



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord initially requested an Order of possession based on unpaid rent, compensation for unpaid rent, and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The landlord applied on February 26, 2016 and amended the application on March 31, 2016 to include a claim for damage to the rental unit in the sum of \$893.00.

The landlord and tenant L.W. were present at the start of the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The tenant confirmed that the co-tenant, C.W. received the initial hearing documents and accompanying evidence on February 26, 2016. Both tenants were personally served.

Preliminary Matters

Tenant L.W. confirmed that on March 29, 2016 she was given the amended application and evidence, by personal delivery outside her child's school. The landlord confirmed that the male tenant was not served.

Therefore, I determined that the claim for unpaid rent would proceed against both tenants. I find that the balance of the claim included in the amended application may proceed against the female tenant only, as the male tenant was not served with a copy of the amended application.

The parties agreed that the tenancy has ended. The landlord does not require an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,200.00 for unpaid January and February 2016 rent?

Is the landlord entitled to compensation in the sum of \$893.00 for damage to the rental unit?

Background and Evidence

The tenancy commenced on October 1, 2015. Rent was \$1,500.00 due on the first day of each month. A security deposit in the sum of \$750.00 and pet deposit in the sum of \$200.00 were paid. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the landlord issued a 10 day Notice to end tenancy for unpaid rent and, as a result, the tenants vacated on February 29, 2016.

The landlord said that a move-in condition inspection report was “poorly done.” A condition inspect report was submitted as evidence; it is not completed or signed by either party.

The tenant confirmed that they paid \$800.00 rent in January 2016 and did not pay February 2016 rent in the sum of \$1,500.00. The landlord has claimed compensation for this unpaid rent; totaling \$2,200.00.

The landlord said she told the tenants they could meet on February 29, 2016, at any time, to complete the move-out condition inspection. The landlord then said they agreed to meet at 5 p.m.

The tenant read from text messages she sent the landlord. The tenant sent the landlord a text at 4 p.m. on February 29, 2016 to say she would not be able to meet on that date and would finish in the morning. The landlord replied that she expected to have the keys by 5 p.m. The tenant agreed she told the landlord she could not meet at 5 p.m. and that she offered to meet at 1 p.m. the next day. The landlord refused to meet on March 1, 2016 and said they would need to meet at 1 p.m. on February 29, 2016.

There was no dispute that the tenant went to the rental unit on March 1, 2016. The landlord was at the property. The landlord did not ask the tenant to enter the home to complete he inspection. The landlord said the tenant arrived around 2:30 p.m. the landlord did not offer the opportunity to walk through the unit. The conversation deteriorated and the tenant left the property.

The landlord has made the following claim for compensation:

Cleaning	\$400.00
Plumbing	250.00
Dump fee	31.18
Alarm key fob	61.95
Hot tub cover	150.00
TOTAL	\$893.13

Food was left in the fridge, windows needed to be cleaned, window sills, the bathrooms and floors needed cleaning. The landlord submitted a photo of the inside of a drawer, some marks around the bathroom sink identified as mold, a dirty bathtub (illegible photo) and some marks on carpeting. The landlord submitted an undated invoice issued by K.E. for 16 hours of cleaning in the sum of \$400.00.

The landlord supplied a copy of a March 2, 2016 invoice for the cost of removing a toy from the main bathroom toilet. The drain was snaked, the toilet was lifted and new seal was installed. A small toy was found in the plumbing. The cost of the repair was \$250.00.

The landlord submitted photos of items left on the deck by the tenants. A dump fee invoice in the sum of \$31.18 was submitted in support of the cost incurred by the landlord for hauling the items.

The landlord submitted an email that set out a quote to replace the key fob that was not returned by the tenants.

The landlord said the tenants damaged the hot tub cover. The landlord did not know the age of the cover but said it was very old.

The landlords' written submission set out the details of other items that had been damaged. No estimate or calculation of the cost of those items was provided and the monetary claim did not include those items. The landlord asked if these could be considered. I explained that the respondents must be served with notice of a claim and that consideration of compensation not fully set out in the application would form a breach of natural justice.

