged

losses. For these reasons, I dismiss the Landlords' claims for compensation in the amount of \$1,000.00.

I therefore award the Landlord monetary compensation in the amount of \$268.12.

Hydro	\$8.26
Carpet clean	\$105.00
Lost rent revenue	\$154.86
TOTAL	\$268.12

I order that each party bear the cost of their own filing fee.

The Tenant is entitled to return of her deposits less the amount awarded to the Landlord.

Conclusion

I authorize the Landlords to retain \$268.12 of the Tenant's security and pet damage deposit of \$800.00 and order that they return the balance of **\$531.88** to the Tenant. I grant the Tenant a Monetary Order in this amount.

This Monetary Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 20, 2017

Residential Tenancy Branch