



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD, MNDC, MND and FF

Introduction

This application was brought by the landlords seeking a Monetary Order for damages to the rental unit and losses incurred at the end of the tenancy and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a matter of note, this tenancy was the subject of a hearing on January 13, 2009 on the tenant's application. The landlord did not appear and the tenant was awarded return of her security deposit in double plus interest and the filing fee.

Issue(s) to be Decided

This matter requires a decision on whether the landlords have proven damages and losses. that the tenant was responsible for those, and that he amount claimed is the actual or appropriate cost of remediation.

Evidence

This tenancy ran from January 2, 2008 to January 31, 2009. Rent was \$950 per month and the landlord had given notice of a rent increase to \$985.15 to take effect on February 1, 2009. The landlords hold a security deposit of \$475 paid on January 2, 2008. The rental building, a basement suite in the landlord's home, is seven or eight years old.

During the hearing, landlords gave evidence that the tenant had posted a Notice to End Tenancy on their door on December 31, 2008 which they acknowledged having read late that day. The tenant did not pay the rent for January, and the landlords served a 10-day Notice to End Tenancy on January 2, 2009.

Subsequently, they began newspaper and internet advertising of the rental unit. New tenants moved in on March 1, 2009.

Claims and Analysis

The landlords claim and I find as follows:

January rent - \$950. The landlords stated and the tenant did not contest that she had not paid the rent for January 2009. She stated that she had not been well on January 1, 2009 and could not deliver the rent. However, that would not explain why the rent had not been paid within the five days allowed after the Notice to End or why it remained unpaid at the time of the hearing. Therefore, this claim is allowed in full.

February loss of rent - \$985.15. (Note: the properly served Notice of Rent Increase would have come into effect Feb. 1/09.) The landlord claims loss of rent for February on the grounds that:

1. the tenant had served by posting and therefore notice was deemed to have been received three days late;
2. the tenant had not cooperated in their efforts to show the rental unit to prospective tenants;
3. the tenant had further complicated matters by stating she was moving on January 10, 2009 and again on January 14, 2009 but did not moving on either date making the landlords fearful to commit to a new tenant until they had certain possession (the landlords had applied for an Order of Possession but the hearing was scheduled for mid-February);
4. the tenant left the rental unit in a condition that required a degree of cleaning and repair that made occupancy in early February impossible.

The tenant contested the all of these positions.

I reject the cause of late notice as the landlords acknowledged they had received and read the tenant's notice on December 31, 2008. As to the other causes, the landlords had diarized each instance claimed and I find the evidence of the landlords to be the more credible. Therefore, I find that tenant's failure to cooperate fully with the landlords' efforts to find new tenants for February 1, 2009 caused the loss of rent for February and this part of the claim is allowed.

Replacement of back door – \$408. The landlords claim replacement cost for a pre-hung back door on the grounds that they had approved installation of an electric cat door by the tenant, and the tenant had installed a lower cost non-electric version. They stated, substantiated by photographic evidence and earlier correspondence to the tenant that it had not worked properly and was often stuck open leading to loss of heat paid for by the landlords.

The tenant stated that she had had a friend install it for her and that the landlords had not specified that the cat door must be electric. The landlords were adamant that they had been specific in their approval and the Condition Inspection report records approval of an “electric door” approved on March 8, 2008. .

I find that, having approved installation of a cat door, the landlords are not entitled to the full replacement cost for a pre-hung door. However, I find that they are entitled to the equivalent amount of the electric door for which they had given approval.

I accept the evidence of the landlords that such doors are valued at \$120 plus installation and tax. I find that the landlords are entitled to \$160 on this claim.

Toilet seat - \$32.45. The landlords claim that the tenant called them very early in the tenancy and advised that her granddaughter had broken the toilet seat. The tenant’s sister gave evidence that she had viewed the rental unit at the beginning of the tenancy and that the toilet seat was already broken.

I give the benefit of the doubt to the tenant on this question and dismiss this part of the claim.

Piece of co-axial cable - \$10. The landlords stated that they had provided the tenant with a piece of co-axial cable at the beginning of the tenancy that went missing at the end. Given that such is a consumable item, its minimal value and some uncertainty as to its whereabouts, I dismiss this part of the claim.

Garbage removal - \$25. The landlords make this claim for garbage removed at the end of the tenancy including their gas, but the parties strongly disagree on the amount of garbage left behind.

Given the difficulty of quantifying the cost of this relatively small expense and given the lack of dump receipt, this part of the claim is dismissed.

Missing freezer wrack - \$84. The landlords claim for a freezer wrack missing from the refrigerator at the end of the tenancy for which replacement cost is \$84. The tenant denies all knowledge of it, but did state that five persons assisted her with moving. I find, on the balance of probabilities, that the wrack went missing during the move and allow this part of the claim in full.

Carpet cleaning – \$221.76. The landlords claim and I find they are entitled to recovery of a professional carpet cleaning in this amount.

Door key - \$4.46. The tenant concurred that she had returned only one of two keys and this claim is allowed.

General Cleaning - \$187.50. The landlords make this claim for 7.5 hours of cleaning at \$25 per hour. On the basis of photographic evidence, I find this claim to be reasonable and in keeping with norms. It is allowed in full.

Patching holes in walls - \$150. The landlord claims five hours work at \$30 per hour for patching and retouch numerous holes in the walls. On the basis of photographic evidence, I find that the holes are somewhat beyond normal wear and tear and allow \$50 for this part of the claim.

Filing fee - \$50. I find that the landlords have succeeded in large and that they should recover their filing fee from the tenant.

I dismiss the landlords' claims for personal costs such as travel, time off work, loss of utilities as natural costs of doing business..

Finally, I find that the landlords are entitled to a Monetary Order, including authorization to retain the security deposit in set off, calculated as follows:

January rent	\$ 950.00
February loss of rent	985.15
Replacement of back door	\$160.00
Missing freezer wrack	84.00
Door key	4.46
Carpet cleaning	221.76
General cleaning	187.50
Patching walls	50.00
Filing fee	50.00
Sub total	\$2,692.87
Less retained security deposit	- 475.00
Less interest (Jan. 29/08 to date	- 7.11
TOTAL	\$2,210.76

Thus, the landlords are authorized to retain the security deposit and interest in set off and, in addition, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$2,210.76 for service on the tenant.

March 6, 2009.

Dispute Resolution Officer