



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This decision pertains to the Landlord's application for dispute resolution made on September 19, 2017, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks the following relief:

- an order for money owed or compensation for damage or loss; and,
- an order granting recovery of the filing fee.

The Landlord and one of the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

The Landlord testified that the Tenants were served with a One Month Notice to End Tenancy for Cause (the "Notice") on August 10, 2017, indicating an end tenancy date of October 1, 2017, by leaving a copy with the Tenants.

The Landlord also testified that they served the Tenants with the Notice of Hearing, along with other evidentiary documents, after the Landlord filed an Amendment to an Application for Dispute Resolution. The Tenant acknowledged receiving the amended application package from a process server on or around April 1, 2018. I am satisfied that the Landlord properly served the Tenants with the Notice of Hearing.

Issue

Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Landlord testified that the parties entered into a signed, written tenancy agreement commencing October 1, 2015, with monthly rent of \$1,450.00 due on the first of the month. A security deposit of \$750.00 and a pet damage deposit of \$250.00 was paid. The parties mutually entered into a new tenancy agreement whereby the rent was increased to \$1,550.00 effective March 2016. The Landlord and Tenants conducted a condition inspection on October 1, 2015, and the Landlord completed a condition inspection report. A copy of the report was submitted into evidence.

At the end of September 2017, the Landlord attended to the property when the Tenants were in the process of moving out, to do a prearranged inspection. However, the Tenants drove away upon the Landlord's arrival. The Landlord attempted to contact the Tenants to arrange a second inspection, but was unsuccessful in reaching them or receiving a response. The Tenants did not dispute this version of events. The Landlord eventually completed a condition inspection report on October 1, 2017. The Landlord retained the security and pet damage deposits as a result of the Tenants' non-participation.

The Landlord testified that the Tenants left the rental unit with extensive damage to the carpets, walls, sliding glass door screens, kitchen floor tile, and exterior vinyl deck. The Landlord also claimed an insurance deductible. Submitted into evidence by the Landlord were several colour photographs depicting the damage. The descriptions on the report were consistent with the Landlord's testimony and photographic evidence. Also submitted into evidence were various receipts for costs of repairing the property.

The Landlord testified that the Tenants did not pay rent for September 2017, and that the Landlord suffered a loss of income for October 2017 as a result of being unable to rent the unit, due to repairs that took place. I noted a discrepancy between the rent (\$1,650.00) and the future loss of income (\$1,650.00) amounts on the Landlord's Monetary Order Worksheet, and the tenancy agreement; the Landlord acknowledged that this was an error, and that the amount should be \$1,550.00.

The Tenant testified that the Tenants caused the damage as described. However, the Tenant disagreed with a few of the Landlord's description of how the damage occurred. They also disagreed with the Landlord's description of the damage as being extensive as it was described.

Regarding the exterior vinyl deck, the Landlord alleged that the damage was caused by the Tenants' young German Shepard dog. The Tenant disagreed, and explained that the damage had been caused by metal patio chair legs scraping and tearing the vinyl.

The Tenant testified that the carpets were damaged, but that it was from ordinary wear and tear. They acknowledged that the dog pulled on a thread in the carpet and that this exacerbated the

carpet damage. The Tenant acknowledged that they caused the damage, that they did not pay the rent for September 2017, and that the Landlord should be compensated for a loss of rent for October 2017. During the Tenant's testimony, the Tenant said, "I have no problem paying for the damage and rent," but not in the amount claimed by the Landlord.

At the end of the Tenant's testimony, I sought further clarification on whether they had provided a forwarding address to the Landlord. The Tenant said that they did not provide a forwarding address.

The Tenant testified that they had "lots of messages," and almost "two years' worth" of messages between the parties regarding property repairs, and before and after photographs, that they could submit if I so wished. The Tenant did not submit into evidence any documentation regarding this claim, explaining that they did not know how to go about this.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 47 of the Act, the Notice informed the Tenants that the Tenants had 10 days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified, and provided documentary evidence to support their submission, that the Tenants did not pay rent when it was due, and has not paid rent for September 2017. There is insufficient evidence that the Tenants applied to cancel the Notice. Taking into consideration the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for monetary damages for unpaid rent. The Tenant agreed to this as well.

