



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND-S, FF

For the tenant: MNDC, MNSD, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (Act).

The landlord applied for:

- compensation for alleged damage to the rental unit by the tenant;
- authority to apply the tenant's security deposit to any monetary award;
- a monetary order for unpaid rent; and
- recovery of the filing fee.

The tenant applied for:

- compensation for a monetary loss or other money owed;
- a return of his security deposit; and
- recovery of the filing fee.

These matters convened by teleconference on April 7, 2020, and due to the length of the hearing and the discussion of evidence issues, the hearing time expired. The matters were adjourned and both parties were advised they were expected to attend the reconvened hearing on the date and time in the Notice of Adjourned Hearing.

An Interim Decision was issued on April 8, 2020. At the original hearing, the evidence issues were discussed and as a result, the Interim Decision outlined orders for both parties.

As such, this Decision must be read in conjunction with my April 8, 2020, Interim Decision.

At the reconvened hearing on June 4, 2020, the landlord attended; however, the tenant did not attend.

At the original hearing, both parties understood the hearing was adjourned and the provided dates upon which they were not available. There was no indication in the Residential Tenancy Branch (RTB) record that the tenant contacted the RTB prior to this reconvened hearing. After consideration of the foregoing, I continued the June 4, 2020 reconvened hearing in the absence of the tenant.

At the original hearing, the landlord testified in full support of his application, and due to the evidence issues in which the tenant said he had not received the landlord's evidence, the reconvened hearing was to hear the tenant's response to the landlord's application and to deal with the tenant's application.

I continued the reconvened hearing for 13 minutes to allow the tenant to call into the teleconference hearing.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

Although the tenant attended the original hearing, he failed to attend the reconvened hearing to respond to the landlord's application or present evidence on his own application for dispute resolution.

Rule 7.3 of the Rules of Procedure provides as follows:

Consequences of not attending the hearing. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any evidence or submissions, I order the application of the tenant dismissed, without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant for cleaning, carpet replacement, unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this one year, fixed term tenancy began on May 1, 2017, ended on or about October 1, 2019, that the beginning monthly rent was \$2,600 and the tenant paid a security deposit of \$1,300.

The landlord has retained the tenant's security deposit.

The landlord's original application listed a monetary claim of \$1,300; however, the landlord amended his application to include a request for unpaid rent for two months, in the amount of \$5,800.

The landlord filed a security deposit reconciliation statement, which supported his original monetary claim. This statement showed a claim for \$630 for rental unit cleaning and a carpet purchase and installation charge. I note that the total cost for carpet purchase and installation charge was \$2,748.72, and the tenant's portion was \$1,089.67, according to the reconciliation statement.

On the reconciliation statement, the total charges to the tenant was \$1,719.67; however, the landlord's application showed a claim for \$1,300.

Cleaning –

In support of his claim for cleaning, the landlord submitted that the tenant had done some cleaning, but had not finished. The landlord described the condition of the rental unit as a "mess".

The landlord said that the tenant was offered to attend a move-out inspection, but did not as he was already traveling.

There was no evidence of a move-in condition inspection or a condition inspection report (CIR).

The landlord submitted photos of the rental unit, an invoice for cleaning from a cleaning company, and a move-out CIR that the landlord completed.

Carpet replacement and installation –

The landlord said that dirt was ground into the carpet and that the tenant failed to clean or steam clean the carpet. The landlord submitted that he had to replace the carpet.

In response to my inquiry, the landlord said the carpet was 8 years old when it was replaced.

The landlord referred to his photographic evidence showing the carpet after the tenancy ended. The landlord filed an invoice for the carpet replacement.

Unpaid rent –

The landlord submitted that near the end of the fixed term tenancy, the parties negotiated new terms of the tenancy. Included in the new terms, was that the tenancy would continue on a month-to-month basis and that both parties would give each other three months notice to end the tenancy.

