



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 was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord and tenant. The landlord applied to keep all or part of the security or pet damage deposit and for a Monetary Order for: unpaid rent or utilities; for damage to the unit, site or property; money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The tenant applied for the return of all or part of the security or pet damage deposit and for the recovery of the filing fee for the cost of making the application.

Both the landlord and the tenant appeared for the hearing and no issues in relation to the service of documents and evidence under the Act were raised by any of the parties.

The affirmed testimony provided by the parties during the hearing and the documentary evidence provided prior to the hearing was carefully considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation for damages to the rental suite?
- Is the landlord entitled to monetary losses incurred because the tenant broke a fixed term tenancy?
- Is the landlord entitled to keep the security deposit in partial satisfaction of the landlord's claim?

Background and Evidence

Both parties agreed that the tenancy started on September 1, 2012 for a fixed term of one year to end on August 31, 2013. A written tenancy agreement, provided as evidence, was completed and the tenant paid \$750.00 as a security deposit on

September 1, 2012 which the landlord still retains. Rent was payable by the tenant in the amount of \$1,500.00 on the first day of each month. The landlord did not complete a move-in or move-out condition inspection report.

The landlord testified that he received an e-mail from the tenant on April 17, 2013 asking whether the fixed term tenancy could be ended as the tenant was struggling to pay rent and wanted to pursue a career opportunity in Vancouver. The landlord agreed on the basis the tenant would find another tenant to take over the remaining portion of the tenancy. The tenant made a number of enquiries and passed on the details to the landlord of a potential new tenant to take over the tenancy. However, when the landlord spoke to the proposed new renter, a commitment could not be made by the renter until June or July which was not good enough. The landlord informed the tenant of this.

The landlord testified that the tenant left the tenancy on May 1, 2013 and as a result he hired a professional company to find a new tenant, after which he was able to re-rent the rental suite on June 1, 2013. As a result, the landlord now claims \$1,500.00 in lost rent for the month of May, 2013 from the tenant. The tenant testified that she provided the landlord with a forwarding address in writing by registered mail on August 22, 2013 which the landlord received on September 1, 2013. The landlord also makes the following monetary claim with the following supporting evidence:

- \$73.50 for carpet cleaning. The landlord testified that the tenant had a dog which urinated on the stairway carpet. As a result, he hired a professional company to clean the carpets but the urine smell could not be removed.
- As a result, the landlord obtained a quote to replace the carpet at a cost of \$923.42. The landlord testified that the carpet was 5 years old and the invoice presented as documentary evidence contains details completed by the carpet professional providing the quote; the details state that there is a strong pet odor coming from the carpet which is still evident, even through masking of the odor being currently done through the use of perfume and odor neutralisers.
- \$3,853.57 for the replacement of the wood flooring. The landlord provided two pictures showing scratches on the floor which he claims came from the tenant's dog and that these cannot be repaired. As a result, the landlord provided a quote for the replacement of the five year old flooring of approximately 1000 square feet. The landlord testified that 10-15 square feet was damaged by the tenant's dog.
- \$300.00 for power washing the house driveways and walkways, mowing the front, side and back lawns and removing garbage to the landfill. The landlord

provided a receipt for the cost of doing this work by the property company he employed to find a new tenant.

The landlord also provided a number of photographs showing the interior of the house had not been cleaned, including the stove which was also damaged. In addition, the landlord provided pictures of wall dents which he testified were caused by the tenant. However, these items were not claimed for in the landlord's application.

The tenant acknowledged that she did owe the landlord for unpaid rent for May 1, 2013, as she broke the fixed term tenancy.

The tenant also confirmed that she had a dog in the rental suite but denied that her dog urinated on the carpets or caused the scratches to the wooden flooring. The tenant testified that the previous owner had dogs. The tenant testified that she steam cleaned the carpets and that the assessment done for the quotes provided by the landlord for the replacement of the carpet and flooring was done after the tenancy had started for the new renters in July, 2013.

