



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks compensation under section 67 of the Act for costs associated with the tenant's vacating of the rental unit. To wit:

Tenant wasn't ready at the agreed upon move out time and over held the unit for an extra day. When she finally vacated she left a huge mess and didn't return any keys, or fobs for the unit or apartment building. The strata has had to rekey the building and we have had to purchase replacement keys and fobs. Many extra trips to the unit to facilitate cleaners, locksmiths, and carpet cleaners. Incoming tenants were displaced for an extra day and had to rent a storage space for 2 extra days., including carpet cleaning and multiple key replacements, and other matters.

In addition, the landlord seeks compensation under section 72 of the Act for the filing fee.

A dispute resolution hearing was convened on March 26, 2019 and the landlord's agent and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to compensation under section 67 of the Act?
2. Is the landlord entitled to compensation under section 72 of the Act?

Background and Evidence

The landlord's agent ("agent") testified that the tenancy began on February 1, 2018 and ended on October 31, 2018, though the tenant was overholding the rental unit by a day. Monthly rent was \$1,000.00 and the tenant paid a security deposit of \$500.00 and a pet damage deposit of \$500.00, both of which are currently retained by the landlord.

The landlord claims compensation in the amount of \$1,351.13, comprised of various costs for replacement keys, key cutting, key fob replacement, carpet cleaning, unit door re-keying, unit cleaning, overholding rent/storage, bylaw infraction, and mail key re-keying. Carpet cleaning was listed at \$115.50 and rental unit cleaning was listed at \$150.00. I note that the landlord sought \$317.12 for "mileage and admin costs."

The landlord submitted into evidence a monetary order worksheet which listed the individual costs and supporting receipts and invoices for the amounts claimed. The bylaw infraction fine of \$50.00 was because of the tenant's belongings being left in the hallway, in violation of strata bylaws.

A Condition Inspection Report was completed at both the start and at the end of the tenancy.

The tenant did not dispute, or comment on, any of the landlord's claims except the costs related to the carpet cleaning. She testified that she had the carpets cleaned about a week before she moved out. Also, the tenant testified that the loss of the plastic fob keys was "beyond my control" and that she has no idea what happened to them. They "must've gone through a drain in the street," but she was not entirely certain.

The tenant testified that while she did not move everything out of the rental unit until a day after the tenancy ended (the movers were unable to take everything), she in fact left the rental unit on the last day of the tenancy. She also noted that she did in fact return the key fob, though she did not specify which key this was.

The landlord's agent rebutted that the landlord never received the key fob. And, that the carpets were "definitely not cleaned," and that they smelled of pet urine.

The agent confirmed that the landlord received the tenant's forwarding address on or after November 14, 2018.

In her rebuttal, the tenant argued that the carpets were cleaned, but that the cleaner "must've missed a spot" under some furniture.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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

In this case, the landlord claims that the tenant did not return the keys, did not clean the carpets, and overheld the rental unit by a day.

Section 37 of the Act states that

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.

In this case, the tenant did not dispute that she vacated the rental unit until the evening of the first of November. Whether she resided in the rental unit is irrelevant: she had possession of the rental unit until the next day. As such, the landlords is entitled to compensation for the overholding.

While the tenant claims to have returned the key fob to the landlord, she also testified that she lost keys, possibly down a street drain. There appeared to be 5 keys issued at the start of the tenancy, and there is no evidence that the tenant returned any of them. It may have not been the tenant's fault that she lost one or more of the keys, but it is still the tenant's responsibility to accept any cost from losing them.

Regarding the carpet cleaning, the tenant claims that she had the carpets cleaned. The landlord's agent claims that the carpets were not cleaned. The tenant provided no documentary evidence to support her claim that the carpets were professionally cleaned, such as a receipt from a cleaning company or a receipt for a Rug Doctor rental. If the tenant did in fact employ the services of a professional carpet cleaner, they did a very poor job. The photographs submitted by the landlord reveal a dirty carpet covered with what appears to be dog hair. While the process of moving out may often leave a bit of detritus behind, the tenant is ultimately responsible for leaving the rental unit reasonably clean. The carpet depicted at the end of the tenancy was not, in my finding, reasonably clean.

The tenant did not dispute the remaining aspects of the landlord's claim, such as the cleaning of the rental unit or the bylaw costs.

Regarding the landlord's claims for mileage and administrative costs, these are not compensable claims under the Act, and are, to use the vernacular, the cost of doing business. The amount of \$317.12 for this aspect of the landlord's claim is dismissed.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$1,034.01. I award this amount to the landlord, under section 67 of the Act. Further, as the landlord was successful in its application, I grant a monetary award of \$100.00 for the filing fee, pursuant to section 72 of the Act.

I order the landlord to retain the tenant's security and pet damage deposits in the amount of \$1,000.00 in partial satisfaction of the above-noted awards.

I calculate a total monetary award of \$1,134.01, and a monetary order for \$134.00, for the landlord as follows:

CLAIM	AMOUNT
Claims (keys, bylaw, cleaning)	\$1,034.01
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$1,000.00)
Total:	\$134.01

Conclusion

I grant the landlord a monetary order in the amount of \$134.01, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 26, 2019

Residential Tenancy Branch