



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNR-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants;
- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlords attended the hearing; however, the tenants did not attend.

The landlord stated they served tenant BB with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by email on April 2, 2020. The landlord submitted a copy of email exchanges between them and tenant BB.

Based on the landlords' undisputed evidence, I accept the tenant was served notice of this hearing in a manner complying with the Director's Order in effect at that time to an email address routinely used by the parties for tenancy matters. The hearing proceeded in the tenants' absence.

The landlords were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlords submitted that they did not serve their application to the other listed tenant, MA, as she had moved away. As a result, I have removed respondent, MA's, name from any orders resulting from this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for damage to the rental unit and unpaid rent from the tenants, to keep their security deposit, and to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and/or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

The landlords submitted a written tenancy agreement showing a tenancy start date of August 1, 2019, for a fixed term through May 31, 2020, monthly rent of \$1,400, and a security deposit of \$650 being paid by the tenants to the landlords. The written tenancy agreement shows the tenancy would end after the date of the fixed term and the tenants were required to vacate, as the landlord was to renovate and occupy the rental unit.

The landlords retained the tenants' security deposit, having made this claim against it.

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rubbish removal	\$3937
2. Cleaning and carpet removal	\$772
3. Installation of new carpet	\$3879
4. 2 months loss of rent revenue	\$2800
TOTAL	\$11,388

In support of their application, the landlord testified to the following:

The landlord said the tenant informed him that he was vacating the rental unit by February 25, 2020. The landlord said that the tenant failed to attend the move-out inspection, despite being offered two opportunities.

The landlord submitted that the garbage removal company attended the rental unit to remove the personal property left by the tenants, as it appeared they failed to remove any of their belongings.

The landlord said that the inspection showed that the tenants did not leave the rental unit reasonably clean. The landlord said that it did not appear that the tenants cleaned the rental unit at all prior to their departure and then it became necessary to hire a cleaning company to perform cleaning services and carpet removal.

Included with the landlord's evidence was a letter from the owner of the rubbish removal company. The letter stated that they removed four, 1-ton truckloads of typical household contents to the dump and another four loads of metal and wood to the dump. The letter also stated that in 27 years of running a rubbish removal business, that was the worst case of junk removal. The owner also said that there was nothing of value.

As to the carpet, the landlord said the entire carpet had to be replaced, as it could not be salvaged. The landlord said that the painters would not come into the rental unit to paint until the carpet was removed. The landlord submitted the carpet seemed soaked with human urine.

The landlord said that the carpet was installed in August 2015.

As to the claim for loss of rent revenue, the landlord submitted said the rubbish removal and cleaning took almost the entire month of March and they were unable to re-rent the rental unit due to the condition it was in after being abandoned by the tenants.

The landlord's additional evidence included a copy of the move-in and move-out condition inspection report (CIR), copies of the invoices for the costs claimed, and photographs of the rental unit.

The tenant did not attend the hearing and no evidence or submissions were provided by him despite having been properly served with the landlords' application for dispute resolution, evidence and Notice of Hearing.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

I find the landlords submitted sufficient and uncontested evidence to support that the rental unit was not left reasonably clean, or clean at all, and that the damage claimed was beyond reasonable wear and tear.

I find the photographs accurately show the extent of the substantial amount of household rubbish and personal property left by the tenants, which required removal. I also find these photographs accurately show the damage done by the tenants during the tenancy.

I have reviewed the landlords' receipts and invoices for the amounts claimed. Upon hearing from the landlord and reviewing the evidence, I find the costs claimed to be reasonable, considering the state of the rental unit at the end of the tenancy.

I therefore find the landlord has submitted sufficient evidence to support their claim for cleaning, rubbish and carpet removal.

I grant them a monetary award of \$3937 for rubbish removal and \$772 for cleaning and carpet removal.

As to the claim for full, wall-to-wall carpet replacement, Residential Tenancy Branch (RTB) Policy Guideline 16 states that in a claim for damage, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, which are depreciating throughout a tenancy through normal wear and tear.

I considered that at the end of the tenancy, the carpet was five years old. Under section 40 of the Policy Guideline, the useful life of carpet is 10 years. In this case, I find the carpet had depreciated by 50%.

I also find that if the landlords were compensated for new carpeting, in consideration of the carpets having depreciated by 50%, they would be put in a better position than if the damage had not occurred.

Under the circumstances, I find the landlords are entitled to one half of their monetary claim for carpet and installation of \$3,879. I grant them a monetary award of \$1,939.50.

As to the claim for loss of rent revenue, Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

On the basis of the undisputed evidence, I find the tenant ended the fixed term tenancy prior to the end of the fixed term and is liable to the landlords for rent for the months until the end of the tenancy. The landlords have claimed loss of rent revenue for two of the remaining three months of the tenancy due to the condition of the rental unit.

After reviewing the landlords' undisputed evidence, I find it reasonable that the rental unit was left in such a state of disrepair and clutter that the landlords were not able to rent the rental unit for the two months as claimed.

I therefore grant them a monetary award of \$2,800, as claimed.

I grant the landlord recovery of their filing fee, due to their successful application.

Conclusion

The landlords have established a monetary claim, in the amount of \$9,548.50, which includes \$3,937 for rubbish removal, \$772 for cleaning and carpet removal, \$1,939.50 for one half of carpet and installation, \$2,800 for two months of loss of rent revenue, and \$100 for recovery of their filing fee.

Pursuant to section 72(2) of the Act, I authorize the landlords to retain the security deposit of \$650 in partial satisfaction of this monetary claim. I grant the landlords a monetary order for the balance due, in the amount of \$8,898.50.

In the event the tenant does not voluntarily comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant is cautioned that costs of enforcement are recoverable from the tenant.

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: August 13, 2020

Residential Tenancy Branch