The tenant denied leaving garbage in the rental suite and stated that she left the rental suite clean, including pressure washing the driveway.

The landlord provided a letter from the previous renter which states that the rental suite was left by her in clean condition. However, the landlord also confirmed that the previous tenant had two dogs in the rental suite. The landlord also provided a text message conversation he had with the tenant where she stated "There might have been a couple of floor scratches though but nothing that's not normal wear and tear."

Analysis

The tenant provided the landlord with a forwarding address in accordance with the requirements of the Act by registered mail. Using the deeming provisions of the Act in relation to the service of documents, I find that the landlord had until September 11, 2013 to make an application to keep the tenant's security deposit and therefore the landlord made the application within the allowable time limits provided by the Act.

In relation to the landlord's claim of unpaid rent in the amount of \$1,500.00, I make the following finding. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of tenancy. As a result, I find that the tenant failed to abide with the requirements of the Act in relation to

the fixed term tenancy and ended the tenancy earlier than is allowed under the Act in relation to the signed fixed term tenancy agreement.

Section 7(2) of the Act states that a party claiming compensation for non compliance with the Act must do what is reasonable to minimize the loss. The landlord testified that the rental suite was re-rented the following month and I find that the landlord acted in accordance with the Act in mitigating his loss. As a result, I award the landlord \$1,500.00 in unpaid rent for May, 2013.

Section 37 (2) (a) of the Act states that when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear. The Act also states that the landlord must complete a condition inspection report in accordance with the regulations at the start and end of the tenancy.

The landlord failed to complete a move-in and move-out condition inspection report which would have been vital in proving the damages claimed by the landlord. However, in considering the evidence before me I make the following findings.

The landlord provided sufficient evidence in the form of a statement from the previous renter stating that the rental suite was clean. In addition, the landlord provided photographic evidence to show that the tenant had not left the rental suite reasonably clean at the end of the tenancy. In her testimony, the tenant admitted to having a dog during the tenancy but denied that the dog caused the scratches to the hardwood flooring. However, her text message to the landlord indicates that the scratches were in existence during her tenancy. The landlord acknowledged that the previous renter had two dogs but the previous renter mentioned no damage to the rental suite by the dogs.

Based on this, I find that, on the balance of probabilities, the tenant is responsible for the damage caused to the unit by her dog. In determining the amount the landlord is to be awarded for this cost, I have considered the useful life of the carpet and wooden flooring detailed in Policy Guideline 40 to the Act, which states that the useful life of carpet is 10 years and hardwood flooring is 20 years. The landlord testified that the flooring and carpet were 5 years old.

As a result, I award the landlord \$461.71 for costs towards replacement of the carpet and the \$73.50 for the landlord's attempt to mitigate loss by cleaning the carpet.

The landlord testified that the total area the scratches on the hardwood flooring were contained on was about 10-15 square feet of the total 1,000 square feet of flooring which is required to be replaced. Based on the area damaged by the tenant's dog and

the useful life of the floor, I award the landlord an appropriate amount of \$289.00 towards the cost of replacing the hardwood flooring, which accounts for 10% of the cost of the remaining 15 years of life of the flooring.

I dismiss the landlord's claim for \$300.00 for the power washing of the driveways and mowing of the lawns. The landlord has not provided sufficient evidence of the cleaning of the yard that was required such as photographic evidence of the unkempt landscape or an itemized list of the items left behind by the tenant which the landlord had to dispose of. The landlord provided a number of photographs for this hearing but none supporting this portion of the landlord's claim.

I also award the landlord the \$100.00 filing fee for the cost of this application pursuant to Section 72 of the Act. Therefore, the total amount payable by the tenant to the landlord is \$2,424.21. As the landlord already holds a \$750.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$1,674.21.

Conclusion

For the reasons set out above, I grant the landlord a monetary order pursuant to Section 67 of the Act in the amount of **\$1,674.21**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant's application is dismissed without leave to re-apply.

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: December 16, 2013

Residential Tenancy Branch

