



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, MNR, MNDC, MNSD, & FF

Introduction:

This hearing dealt with an application by the landlord for a monetary claim related to loss of rent and damage to the rental unit by the tenant. The landlord also requests to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Has the tenant failed to pay rent owed and cause the landlord a loss of rental revenue due to his failure to comply with an Order of a Dispute Resolution Officer? Has the tenant failed to return the rental unit in a reasonably clean and undamaged state at the end of the tenancy? Is the landlord entitled to retain the tenant's security deposit plus interest in partial satisfaction of this claim?

Background and Evidence:

This tenancy began August 15, 2006 for the monthly rent of \$1,300.00. The tenant paid a security deposit of \$650.00 on July 28, 2006. There was no evidence submitted by the landlord showing that a move-in condition inspection was completed at the start of the tenancy. Both parties agree, for different reasons, that there was no move-out condition inspection of the rental unit.

This tenancy ended effective November 6, 2008 pursuant to an Order of Possession issued by a Dispute Resolution Officer on November 4, 2008 (Reference Decision and Order on File #727643, dated November 4, 2008). This decision and Order was issued pursuant to section 63 of the *Act* resolving the tenant's application to dispute a two month Notice to End Tenancy for landlord's use of the rental unit. The parties agreed that the issue would be resolved by a mutual end to the tenancy effective November 6, 2008.

The landlord submitted that he contacted the tenant and arranged to meet for the move out condition inspection on November 8, 2008. He stated that the tenant never appeared and most of his possessions were removed from the rental unit. The landlord stated that he attempted to reach the tenant several times by phone but did not hear from the tenant until approximately November 11th, 2008. The landlord had the locks to the rental unit changed on November 8, 2008.

The landlord requests the following claim in damages due to the tenant's failure to vacate the rental unit on the effective date of the Order of Possession and the tenant's failure to reasonably clean and repair damage caused to the rental unit:

Cost to replace locks on rental unit	\$100.00
Cost to have rental unit cleaned	\$200.00
Outstanding utility bills for October 2008 and pro-rated for November 2008	\$149.00
Garbage removed from rental unit and taken to be disposed	\$150.00
Removal and replacement of entry way carpeting due to stains and damage	\$540.00
Replacement of broken window in bathroom	\$90.00
Pruning of shrubs and trees	\$200.00
Installation of kitchen sink faucet	\$61.18
Cleaning of outside of rental unit and walkways	\$400.00
LL's labour cost for cleaning, repairing and organizing labour	\$180.00
Carpet cleaning of rental unit	\$189.00
Advertising cost for rental unit	\$68.17
Replacement of missing parts for vacuum	\$50.25
Replacement of missing shower head in bathroom	\$40.00
Unpaid rent for October 2008	\$1,000.00
Loss of rental revenue for November 2008	\$970.00
Recovery of filing fee paid for application	\$50.00
Total	\$4,437.60

The tenant disputes the landlord's application. The tenant argued that the landlord did not allow him the opportunity to complete the cleaning and repairing of the rental unit when he changed the locks to the rental unit. The tenant submitted that the landlord did not call him or make any attempts to arrange a final move-out inspection. The tenant argued that the carpet the landlord is claiming for was damaged and dirty from the start of the tenancy and that he had to professional clean all of the carpets at the beginning of the tenancy since the landlord failed to do so. He submitted that he is not responsible for cleaning the carpets again at the end of the tenancy.

The tenant denies using the vacuum provided by the landlord and denies taking the missing components. The tenant also argued that the bathroom window broke due to natural exposure since it was old and a seal had gone. The tenant also argued that he is not responsible for pruning trees and shrubs or cleaning the outside of the rental unit.

Finally the tenant argued that he is not responsible for lost rent in October 2008 as he was entitled to compensation pursuant to the two month Notice to End Tenancy pursuant to section 49 of the *Act*.

