



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MND, & MNSD

Introduction

This hearing dealt with the landlord's application seeking compensation related to costs to clean and repair the rental unit from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the tenants breach the tenancy agreement, *Act* and regulations entitling the landlord to monetary relief?

Background and Evidence

This tenancy began on September 15, 2009 for the monthly rent of \$825.00 and a security deposit of \$412.50 paid on September 12, 2009. The tenancy ended effective August 31, 2010; however, the tenants vacated the rental unit around August 9, 2010.

The landlord is seeking for following losses due to the tenants' breach of the tenancy agreement:

Outstanding rent owed for August 2010	\$825.00
Portion of cost to replace stove	\$159.60
Cost to replace faucet in kitchen	\$91.14
Cost of labour related to cleaning, painting and completing repairs at rental unit	\$130.00
Cost of paint	\$38.25
Cost to dump items left behind by the tenants	\$35.50
TOTAL	\$1,314.49

The landlord submits that the stove in the rental unit had to be replaced because the handle to the oven had been broken by the tenants and a replacement part could not be found. The landlord purchased a used stove and claims half the cost against the tenants. With respect to the cleaning, painting and repairs the landlord stated that they

had to repair the tenants' attempt at repairing the walls. In addition the baseboards were all chipped and the entire rental unit needed to be cleaned. The tenants also left behind bags of garbage and left items in the storage room which had to be disposed of.

The landlord provided a copy of the move out condition inspection report which the tenants signed on August 9, 2010. The report documents that the stove is damaged with a burned out element but no indication of the handle being broken. There is also a note that the kitchen faucet is broken and the drapes were not cleaned. The report also documents that the living room area had some plastering done by the tenant as well as in the bathroom. Otherwise, all other aspects of the rental unit are identified as being satisfactory. There is no indication on the report that the rental unit was not cleaned.

The tenants stated that the oven handle came off when the tenancy began and they were going to fix on behalf of the landlord but did not get around to it. The tenants also stated that the stove was not cleaned because the landlord was replacing it. The tenants denied that the rental unit was left unclean or that any debris was left behind.

The tenants also dispute the rent claimed by the landlord. The tenants stated that they vacated the rental unit early on August 9, 2010 so the landlord could get in and attempt to rent the unit. The tenants understood that the landlord would retain the security deposit for half a month's rent and they would not be responsible for any further loss. The tenants did not have this arrangement outlined in writing and the landlord denies this arrangement. The landlord submitted that if the rental unit could have been rented than the tenants would not have been held to the additional rent; however, the rental unit did not rent.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

In the circumstances before me the parties have provided conflicting verbal testimony. Therefore, I have placed the weight of evidence on documentary evidence, specifically the written move in and move out condition inspection reports. In respect to the tenants' claim that there was a verbal agreement releasing them from their obligation to the rent owed for August 2010, I do not accept this position in the absence of corroborating evidence because the landlord disputes the oral testimony.

I accept that the rental unit required some touch up painting based on the notations in the move out condition inspection that the tenants plastered areas in the living room and bathroom. However, I do not accept that the touch up painting required a full can of paint for the sum of \$38.25 and I only award the landlord half this cost for the amount of \$19.12. The landlord did not provide an itemized breakdown of how much labour was required to complete the painting so I find that it required 1 hour at \$20.00 per hour for the sum of \$20.00. Therefore, I grant the landlord the amount of \$39.12 to complete touch up painting to the rental unit.

I deny the landlord's claim that the rental unit required cleaning. The inspection report does not corroborate the landlord's claim and no other evidence was provided to suggest that the move out inspection report was not accurate. I also deny the landlord's claim for labour related to repairs since the landlord failed to provide any breakdown of the labour between cleaning, painting and completing repairs.

I accept that the stove in the rental unit was in disrepair at the end of the tenancy. I have no evidence from the tenants to confirm that the stove was not in good shape at the start of the tenancy as nothing was documented on the inspection report. Therefore, I accept the landlord's claim that the stove needed to be replaced and I grant the landlord's claim for half the replacement cost for the amount of \$159.60.

I deny the landlord's claim for dumping fees as the inspection report make no note of debris left behind. I also deny the landlord's request to be reimbursed for the cost of the registered mail sent to the tenants as part of processing this application. This is a cost of pursuing a claim and the *Act* only provides that an applicant can be reimbursed the filing fee for the application which I grant the landlord for the sum of \$50.00.



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Finally I grant the landlord's claim for the loss of rent for August 2010 for the sum of \$825.00. The tenants gave a notice to end the tenancy for August 31, 2010 and in the absence of corroborating evidence I do not accept the tenants claim that they were not required to pay the rent owed. I also grant the landlord's request to recover the sum of \$25.00 related to the tenant's cheque having insufficient funds pursuant to the regulations.

Conclusion

The landlord established a monetary claim related to damage to the stove and costs to complete touch up painting to the rental unit and outstanding rent. After retaining the tenant's security deposit in partial satisfaction of this claim, there is an outstanding balance owed to the landlord for the amount of **\$678.66**.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenants for the sum of **\$678.66**. This Order may be served on the tenants. 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: December 24, 2010.

Residential Tenancy Branch