



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 8, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The parties appeared at the scheduled teleconference hearing, gave affirmed testimony, and confirmed receipt of evidence served by the Landlord. The Tenant signed into the proceeding four minutes late. I informed the Tenant of the testimony I had heard prior to his signing into the proceeding.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a monetary order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2013 and was scheduled to end on February 28, 2014, at which time the Tenant was required to vacate the unit. The Tenant was required to pay rent of \$1,500.00 on the first of each month and on March 1, 2013 the Tenant paid \$750.00 as the security deposit. The parties attended the move in condition inspection on March 1, 2013 and signed the condition report form agreeing to the condition of the unit.

The Landlord testified that when the Tenant failed to pay February 1, 2014 rent a 10 Day Notice was posted to his door on February 10, 2014 with an effective date of February 24, 2014. The parties communicated through text messaging and agreed to meet at the rental unit on February 24, 2014 so the Tenant could pay some of the outstanding rent, return the keys and possession of the unit to the Landlords. The Tenant rescheduled the meeting to occur on February 25, 2014; however, he did not attend at the rescheduled time.

The Landlord submitted that when they attended the unit on February 25, 2014, the unit was locked and the Tenant had already vacated the unit leaving it damaged, dirty, scattered with debris, and with two sets of keys sitting on the counter, as supported by the photos they provided in evidence. The Landlord argued that the Tenant did not attempt to contact them after February 25, 2014 so they conducted the move out inspection in absence of the Tenant, as supported by the condition inspection report form provided in their evidence.

The Landlord now seeks compensation of \$5,000.00 which consists of the following:

- 1) \$330.75 To remove the junk and debris left behind by the Tenant as per the receipt in their evidence
- 2) \$25.00 To replace the guest parking pass as per the receipt provided
- 3) \$552.68 Which consists of 24 hours labour @ \$20.00 per hour to clean and repair the unit plus material costs of \$72.68 as supported by the receipts provided in the Landlord's evidence. The Landlord argued that they had to change the locks because the Tenant had left the two sets of keys inside and the door was locked when they attended the unit. The door could not be locked without a key. Other damages were repaired as supported in their evidence.
- 4) \$1,500.00 For unpaid rent that was due February 1, 2014.
- 5) \$100.00 For lost March 2014 rent because the Landlord had to offer their new tenant a \$100.00 discount for delaying their tenancy by two days due to the Tenant's actions and due to the condition the rental unit was left in
- 6) \$3,000.00 For damages caused to the laminate flooring. This amount is based on an estimate by a professional who told the Landlord that they could only have the floor repaired once because it was laminate. The floor has not been repaired at this time. The Landlord submitted that the damage is to approximately 30 % of the living room and is located in areas where the Tenant had furniture. They have owned this unit since approximately 2010 and the unit was built in approximately 2002. The floor was in perfect condition at the onset of the tenancy.

The Tenant did not dispute the items claimed in (1) and (2) and accepted responsibility for only those two items. The Tenant disputed the remaining items as follows:

The Tenant testified and confirmed that he had made arrangements to meet with the Landlords at the rental unit February 24, 2014; that he changed the date and time of the meeting to February 25, 2014; and that he did not attend the rescheduled meeting. He argued that he left the two sets of keys inside the rental unit and left the door wide open when he left. He claimed that he did not lock the unit as all the keys were left inside. Therefore he should not have to pay to have the locks changed.

The Tenant submitted that he cleaned the rental unit before he moved out. He later stated that he had left some possessions inside the rental unit, such as his couch, and that he did not submit any evidence to prove the condition he left the unit in. He argued that \$552.68 was too much money to clean a 500 square foot unit after he had already cleaned it.

The Tenant stated that he did not pay February 2014 rent because he did not have a chance to pay it. He argued that he was paying his rent in cash after his girlfriend moved out and that his cheque was returned because the account was closed not because it was NSF. He stated that the manner in which he would pay rent involved him texting the Landlord to make arrangements to meet them across the street and he would pay the rent in cash. The Tenant confirmed that he did not make these arrangements to pay February rent. He stated that he should not have to pay the February rent because the Landlord showed up at the rental unit on February 9, 2014 and demanded payment in an inappropriate manner and then posted an eviction notice the next day.

The Tenant stated that he felt he should not have to pay \$100.00 for an agreement the Landlord made with their new tenant. He stated that this situation occurred because the Landlord did not contact him properly when seeking payment of the rent.

The Tenant testified that damage was caused to the living room floor from his lazy boy recliner chair. He argued that it was only in one small corner of the rental unit next to the balcony and was not covering 30% of the floor. He stated that the rental unit was really old so he should not have to pay for damage to the old floor.

In closing, the Landlord confirmed that they had returned the female tenant's cheques, which were replaced with cheques from this Tenant. The Tenant's cheques were returned NSF as per their evidence submitted from the bank.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenant did not dispute the Landlord's claims of \$330.75 for junk removal and \$25.00 for the purchase of a replacement guest parking pass. Accordingly, I grant the Landlord monetary compensation for these items of **\$355.75** (\$330.75 + \$25.00).

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was that the Tenant did not pay rent that was due on February 1, 2014, which I find is a breach of section 26 of the Act. Accordingly, I award the Landlord compensation for February 2014 rent of **\$1,500.00**.

Section 21 of the Regulations provides that 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.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In the absence of documentary evidence from the Tenant to support his testimony about the condition of the rental unit at the end of the tenancy, I accept the submissions from the Landlord as supported by the Landlord's photographs and the move out condition inspection report submitted into evidence. Accordingly, I find the Tenant breached sections 32 and 37 of the Act. I grant the Landlord monetary compensation as follows:

Notwithstanding the Tenant's argument that the unit was only 500 square feet, I accept the Landlord's submission that it took her and her spouse two days to clean, repair, and ready the unit for the next tenant plus the cost of supplies and materials of \$74.66. Accordingly, I award the Landlord compensation for repairs and cleaning as claimed of **\$552.68**.

As noted above the Landlord is required to mitigate any loss by readying the unit and re-renting it as quickly as possible. In this case, when considering the condition the unit was left in, I find the Landlord did what was reasonable to negotiate a later move in date, at a discounted rate, in order to meet their landlord obligations to provide a clean and undamaged unit to their new tenant. Had they not taken this action they may not have been able to secure a new tenant and could have been faced with loss of rent for the entire month. Accordingly, I find the Landlord has met the burden of proof to claim the loss of rent for March 2014 of **\$100.00**.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

It was undisputed that the laminate flooring was scratched during this tenancy and it had not been replaced or repaired as of the onset of this proceeding. What were disputed were the amount of area that was scratched and the age of the floor. The Landlord submitted that the floor had been installed prior to them purchasing the unit in approximately 2010, the unit was built around 2002, and the scratches were on approximately 30% of the living room floor. The Tenant argued that the unit was very old and the scratches were only where his single lazy boy recliner was located.

After consideration of the foregoing, I find that despite the floor being cosmetically less appealing it can still be used for its intended purpose, as supported by the fact that it has not been repaired or replaced. Therefore, in absence of a loss to repair or replace the floor, I find the Landlord is entitled to nominal damages in the amount of **\$250.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Junk Removal & Parking Pass	\$ 355.75
February 2014 Rent	1,500.00
Cleaning, repairs, change locks and supplies	552.68
Loss of March Rent	100.00
Damage to Floor	<u>250.00</u>
SUBTOTAL	\$2,758.43
LESS: Security Deposit \$750.00+ Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$2,008.43</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$2,008.43**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that 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: August 12, 2014



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca

Residential Tenancy Branch

#RTB-136 (2011/07)