Analysis:

Section 1 of the *Residential Tenancy Policy Guidelines Manual* states in part the obligations of landlords and tenants respecting the care and maintenance of a rental unit as follows:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Section 16 of the manual states in part:

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

If a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

The landlord has the burden of proving his application on the balance of probabilities. The tenant has the onus of showing that the amount claimed by the landlord was unreasonable. In order to establish this monetary claim the landlord must establish that the tenant breached the tenancy agreement or the Act and regulations, show that the damages are a result of this breach and that the cost claimed is a reasonable expenditure.

Although the landlord provided receipts for some of the costs he is claiming, he did not submit receipts for the outstanding utilities claimed. Therefore, I find that I have no evidence in which to support this portion of his claim.

The tenant also failed to provide any evidence in support of some of his arguments. For example, the tenant claims he had the carpets cleaned at the beginning of the tenancy and therefore should not be responsible for the landlord's claim for carpet cleaning now. I find that I cannot accept this argument without evidence from the tenant that he had the carpets cleaned as claimed.

With respect to the issue of outstanding rent and loss of future rent I have considered the evidence submitted and the decision of November 4, 2008 made on file number 727643. As noted above this decision dealt with the tenant's application disputing the two month Notice to End Tenancy for landlord's use of the rental unit. The landlord claims that the tenant agreed to pay the sum of \$1,000.00 for rent owed and the tenant argued that he is not responsible for any rent as he is entitled to compensation pursuant to the two month Notice to End Tenancy.

I reject these arguments. I find that the parties came to a mutual agreement respecting the issue of the two month Notice to End Tenancy which only provided for the tenant to vacate on November 6, 2008. There was no terms in this agreement respecting compensation or rent owed. I find that the matter was settled as written in the decision of November 4, 2008. Therefore, I reject the landlord's claim for loss of rent for October 2008.

I also reject the landlord's claim against the tenant for cleaning of the outside of the rental unit and for pruning. These costs are associated with maintaining a property and are outside of the requirements of a tenant.

I also reject the landlord's request for the cost to replace the front entrance carpeting. As admitted by the landlord during the hearing this carpet was 16 years old and no longer had any appreciable value. The normal life of a carpet is considered to be 10 years after which the owner of the property is expected to replace it. I also do not accept the landlord's claim for the replacement of the bathroom window as I accept it is more likely than not that this damage was due to age rather than damage caused by the tenant. I also do not accept the landlord's request for advertising costs to re-rent the unit as this is a business expense.

I do not accept the tenant's evidence respecting the end of his tenancy. I accept the evidence of the landlord that the tenant failed to appear on November 8, 2008 and failed to make any contact with the landlord until approximately November 11, 2008. Therefore, I do not accept the tenant's argument that he was prevented from completing the repairs and cleaning of the rental unit. The evidence is clear that the tenant was required to vacate the rental unit as of November 6, 2008 and after this date he made no attempt to communicate with the landlord or make arrangements to extend his move out date.

Based on this I accept the following of the landlord's claim due to the tenant's breach of the tenancy agreement and *Act*:

Cost to replace locks on rental unit	\$100.00
Cost to have rental unit cleaned	\$200.00
Garbage removed from rental unit and taken to be disposed	\$150.00
Installation of kitchen sink faucet	\$61.18
LL's labour cost for cleaning, repairing and organizing labour	\$180.00
Carpet cleaning of rental unit	\$189.00
Replacement of missing parts for vacuum	\$50.25
Replacement of missing shower head in bathroom	\$40.00
Loss of rental revenue for November 2008 – pro-rated over 24 days @ \$44.00 per day	\$1,056.00
Recovery of filling fee paid for application	\$50.00
Total	\$2,076.43

From this total I grant the landlord's request to retain the tenant's security deposit plus interest. I find that the tenant failed to participate in a move-out condition inspection report and failed to provide a forwarding address to the landlord. I Order that the landlord may retain the sum of \$671.12 in partial satisfaction of this claim.

Conclusion:

I grant the landlord's claim in part. I grant the landlord a monetary Order for the remaining balance of **\$1,405.31**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated January 02, 2009.

Dispute Resolution Officer