



Dispute Resolution Services

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

DECISION

Dispute Codes: MND and FF

Introduction

This application was brought by the landlord on seeking a Monetary Order for damages to the rental unit and recovery of the filing fee for this proceeding.

As a matter of note, this tenancy was the subject of a hearing on the tenants' application on January 14, 2009 in which the tenants given a monetary order for return of the unrelinquished portion of their security deposit in double under section 38(6) of the *Act* and one month's rent under section 51(1) of the *Act*.

Issue(s) to be Decided

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

Evidence

This tenancy ran from April 28, 2006 to October 31, 2008, although move-out was delayed until November 1, 2008. The landlord held a security deposit of \$475, the disposition of which was dealt with in the previous hearing.

There were no condition inspection reports completed at either the beginning or the conclusion of the tenancy, although the parties met at the rental unit on the morning of November 1, 2008, were in conflict, and the move out was completed in the after noon.

This tenancy had ended on a Notice to End Tenancy for landlord use on the landlord's intention to have his mother move in to the rental unit. While her subsequent illness made that impossible, the tenants claim that the landlord had told them not to be concerned about some damages now claimed as he intended to renovate. The landlord stated that they had misunderstood his efforts to conclude an unpleasant exchange and defer contested items. The landlord stated he had considered simply absorbing his losses until the tenants made their application.

Both parties submitted photographs of the rental unit with markedly different depictions, the landlord's having been taken in the morning and the tenant's having been taken in the late after noon after they had cleaned.

Claims and Analysis

The landlords claim and I find as follows:

Bathroom drywall repair - \$75. The landlord gave evidence that he had to repair a large crack in the bathroom wall. The tenants stated that the crack had been there when they moved in and that it would have been recorded if the landlord had conducted a move-in inspection. In spite of evidence from the former tenant (currently a tenant in another of the landlord's properties) stating the house was in excellent condition when he left, I find that the landlord has not proven the subject tenants caused the crack in question. This part of the claim is dismissed.

Repair hole in hall and repaint - \$150. The tenant concurred that the hole was his responsibility and, irrespective of the landlord's comment that he intended to renovate, I find that the tenants are responsible for this repair. The landlord claims \$75 each for patching the hole and the consequent necessity to repaint the hall. The full claim of \$150 is allowed.

Repaint child's bedroom - \$75. The tenants had, with the landlord's permission, repainted a child's bedroom in very bright colors. The tenants stated that they had intended to repaint the room and had left painting materials. The landlord stated that it took three coats to restore the room to more conventional colors. I find that this claim is reasonable and allow it in full.

General cleaning - \$137.50. The cleaner gave evidence that she had done five and one-half hours work on the rental unit between November 14th and 15th. She said it included cleaning behind the fridge and stove and cupboards. The tenants stated, supported by their photographic evidence, that they had cleaned thoroughly, although they had not moved the fridge and stove for fear of damaging the floor. They also argued that the cleaning took place two weeks after the tenancy ended and very likely included some cleanup resulting from the landlord's work in the rental building. I find that the tenants are responsible for \$80 of this claim.

Blinds - \$868. The landlord claims this amount for replacement of blinds broken by the tenants. The tenants gave evidence that when they moved in, some of the blinds were in the bathtub, were in poor condition and broke when they attempted to reinstall them. Another fell down on its own. The tenants replaced some blinds at their own cost and left two of those when they vacated.

In the absence of condition inspection reports, I find that the landlord has not met the required burden of proof and this part of the claim is dismissed.

Yard cleaning in October 2006 - \$495. The landlord hired a gardener five months into the tenancy to clean up the yard. The tenants stated that their agreement for yard work was limited to lawn mowing which the gardener did not do on this occasion. I find that the landlord has not proven that the tenants should be responsible for this claim and it is dismissed.

Yard cleaning in December 2008 - \$665. The landlord submitted an invoice from a landscaping company dated December 1, 2008 for \$1,377, \$700 of which was attributed to the landlord and \$665 if which was attributed to the tenants.

The landlord's photographs, and evidence of a neighbour, clearly establish that the grounds were subject to severe neglect for some period of time. While I find that the tenants are responsible for some portion of this billing, I find that the amount claimed would exceed the damage resulting from their failure to mow the lawn.

However, I do find the tenants are responsible for \$350 of the cost of the yard remediation.

Filing fee - \$50. Having found merit in the landlord's application, I find that he should recover the filing fee for this proceeding from the tenants.

Thus, the landlord's copy of this decision is accompanied by a Monetary Order calculated as follows:

Repair hole in hall wall and repaint	\$150.00
Repaint child's bedroom	75.00
General cleaning	80.00
Yard cleaning in 2008	350.00
Filing fee	50.00
TOTAL	\$705.00

Thus, 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 \$705 for service on the tenants.

For the convenience of the parties and in the event they wish to conclude matters expeditiously, the difference between the previous award to the tenants and the current award to the landlord is as follows:

Previous award to tenants	\$1,703.44
Present award to landlord	- 705.00
Balance owed to tenants by landlord	\$ 998.44

March 11, 2009.

Dispute Resolution Officer