The tenant responded to the claim for damage and said that the unit was left in a clean state. The tenant cleaned the carpets, repaired walls and anything that was to be disposed of was placed on the deck. The tenants' brother was going come with his truck on February 29, 2016 but could not. The landlord refused to allow the tenant to remove the items on March 1, 2016.

When the tenant arrived at the unit on March 1, 2016 the doors were locked and the landlord was there. They had a heated conversation. As the tenant had her children with her, she left the property. The tenant said the unit was clean when they vacated.

The tenant said when they left the unit the toilet was working. She said it was possible that one of her young children put something down the toilet.

The tenant said that the keys were stolen from her vehicle and not returned to the landlord.

The tenant said there was no move-in inspection report completed. When the tenant was at the unit on March 1, 2016 the landlord did not make an offer for the tenant to enter for an inspection. This was not disputed by the landlord. The landlord did not have a new tenant for the unit at that time.

The tenant confirmed they have not given the landlord a written forwarding address.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

There was no dispute that the rent claimed as owed for January and February 2016 was not paid. Therefore, pursuant to section 67 of the Act I find that the landlord is entitled to compensation in the sum of \$2,200.00 for January and February 2016 rent.

In relation to the claim for cleaning, a tenant is required to leave a rental unit reasonable clean at the end of the tenancy. The landlord has the burden of proving the unit was not reasonably clean. Outside of several photos that showed what I find reflected the need for very little cleaning, there was no evidence the unit had not been reasonably cleaned. Therefore, I find that the claim for cleaning is dismissed.

I find, on the balance of probabilities that the presence of the toy in the plumbing was due to the actions of the tenants. It is not unreasonable to accept that one of the children put the toy in the toilet. Therefore, I find that the landlord is entitled to sum claimed for removal of the toy.

Even if the tenants were barred from the property, I find that the items left on the deck for removal to the land fill was the responsibility of the tenants. As the landlord has paid the dumping fee for those items I find that the landlord is entitled to compensation as claimed.

There was no dispute that the key fob was not returned. Therefore, I find that the landlord is entitled to compensation as claimed.

Compensation for damages is intended to be restorative. When an item is replaced as a result of damage and that item has a limited useful life, it is appropriate to reduce the

replacement cost by the depreciation of the original item. Residential Tenancy Branch (RTB) policy # 40 suggests a landlord should bring forward evidence showing the age of the item at the time of replacement. This concept was explained during the hearing. The landlord said the hot tub cover was old and provided no evidence of the actual age of that item. Therefore, in the absence of evidence of the age of the cover I explained that this portion of the claim was dismissed.

From the evidence before me I find that the landlord failed to complete a move-in condition inspection report and, as a result extinguished the right to claim against the deposits for damage to the rental unit. The landlord had a claim for damage and unpaid rent.

The tenants did not supply a written forwarding address to the landlord; which would trigger the time limit for an application when claiming against a deposit.

Therefore, in addition to \$2,200.00 for unpaid rent, the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning	\$400.00	0
Plumbing	250.00	250.00
Dump fee	31.18	31.18
Alarm key fob	61.95	61.95
Hot tub cover	150.00	0
TOTAL	\$893.13	\$343.13

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, with the landlord's acknowledgement, I find that the landlord is entitled to retain the tenant's security and pet deposits in the amount of \$950.00, in partial satisfaction of the monetary claim.

The landlord wishes to have the deposits applied to the claim for damages first and the balance against the claim for unpaid rent. Therefore, I find that the value of the security and pet deposits is decreased by the sum of \$343.13 to satisfy the claim for damage. The value of the deposits to be applied to unpaid rent is \$606.87.

As the both tenants were served with Notice of the claim for unpaid rent, I find that both tenants may be named on the monetary Order.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,693.13 owed for rent and the filing fee. In the event that the tenants do not comply

with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

Conclusion

The landlord is entitled to compensation as claimed for unpaid rent.

The landlord is entitled to compensation in the sum of \$343.13 for damage to the rental unit. The balance of the claim is dismissed.

The landlord may retain the deposits in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: April 15, 2016

Residential Tenancy Branch