



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages, unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

This hearing was also scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for compensation for damages and return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

I have determined that portions of late evidence supplied by the parties will not be considered in determining the outcome of this hearing. Neither party served the other with photographs submitted as evidence; therefore, these photographs were not considered in my decision. The only evidence submitted and served to the other party within the time frame required by the Residential Tenancy Branch Rules of Procedure were the documents submitted by the landlord in August 2009. I did reference a copy of the residential tenancy agreement that both parties acknowledge as accurate and documents which both the landlord and tenants had signed, that were referenced and established as accurate during the hearing.

On December 1, 2009 the tenants submitted an amended application for dispute resolution, decreasing their monetary claim from \$5,814.00 to \$4,448.00. This amended application has been accepted as I find it is not prejudicial to the landlord.

The parties were at liberty to provide oral testimony referencing any late evidence that has been excluded.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation in the sum of \$3,983.00 in damages and/or loss?

Are the tenants entitled to return of the deposit paid to the landlord?

Is the landlord entitled to monetary compensation in the sum of \$4,495.00 in damages and/or loss and retention of the deposit held in trust?

Is either party entitled to filing fee costs?

Background and Evidence

This tenancy commenced on November 1, 2007. On September 1, 2008, the parties signed a one year fixed term agreement which commenced on August 1, 2008. This agreement was to convert to a month-to-month agreement at the conclusion of the fixed term. A deposit in the sum of \$575.00 was paid on November 3, 2007. Rent was \$1,350.00 per month, as indicated on the fixed-term tenancy agreement.

The tenants moved out at the end of July 2009; the parties agree that no move-in or move out condition inspections were completed.

The tenants have made the following claim:

Replace upstairs flooring	3,591.00
Labour, install downstairs flooring	700.00
August 2008 to May 2009 illegal rent increase, \$50.00 per month	500.00
Security deposit return	575.00
Filing fee	50.00
	5,808

I note that the amount claimed by the tenants differs from the amount indicated on their amended application for dispute resolution.

The landlord has made the following monetary claim:

Replace patio screen	55.00
Clean stove	60.00
Pick up dog dirt	25.00
Clean carpets	180.00
Replace 3 bedroom carpets	571.00
Cleaning	150.00
Patio door curtains missing	140.00
Paint interior of house	2,200.00
Front window curtains missing	200.00
Rent owed for May, June, July 2009 \$200.00 per month	600.00
Loss of rent revenue ½ August 2009	675.00
	4,916

At one point during the tenancy the tenants showed an interest in possibly purchasing the home. During the tenancy the tenants completed some renovation work on the rental unit; much of which forms the basis of the tenant's dispute.

The landlord testified that at the end of the tenancy the patio screen required replacement and that at the start of the tenancy the fireplace was clean and left dirty at the end of the tenancy.

The landlord testified that the tenants did not clean the stove and that dog excrement was left in the backyard.

The landlord testified that the carpets were last replaced in 2005 and that due to soiling by the children and dog they had to again be replaced. The landlord stated that he first cleaned the carpets and then decided to replace them.

The landlord stated that he hired a cleaning service on August 15 who cleaned the stove, fireplace and the rest of the house.

The landlord testified that the claimed window coverings were missing after the tenants moved out and he found that they had been used a drop cloth for painting. The landlord stated that his new tenant has purchased window coverings.

The landlord stated that the tenants painted the rental unit without his authorization. The landlord testified that he paid \$3,000.00 for painting, of which \$2,000.00 was for interior work.

The tenants testified that they did not use the fireplace during the tenancy and that it was dirty when they moved in. The tenants stated that they hired a cleaning company at the end of the tenancy and paid \$120.00 for this service. The tenants denied leaving the rental unit in an unclean state.

The tenants stated that they spoke to the landlord about the curtains as they were torn on the bottom and had cigarette burns and that the landlord had agreed the tenants could remove the curtains, which were left in a cupboard.

The tenants stated that the screen was damaged when they moved into the rental unit and that they picked up all of the dog dirt in the yard.

The tenants testified that with the landlord's permission they had completely painted the rental unit. By April 2009 they had painted all but part of a feature wall as they felt they had put too much effort into the unit and were not going to purchase the home. The tenants stated that the landlord viewed the painting and had told them not to worry about completing the final wall. The tenants stated that the landlord did not want to reimburse them for the cost of painting.

In relation to their claim for rent reimbursement, the tenants referenced a March 31, 2008 agreement signed by each party providing the tenants with a rent reduction during a period of time when they had hoped to purchase the home. This addendum indicated that the tenancy agreement of November 2007 was replaced and that effective April 1, 2008 the tenants were to pay \$1,300.00 per month. The tenants are claiming reimbursement of \$50.00 per month from April 2008 to July 2009 as they paid \$1,350.00 per month, not the agreed upon \$1,300.00.

The tenants also supplied an addendum signed by each party dated August 1, 2009 which replaces a February 1, 2008 agreement. The August 1, 2008 addendum indicated the tenants wanted the security of a one year lease and that they now agreed to pay \$1,350.00 per month rent.

The tenants are claiming reimbursement for costs covering labour and supplies for work they completed in the rental unit. The tenants stated that there was no written agreement indicating that this work formed part of the tenancy. The tenants claimed that the landlord owes them \$2,171.00 in labour costs and that there was verbal agreement these costs could be deducted from rent owed at the rate of \$200.00 per month until the debt was paid.

