



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, & FF

Introduction

This hearing dealt with an application by the landlord seeking compensation related to loss suffered to clean and repair the rental unit after this tenancy ended. The landlord also seeks to retain the tenant's security deposit in partial satisfaction of this claim.

The landlord appeared and provided affirmed oral testimony and submitted documentary evidence in advance of the hearing date. The landlord testified that the tenant was served with notice of this hearing and all evidence by registered mail on June 24, 2010.

Based on the landlord's testimony, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*. I proceeded with the hearing in the tenant's absence.

The tenant provided documentary evidence and a written submission which I have considered as part of this decision.

Issues(s) to be Decided

Did the tenant fail to return the rental unit in a clean and undamaged stated at the end of the tenancy pursuant to section 32 of the *Act* entitling the landlord to monetary relief?

Background and Evidence

This tenancy began on September 1, 1998 for the monthly rent of \$500.00 and a security deposit of \$250.00. The tenant was also required to pay one third of the utility costs per month. The tenancy ended on March 31, 2010; however, the tenant actually vacated the rental unit by March 15, 2010.

During the course of the tenancy the landlord increased the rent on three occasions. The landlord acknowledged that the rent increases were not completed in accordance with the *Act* but were verbal agreements between friends. It appears from receipts provided in the tenant's evidence that the rent was raised to \$650.00 around November 2009 and that the tenant began paying 50 percent of the utilities in December 2009. Beginning January 2010 the tenant's rent was raised to \$725.00 and he was required to pay one half of all the utility costs. This was because the tenant had another occupant living with him in the rental unit.

The landlord stated that he was appalled by the condition of the rental unit at the end of the tenancy. The landlord stated that the rental unit needed to have every wall washed to remove nicotine staining and that all of the carpets throughout the rental unit had been burned repeatedly by cigarettes. In addition, the rental unit required extensive cleaning. The landlord replaced all the carpets and repainted the entire rental unit. The landlord also stated that there were significant holes made in the wall of the bedroom and behind the fridge. The tenant failed to return the keys to the rental unit, including the mail box key. There was one damaged window screen which the landlord also repaired. The landlord withdrew his claim for the cost to repair the home security system as he had not yet completed this repair.

The landlord confirmed that the carpets were over 10 years old and that the rental unit had not been painted at all during the 11 years tenancy.

The landlord seeks the following claim in damages against the tenant:

Replacement of carpet in rental unit (receipts does not provide a breakdown of material and labour)	\$1,740.74
Labour cost to repaint rental unit	\$1,820.00
Cost of paint and painting supplies	\$295.23
Labour cost to wash walls to remove nicotine staining in preparation of painting	\$130.00
Labour and material cost to repair large hole made in bedroom wall and in the wall behind the fridge	\$240.00
Cost and supplies to clean stove	\$45.00
Replacement of rental unit keys and mail key	\$48.30
Replacement of damaged window screen	\$25.00

Unpaid utilities based on 50%	\$199.64
Loss of April rent due to completing repairs	\$650.00
TOTAL	\$5,338.16

Although the tenant did not appear for the hearing, he did provide a written submission which included the copies of some of the rent receipts issued by the landlord. In the written submission the tenant submits that according to *Residential Tenancy Policy* the carpet in the rental unit had no value as it was beyond the useful life of 10 days and the paint in the rental unit was beyond the normal life of 4 years. As a result, the tenant rejects the landlord's position that he is responsible for the total replacement cost. The tenant also submits that the landlord has failed to give rent increases in accordance with the *Act*. According to the tenant's written submission the rent was increased from \$500.00 to \$575.00 in April 2008 and then to \$650.00 in December 2009 and again to \$725.00 in January 2010. The landlord failed to give three months notice and the increases were beyond the allowable amount and were more than the one rent increase allowed in a 12 month period. The tenant submits that he was required to pay 50 percent of utility costs as of as of November 2009.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the *Act*.

Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I

have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

In the circumstances before me, it is clear that the landlord has operated this tenancy based on a causal friendship and the landlord has been unaware or ignorant of his rights and obligations under the *Act*.

Sections 41, 42, and 43 of the *Act* outline the requirements and obligations of landlord's when increasing the rent. The *Act* requires that the landlord give proper notice on an approved form and the *Act* regulates how much a landlord is permitted to increase the rent per year and a process to increase the rent by a sum greater than permitted. The *Act* also provides that only one rent increase can occur in a 12 month period.

From the evidence provided by both parties, I am satisfied that the landlord failed to comply with sections 41, 42, and 43 of the *Act* when he entered into verbal agreements with the tenant to increase the rent and change the amount of utilities payable by the tenant. Pursuant to section 43 of the *Act*, any agreement between the landlord and the tenant to increase the rent to amount greater than allowed by section 42 must be in writing. In addition the landlord is still required to provide three months notice and notice must be on the approved form.

As a result, I find that the tenant's monthly rent should have remained at \$500.00 throughout the whole tenancy and that the tenant was only required to pay one third of the cost of utilities. The rent increases in April 2008, November 2009 and January 2010 contravened the *Act* and are not enforceable. The tenant is at liberty to file an application for Dispute Resolution to recover the sum of rent paid due to rent increases which did not comply with the *Act*.

For the purpose of the application before me, I find that the amount of possible rent and utilities owed to the landlord can only be based on the original tenancy agreement or at \$500.00 monthly rent and one third of utility costs. The landlord has claimed that the outstanding utilities owed, based on 50 percent, is \$199.64. The Hydro bill provided by the landlord shows a total of \$348.48 so based on one third the tenant owes the sum of \$116.16. In the absence of any other utility bill, I find that the tenant owes the landlord the sum of \$116.16 for outstanding Hydro.

I accept the landlord's claim of \$45.00 for cleaning the stove and for cleaning supplies; I accept the landlord's claim of \$240.00 to repair the damage to the drywall, I accept the cost of \$130.00 for the landlord's labour to wash the nicotine from the walls of the rental unit, I accept the landlord's claim for the replacement of keys for the sum of \$48.30 and

the repair of the window screen for \$25.00. I accept that these items were a result of the tenant's breach of section 32 of the *Act* and I accept that the landlord has demonstrated reasonable value of these losses.

I deny the landlord's claim for the cost to replace the carpeting in the rental unit and to have the rental unit repainted. As argued by the tenant, both the carpeting and the paint in the rental unit have a useful life expectancy and pursuant to section 37 of the policy manual the carpets have a useful life of 10 years and the paint in the unit has a useful life of 4 years. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Therefore, I find that the carpets and the paint in the rental unit were fully depreciated and dismiss the landlord's claim for replacement costs of \$1,740.74 and \$1,820.00 respectively. As noted above, I have accepted that the landlord incurred a loss related to cleaning the walls due to the nicotine staining as this is an addition cost attributable to the tenant smoking in the rental unit.

I find that the landlord is not entitled to compensation for a full month's loss of rent due to completing repairs to the rental unit. The most substantive renovations were the replacement of the carpets and the new paint for the entire unit and these contributed the most to limiting the landlord's ability to find a new tenant for April 2010. However, I find that the tenant did fail to return the rental unit in a clean and undamaged condition due to the burns in the carpet and the nicotine staining on the walls which affected the likelihood that the unit could be rented in a timely manner. For this reason I find that the tenant is responsible for the landlord's loss of half a month's rent, or for the sum of \$250.00.

I find that the landlord has established a total monetary claim for the sum of \$604.46. I deny the landlord's request to recover the filing fee paid for this application as the landlord's claim was largely unjustified and the landlord has been found in breach of the *Act*.

From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$279.48 in partial satisfaction of this claim and I grant the landlord a monetary Order for the remaining balance owed of **\$574.98**.

Conclusion

The landlord's application has been granted in part.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the net sum of **\$574.98**. This Order must be served on the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 12, 2010.

Dispute Resolution Officer