



Dispute Resolution Services

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

DECISION

Dispute Codes: MNDC, MNR, MNSD and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of January 14, 2009, the landlord sought a Monetary Order for unpaid, loss of rent, damages to the rental unit and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against any balance owed.

By application of January 5, 2009, the tenant sought a Monetary Order for damages or loss of goods and recovery of her filing fee for this proceeding.

As the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing despite having made application, her application is dismissed without leave to reapply.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a Monetary Order for the rent/loss of rent, damages, and filing fee and authorization to retain the tenant's security deposit in set off.

Background and Evidence

This tenancy began on January 20, 2007 and ended on or about January 3, 2009. Rent was \$1,500 per month and the landlord holds a security deposit of \$675 paid on January 20, 2007. Rent was due on the 20th of each month and the tenancy was for a fixed term set to end on April 20, 2009.

During the hearing, the landlord gave evidence that, as had been the case several times before, his associate telephoned the tenant on December 28, 2008 to ask for the late rent. The tenant gave explanation that her son was moving out and she did not have the rent. She called the landlord shortly after and stated that she was moving.

He said that during the conversation, the tenant advised him that she could no longer afford the rent and was moving out.

The landlord thought the tenant had moved out on January 3, 2009 when he attended the rental unit to take away what turned out to be two trailer loads of left behind materials. During the loading, the tenant and her son returned, and an altercation took place between the son and the landlord resulting in police attendance.

The landlord stated that he began advertising as soon as he had learned that the tenant would be leaving but that the rental unit had been left in a state that required extensive cleaning and repair. He said he did not have sufficient funds to restore the rental unit to the condition it was in before the tenancy began, but was bringing it to a rentable condition. He said that the rental unit had been fully renovated and had been occupied only three months by one tenant, who did no damage, previous to the subject tenant.

The landlord submitted numerous photographs in evidence to illustrate the substantial damage and need for extensive cleaning.

Analysis

The landlord claims, and I find as follows:

Unpaid rent/loss of rent - \$6,000 plus \$800 for reduced rent. The landlord claims and I find he is entitled to the unpaid rent due December 20, 2008 and loss of rent for the period to February 20, 2009. However, as the landlord continues to advertise and I cannot be certain when a new tenant will move in, I cannot award future rent. Similarly, the landlord anticipates he may have to lower the rent to accommodate changing market conditions, but I cannot foresee and therefore cannot award the differential to the conclusion of the fixed term tenancy at this time. Therefore, for unpaid rent and loss of rent, I find that the landlord is entitled to January and February rent to a total of \$3,000.

Linoleum repair/replacement - \$2,000. The landlord noted damage to the linoleum floors to the kitchen, laundry and entry floors. The kitchen and laundry photos show market gouges and tears – possibly from appliances having been dragged across them. The landlord said that he had been able to disguise the damage to the entry floor by putting carpet on top but he did not have funds at present to replace the flooring. In the absence of receipts for replacement, I find that the tenant has devalued the floors by \$1,200 and award that amount.

Repair and repaint walls and ceilings - \$4,000. The landlord's photos show extensive gouging and holes in the walls and ceiling, including embedded bb's and what appears to be knife holes, far beyond normal wear and tear and far beyond what might be remedied with patching and spot painting.

As the landlord did the work himself and is unable to provide a receipt, I find that the work performed would have cost in excess of the order of \$2,000 if done professionally and I award that amount.

Repair plumbing - \$300. Despite his efforts to do so by plunging and snaking, the landlord has been unable to unplug a main drain pipe and believes he may have to engage a professional with a camera to resolve the blockage. As this work has not yet been done and the cost is not ascertained, I make no award at present.

Replace doors and hardware - \$500. The landlord submitted photos showing damage to the front door and a bent and twisted fitting for the screen door which requires replacement. While the landlord had not yet had the funds to have the repairs done and the door replaced, I find that the work will cost at least \$300 and award that amount with leave to reapply for costs beyond that amount.

Broken Window. The landlord has not yet replaced the window and may make further application when the cost is known.

Replace fridge and Stove -\$550. The landlord submitted photographs in support of his claim that the fridge and stove were so dirty and abused that they had to be replaced which he did with used items at a cost of \$550. This part of the claim is allowed.

Cleaning carpets - \$160. On the basis of photographic evidence, I find this part of the claim to be modest and it is allowed. The landlord further noted that, in spite of heavy cleaning, strong pet odours remained in the carpets and the cleaner had advised that they may have to be replaced. In addition to an authorized small dog, the tenant also had an unauthorized ferret and two rabbits. This part of the claim is allowed.

Replace Carpets - \$5,000. The landlord submitted an estimated claim for replacement of carpets but the work had not been done and it had not been ascertain for certain that it would have to be done. Therefore, this part of the claim is dismissed with leave to reapply if necessary.

General Cleaning - \$200. On the basis of photographic evidence, I find this to be a reasonable charge for cleaning and it is allowed.

Repair damage to kitchen cupboards - \$160. On the basis of photographic evidence, this part of the claim is allowed.

Clean and repair blinds - \$165. Photographic evidence showed a number of the slats in window blinds broken and twisted. This part of the claim is allowed.

Holes drilled in house for satellite dish - \$200. The satellite dish installed by the tenant remains in place and may be used by subsequent tenants. This part of the claim is dismissed.

Damage to fence - \$100. The landlord gave evidence that he had to replace three of the slats in the fence, one of which was broken in an altercation between him and the tenant's son. Actual cost for replacing the two broken by the tenants was \$30 and I allow that amount.

Damage to yard and unmaintained shrubbery and tree - \$1,000. As no evidence of this claim was presented at the hearing, this part of the claim is dismissed.

Landlord's time and efforts - \$2,500. There is no provision in the *Act* to compensate parties for items that may be designated as a cost of doing business. Therefore, this part of the claim is dismissed.

Legal and filing fees \$350. There is no provision in the *Act* to compensate a party for legal fees but I do find that the landlord should recover his filing fee from the tenant and allow the \$100 fee.

Thus, I find that the landlord is entitled a monetary order, including authorization to retain the security deposit in set off, an amount calculated as follows:

December 20 th rent	\$1,500.00
January 20 th rent	1,500.00
Linoleum repair/replacement	1,200.00
Repair/repaint walls & ceilings	2,000.00
Repair/replace doors & hardware	300.00
Replace fridge & stove	550.00
Clean carpets	160.00
General cleaning	200.00
Repair kitchen cupboards	160.00
Clean/repair blinds	165.00
Repair fence	30.00
Filing fee	<u>100.00</u>
Sub total	\$7,865.00
Less retained security deposit	- 675.00
Less interest (Jan. 2/07 to date)	- <u>19.87</u>
TOTAL	\$7,170.13

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for \$7,170.13, enforceable through the Provincial Court of British Columbia, for service on the tenant.

As noted, the landlord remains at liberty make application for incomplete repairs and additional costs as indicated.

February 23, 2009

Dispute Resolution Officer