The landlord stated that on May 14, 2009, he gave the tenants a cheque in the sum of \$200.00 which was to recognize labour provided for installation of flooring which the tenants had wanted. The landlord stated that he also purchased flooring costing \$555.53, for the upstairs portion of the home. The landlord denied that he agreed to provide the tenants with rent abatement totalling \$2,171.00 and that the work completed by the tenants was at their own cost.

The landlord stated that the tenants underpaid their May, June and July 2009 rent by \$200.00 per month. The tenants countered that they did not pay this amount as they had a verbal agreement with the landlord that rent reductions would be given in lieu of labour provided by the tenants.

During the hearing the tenants agreed that they provided the landlord with verbal notice at the end of June and written notice one week later that they would move out July 31, 2009. The landlord stated that he received the written notice on July 6, 2009, and is claiming loss of revenue for August as he was not able to locate tenants for September 1, 2009.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the landlord's claim for damages to the rental unit, I find that the landlord has failed to provide any verification of his claim for monetary compensation. The landlord has not provided any receipts for costs incurred and failed to complete a move-in condition inspection which would have provided a record of the state of the rental unit at the start of the tenancy. The landlord did not ensure that a move-out condition inspection was completed at the end of the tenancy and, in the absence of a preponderance of evidence supporting the claim, I dismiss without leave to reapply the portion of the landlord's application for damages to the rental unit. I also base this decision on the tenant's testimony that they hired a cleaning company in order to ensure the unit was clean at the end of the tenancy.

In relation to the landlord's claim for loss of a portion of August 2009 rent, Section 52 of the Act requires a tenant to give a landlord written notice to end a tenancy. This fixed-term tenancy was to convert to a month-to-month tenancy effective September 1, 2009. The tenants have failed to provide the landlord with proper written notice at least one day in advance of the day in which rent is due, as required by section 45 of the Act. The written notice provided on July 6, 2009, would have been effective August 31, 2009, therefore; I find that the landlord is entitled to loss of one half of August 2009, rent revenue in the sum of \$675.00.

The tenants have claimed a rent overpayment in the sum of \$50.00 per month from April 2008 to July 2009. I find, based upon the written addendums referenced during the hearing, which were signed by both parties, that in March 2008 there was written agreement rent would be \$1,300.00 per month and that this superseded the November 2007 tenancy agreement.

I find that effective August 1, 2008 the tenants and landlord made written agreement that they would enter into a one year lease and rent would be \$1,350.00 per month. Therefore, I find that the tenants are entitled to rent reimbursement in the sum of \$200.00 for the excess rent paid from April to July, 2008, inclusive and dismiss without leave to reapply the balance of the claim for rent reimbursement.

In relation to the tenant's claim for compensation for work completed to the rental unit, I find that the parties entered into an agreement which was not part of this tenancy. There is no written record of any rent abatement that would be due to the tenants and neither the original tenancy agreement or the two addendums referenced during the hearing contain any reference to rent reductions for labour or work completed to the rental unit. The landlord did provide the tenants with one cheque for work completed, which I find supports the landlord's claim that he was only providing the tenants with recognition of work they chose to complete of their own volition.

I also base this decision on Section 6(3) of the Act, which provides:

- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Therefore, I find that the remedy sought by the tenants does not fall within the Residential Tenancy Act and I dismiss without leave to reapply the portion of their related to labour, supplies and repairs.

I find that the landlord was entitled to rent in the sum of \$1,350.00 per month and that the he is entitled to compensation for unpaid rent in the sum of \$600.00 for May, June and July 2009.

The following claims have been accepted:

Tenant Claim	Claimed	Accepted
Supplies for downstairs flooring	392.00	0
Labour, install downstairs flooring	700.00	0
August 2008 to May 2009 illegal rent increase, \$50.00 per month	500.00	200.00
Security deposit return	575.00	0
Filing fee	50.00	0
	5,808	200.00

Landlord Claim	Claimed	Accepted
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Clean fireplace	60.00	0
Clean stove	60.00	0
Pick up dog dirt	25.00	0
Clean carpets	180.00	0
Replace 3 bedroom carpets	571.00	0
Cleaning	150.00	0
Patio door curtains missing	140.00	0
Paint interior of house	2,200.00	0
Front window curtains missing	200.00	0
Rent owed for May, June, July 2009 \$200.00 per month	600.00	600.00
Loss of rent revenue ½ August 2009	675.00	675.00
Total	4,916	1,275.00
Less deposit plus interest 576.39		698.61
Less amount owed to tenants 200.00		498.61

The landlord failed to complete a move in or move out condition inspection as required by sections 24(2) and 36(2) of the Act. However, section 72(2) of the Act allows a dispute resolution officer to order payment to a landlord from a tenant from any deposit held in trust by the landlord. I find that the landlord may retain the deposit plus interest in partial satisfaction of the claim for compensation. The amount owed to the tenants has been set off against the landlord's claim, resulting in a balance owed to the landlord in the sum of \$498.61.

As each of the claims has been partially successful I find that neither party is entitled to filing fee costs.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,275.00, which is comprised of loss of rent revenue and unpaid rent.

I find that the landlord may retain the deposit plus interest in the sum of \$576.39 as provided by section 72(2) of the Act.

I find that the tenants are entitled to compensation in the sum of \$200.00 for rent paid that was not owed and that this sum is deducted from the amount owed to the landlord.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$498.61**. In the event that the tenant does not comply with this Order, it may be served

on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of each of the claims is dismissed without leave to reapply.

I find that neither party is entitled to filing fee costs.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 22, 2009.

Dispute Resolution Officer