Pursuant to section 67 of the Act, I find that the Landlord is entitled to a monetary award for unpaid rent in the amount of \$1,550.00 for September 2017.

Claim for Property Damage and Loss of Rental Income

The Landlord seeks compensation for damage or loss with respect to the property, and for loss of rental income.

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due, and to establish the value of the loss or damage.

In determining whether compensation is due, an arbitrator must determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of, or value of, the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 (3) of the Act requires a tenant to “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.” If a tenant does not comply with this section, a landlord may seek an order for compensation under section 67 of the Act.

The Landlord testified, and provided photographs in support of their submission, that the Tenants damaged the carpets, a kitchen floor tile, the walls, two sliding glass door screens, and the exterior vinyl deck.

I am satisfied, based on the undisputed evidence, that the damage to the carpets, a kitchen floor tile, the walls, the sliding glass door screens, and the exterior vinyl deck resulted from the Tenant’s non-compliance with section 32 (3) of the Act. The Landlord provided various receipts showing amounts paid in order to have the rental unit repainted (\$1,815.71), new carpets installed (\$3,087.33), sliding glass door screens replaced (\$100.80), a new kitchen tile purchased (\$39.91), miscellaneous supplies required to do some of the repairs (\$141.44), and for repairs to the vinyl deck (\$1,420.00). I am satisfied that by compensating the Landlord for the cost of these repairs, that the Landlord would be put back in the same position as if the damage had not occurred.

Regarding the claim for loss of rent for October 2018, the Landlord testified that they were unable to rent the property due to the extensive damage, and that the rental unit underwent repairs lasting almost 6 weeks. They were able to let new tenants move in mid-November 2017. I am satisfied, based on the evidence, that the Landlord suffered a loss of rental income due to the Tenants’ non-compliance with section 32 (3) of the Act.

Regarding the claim for an insurance deductible, there was insufficient evidence before me regarding the basis for the claim in order for me to find that there was a loss. Submitted into evidence were various documents from the Landlord’s insurance company pertaining to the damage, including a property restoration company’s estimate. However, the Landlord did not provide sufficient evidence as to what, specifically, the amount claimed (\$1,000.00) was for. The

estimate provided by the property restoration company included particulars claimed for, such as carpet replacement and the deck. For this reason, I dismiss this aspect of the Landlord's claim.

Having determined that the Landlord suffered the above-noted damages and loss, I must now determine whether the Landlord has acted reasonably to minimize that damage and loss.

Sections 23 and 35 of the Act require a landlord to complete an inspection condition report at the start of, and at the end of, a tenancy. The report provides an important source of "before and after" information not found elsewhere, including photographs. Completing a report is a reasonable action in minimizing any potential damage or loss.

Regarding taking reasonable actions in minimizing potential damage to the property, the Landlord completed a thorough inspection condition report at the start of, and at the end of, the tenancy. The Landlord provided the Tenants with an opportunity to participate in the inspection. The Tenants chose not to participate, and failed to communicate regarding a second opportunity to participate.

Regarding taking reasonable actions to minimize loss of rental income, the Landlord made steps to rent out the property as soon as the repairs were completed. New tenants moved in immediately after the repairs were complete. Therefore, I find that the Landlord has acted reasonably to minimize the damage and loss.

For the reasons set out above, I find that the Landlord is entitled to a monetary claim for compensation for damage or loss in the amount of \$6,605.19.

Claim for Recovery of Filing Fee

I find that the Landlord is entitled to recover the \$100.00 filing fee.

Summary of Monetary Claim

A total monetary of award of \$8,805.19 is calculated as follows:

| Claim | Amount |
|------------------------|---------------|
| Unpaid rent | \$1,550.00 |
| Loss of income | \$1,550.00 |
| New carpeting | \$3,087.33 |
| Painting | \$1,815.71 |
| Door screens | \$100.80 |
| Kitchen tile | \$39.91 |
| Miscellaneous supplies | \$141.44 |

| | |
|--------------------------------------|-------------------|
| Vinyl deck repair | \$1,420.00 |
| Filing fee | \$100.00 |
| LESS security and pet damage deposit | (\$1,000.00) |
| Total: | \$8,805.19 |

Conclusion

The Landlord is granted a monetary order in the amount of \$8,805.19. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 19, 2018

Residential Tenancy Branch