The landlord said that the tenant, on August 31, 2019, gave the landlord a one month notice, instead of three months. The landlord said the tenant eventually paid the monthly rent for September 2019, but under the terms of their new agreement, the tenant owes for the additional two months, October and November 2019.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

It is important to note that in this case, the landlord has not submitted a move-in condition inspection report, nor was there proof that there was an inspection of the rental unit with the tenant at the beginning of the tenancy, as is the obligation of the landlord pursuant to sections 23 of the Act.

What this means is the landlord extinguished his right to claim against the security deposit because there was no move-in condition inspection report (CIR), under section 24(2) of the Act. I, however, further find that the landlord is able to still seek compensation from the tenant pursuant to section 7(1) of the Act for claims for damage arising out of the tenancy.

Cleaning –

As to the costs claimed by the landlord associated with cleaning, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, the tenant is required to clean the rental unit to a reasonable standard.

I find the landlord submitted sufficient documentary and photographic evidence that the tenant failed to properly and reasonably clean the rental unit, which required the landlord to have the rental unit cleaned.

I have reviewed the landlord's invoice evidence and find the costs to be reasonable. As such, I find the landlord has established a monetary claim for cleaning in the amount of \$630.

Carpet replacement –

I have reviewed the landlord's photographic and documentary evidence and I accept that the carpet was left dirty, had ground-in dirt, and was not cleaned by the tenant.

I, however, find that the landlord has failed to provide sufficient evidence that the carpet required replacing. For instance, there was no statement from a carpet professional that the carpet could not be salvaged with steam cleaning or shampooing. I would expect the landlord to at least have the carpet steam cleaned or shampooed prior to having it replaced, in an effort to minimize his loss.

I therefore decline to award the landlord the costs for carpet replacement.

In recognition that the carpet was not cleaned by the tenant, *Policy Guideline #16* notes, "an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*nominal damages* are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right."

In this case, although I have declined the landlord's claim for partial carpet replacement, I find an award of nominal damages would be more appropriate in this circumstance. I find the carpet was not left in a manner that could be considered "reasonably clean". I therefore grant the landlord a nominal award of \$200.

Unpaid rent –

The landlord has claimed that the tenant owes unpaid rent for two months, due to his failure to provide three months' notice he was ending the tenancy as was negotiated by the parties near the end of the fixed term of the original tenancy agreement.

In this case, the landlord confirmed that he received the tenant's notice of his intent to vacate on August 31, 2019, and on September 27, 2019, the tenant confirmed he had vacated. Although the notice from the tenant was by email, the landlord responded to the tenant's email by a return email. I therefore accept the landlord was sufficiently served the tenant's notice to vacate.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenant wanted to end the tenancy before October 1, 2019, the latest day the tenant could provide written notice to end the tenancy is August 31, 2019.

What this means is that the tenant was only required by the Act to provide one month's notice to end this month-to-month tenancy. Although the parties agreed to provide each other with three months' notice, section 5 of the Act states that parties may not avoid or contract out of the Act.

Due to the above, I find the tenant complied with his requirement to provide one month's notice to end the tenancy by the end of September 2019. I therefore dismiss the landlord's claim for unpaid rent for the second and third month following the tenant's notice to end the tenancy.

Filing fee -

I grant the landlord recovery of his filing fee of \$100 paid for this application.

Due to the above, I find the landlord is entitled to a total monetary award of \$930, comprised of \$630 for cleaning the rental unit, \$200 for nominal damages relating to the carpet, and \$100 for recovery of the filing fee paid for this application.

I direct the landlord to retain the amount of his monetary award of \$930 from the tenant's security deposit of \$1,300, and order him to return the balance, in the amount of \$370.

To give effect to this order, I grant the tenant a monetary order in the amount of \$370, pursuant to sections 67 and 72 of the Act.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

The landlord's application for monetary compensation is granted in part, he has been granted a monetary award of \$930, as noted above, and authorized to retain this amount from the tenant's security deposit of \$1,300.

The landlord is ordered to return the balance of the tenant's security deposit, or \$370, and the tenant is granted a monetary order in the amount.

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 12, 2020

Residential Tenancy Branch