



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC; MNSD

Introduction

This is the Landlord's Application for Dispute Resolution seeking compensation for damage or loss and to recover the cost of the filing fee from the Tenant.

Both parties attended the Hearing and gave affirmed testimony.

The Tenant acknowledged service of the Landlord's Notice of Hearing, documentary evidence and electronic evidence, by registered mail.

The Tenant did not provide documentary or electronic evidence to the Residential Tenancy Branch or to the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to compensation from the Tenant for damages to the rental unit?

Background and Evidence

The Landlord gave the following testimony:

This tenancy ended on November 1, 2016, as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property. The Landlord provided a copy of the Notice in evidence, which was issued on August 2, 2016, for an effective date of November 1, 2016.

The Landlord testified that the rental property was sold and that when he took possession of the rental property on November 1, 2016, he found that the Tenant had damaged the rental unit by "kicking in" 3 doors; removing and replacing door hinges; writing on the walls and one window "in goopy paint"; and leaving garbage including a tent and mattress in the driveway and at the side of the house. The Landlord provided a Monetary Order Worksheet indicating that he seeks compensation from the Tenant, calculated as follows:

| | |
|---|----------|
| Paint and supplies to repaint/repair doors | \$152.71 |
| Dead bolts for doors | \$32.00 |
| Door handle | \$27.00 |
| Door hinges | \$4.00 |
| Dump fees | \$174.00 |
| Cost of USB stick for electronic evidence | \$26.88 |
| Cost of gas | \$64.00 |
| Landlord's labour (40 hours @ \$20.00 per hour) | \$800.00 |

The Landlord testified that the new owners took possession of the rental property on November 15, 2016.

The Landlord is holding the Tenant's security deposit in the amount of \$550.00. He received the Tenant's forwarding address on November 15, 2016, and made his Application for Dispute Resolution on November 15, 2016.

The Landlord provided copies of invoices and photographs in support of his claim.

The Landlord also provided a copy of a letter from the listing realtor in evidence, dated November 16, 2016.

The Tenant gave the following testimony:

The Tenant stated that she moved into the rental unit on March 1, 2016. She testified that no Condition Inspection Report was completed at the beginning of the tenancy because the Landlord stated that he "didn't want to do it". The Tenant testified that she left the rental unit the way she found it and that when she moved in there was "not one clean room, and dead rates in storage". The Tenant denied leaving any garbage at the rental property. She stated that there were two suites in the rental unit and that she had lived in the upper suite. The Tenant testified that the downstairs suite was rented by others, who had left the garbage.

The Tenant testified that she was "devastated" when she learned that the Landlord was selling the rental property and that she would have to move. She stated that initially, she was not served with a valid notice to end the tenancy. The Tenant stated that she was given a "piece of paper with mumbo jumbo", but that she was eventually given a valid notice.

The Tenant stated that when she moved into the rental unit the sink leaked and the doors never worked properly. The Tenant testified that the Landlord told her to "get a friend to fix it".

The Tenant stated that the police "stole papers from my hand" and that the Landlord turned her water off for "two weekends in a row".

The Landlord gave the following response:

The Landlord stated that he gave the Tenant “papers telling her the house had sold”, but when he learned that he had to give a valid notice to end the tenancy, he did so. He testified that he had never heard of a “condition inspection report” until the Tenant told him about it at the end of the tenancy, and that he wished he had known.

The Landlord submitted that the Police do not steal papers or threaten people and that the Tenant’s credibility should be in question.

The Landlord stated that there was no one living in the basement suite for two months before the Tenant moved out and that the Tenant’s daughter was sleeping in the tent that was abandoned at the rental property.

The Landlord stated that the Tenant lived in the rental unit from March, 2015 until October, 2016, and never mentioned any repair issues or gave any notice in writing that repairs were required.

Analysis

This is the Landlord’s Application and therefore the onus is on the Landlord to provide sufficient evidence to support his claim, on the balance of probability.

The Act requires that condition inspections must be completed at the beginning and at the end of a tenancy. It is a landlord’s responsibility to arrange for such inspections. Section 21 of the regulation provides:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless either the landlord or the tenant has a preponderance of evidence to the contrary.**

[Reproduced as written, my emphasis added]

The letter from the listing realtor provides:

I,[realtor’s name], the listing realtor for the subject property was called by the sellers to check the property after the tenant move out In November 1, 2016. When I went there, I witnessed that the condition of the property wasn’t the same as when I showed it in April 2016. The following issues were needed to be addressed in order to get the place ready for the possession:

- 1) Doors for the bedrooms weren't closing properly; it seems they were been kicked and latches been damaged
- 2) There were chattels such as old desk. TV and other garbage left in the property
- 3) The ceiling and walls were discolored with some sort of prime. The owners had to repaint all the bedrooms and the ceiling to make the place ready for the Possession.
- 4) The property also needed to be cleaned before the Possession date.

[Reproduced as written]

The photographs provided by the Landlord show damaged doors and door jambs with boot marks on the doors, and garbage.

Section 37(b) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, at the end of a tenancy.

Based on the documentary evidence provided by the Landlord, and in the absence of documentary evidence from the Tenant, I find that the Tenant did not comply with Section 37(b) of the Act and that the Landlord is entitled to some compensation.

The Landlord provided copies of receipts in evidence. I find that the amount claimed is reasonable and I allow the Landlord's claim with respect to paint supplies, damage to the doors, gas and dump fees.

There is no provision in the Act for recovery of the cost of providing evidence and therefore I dismiss the Landlord's claim for the cost of a USB stick.

Although I am satisfied that the Landlord did considerable work to make repairs and clean the rental property at the end of the tenancy, I find that he did not provide sufficient evidence that such work took 40 hours to complete. Therefore, pursuant to the provisions of Section 67 of the Act, I find that he is entitled to \$400.00 for this portion of his claim.

The Landlord's Application had merit and I find that he is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

I find that the Landlord has established a monetary award, calculated as follows:

| | |
|---|-----------------|
| Paint and supplies to repaint/repair doors | \$152.71 |
| Dead bolts for doors | \$32.00 |
| Door handle | \$27.00 |
| Door hinges | \$4.00 |
| Dump fees | \$174.00 |
| Cost of gas | \$64.00 |
| Landlord's labour (20 hours @ \$20.00 per hour) | \$400.00 |
| Recovery of filing fee | <u>\$100.00</u> |
| Total | \$953.71 |

With respect to the Landlord's application to apply the security deposit towards his monetary award, I find that the Landlord extinguished his right to claim against the security deposit under Section 38(5) of the Act. Therefore, I find that the Tenant is entitled to return of the \$550.00 security deposit. However, pursuant to the provisions of Section 72 of the Act, I hereby set off the Tenant's entitlement against the Landlord's monetary award, and provide the Landlord with a Monetary Order in the amount of **\$403.71** (\$953.71 - \$550.00).

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$403.71** for service upon the Tenant. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: June 20, 2017

Residential Tenancy Branch