



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MND, MNDC, & FF

Introduction:

This hearing dealt with an application by the landlords for a monetary claim due to loss or damage under the *Act* and damage to the rental unit. Although the tenants were served with notice of this hearing and application by registered mail on December 31, 2008, the tenants did not appear for the hearing. I accept that the tenants received notice of this hearing on the 5th day after the registered mail was sent. I proceeded with the hearing in the tenants' absence.

Issues to be Determined:

Are the landlords entitled to a monetary claim for damage to the rental unit? Are the landlords entitled to loss of rental revenue for December 2008 and January 2009?

Background and Evidence:

This tenancy began on August 1, 2004 for a one year lease. The tenancy then reverted to a month to month tenancy. The currently monthly rent is \$1,550.00 and the tenants paid a security deposit of \$725.00 on July 7, 2004.

This tenancy ended after an Order of Possession was issued to the landlords on November 25, 2008 due to non-payment of rent by the tenants. The landlord stated that the tenants did not actually vacate until approximately December 1, 2008.

The landlords submit the following damages resulting from the tenants' failure to comply with the tenancy agreement by smoking in the rental unit and damaging the rental unit:

Replace carpets due to stains and burns	\$3,699.70
Cost to paint rental unit – stained and smell due to smoking	\$2,900.00
Replace and install 3 doors damaged	\$467.33
Cost of new kitchen faucet and kitchen light fixtures and key replacement	\$293.39
Replacement of range hood filter, fuse box cover and repair to stove	\$188.33
Loss of rent for December 2008 and January 2009	\$3,100.00
Recovery of filing fee paid for application	\$100.00
Total	\$10,748.75

Analysis:

The landlords provided documentary evidence in support of their application including photographs, copies of the tenancy agreement, a copy of the breach letters regarding smoking dated March 17, 2007 and May 12, 2007, and receipts for expenses claimed.

Relevant Law and Policy:

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.

In response to my questions the landlord confirmed that the carpets in the rental unit were new in approximately December 2003 and that the rental unit was last painted at the same time. Therefore, an assessment of damages to these areas would reflect

depreciation of value for six years of use. Generally, a landlord is expected to repaint a unit every 7 years and replace carpets every 10 years.

I accept the evidence presented to me that the tenants were in breach of the tenancy agreement by smoking in the rental unit and I am also satisfied that the tenants failed to return the rental unit in a clean and undamaged condition at the end of the tenancy. I accept that the landlord had to prematurely replace the carpets and paint the rental unit due to the damage caused by the tenants.

However, I only grant the landlord a portion of the amounts claim as depreciated by the loss of value of the carpet and paint. I only grant the landlord the sum of $1/7^{\text{th}}$ of the cost of the painting, or the sum of \$414.28 and $4/10^{\text{th}}$ the value of the carpet replacement, or the sum of \$1,479.88.

I accept the evidence of the landlord that the three damage doors were replaced in December 2003 and the photographic evidence that they are now damaged. I grant the claimed cost to replace and install for \$467.33.

The landlords submitted that the kitchen faucet was replaced in 2006 and that the tenants took it when they vacated leaving the old faucet. I do not accept this claim. The landlords have not provided any evidence to support this position. I have no evidence of the purchase of a new faucet in 2006 or any evidence to show that the tenants took the faucet. Similarly, I have no evidence to support the allegation that the tenants took the light fixtures.

I also deny the landlords request for reimbursement to change the filter in the range hood and cover for the fuse box. I find that it is an expected expense for the landlords to change the filter and I have no evidence showing the damaged fuse box. I do; however, accept the cost for parts related to fixing the damage stove drawer for the sum of \$61.11.

I also find that the loss of two months rental income is a reasonable loss given the requirement to replace the carpets and paint the rental unit. I grant the landlords' claim for lost rental revenue for the sum of \$3,100.00. I also grant the landlords request to recover the \$100.00 filling fee paid for this application from the tenants.

Conclusion:

I have found on the preponderance of evidence that the landlords have established a total monetary claim for the sum of \$5,622.59. I grant the landlords a monetary Order for the sum of **\$5,622.56**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated February 19, 2009.

Dispute Resolution Officer