



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by Landlords to the Tenants, was done in accordance with section 89 of the Act, sent via registered mail. The Tenants confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain a monetary order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal tenancy agreement effective May 1, 2010. Rent was payable on the first of each month in the amount of \$975.00 and \$487.50 was paid by the Tenants during the week of April 5, 2010 as the security deposit. A move-in inspection report was not completed however a move-out inspection report was completed on approximately October 12, 2010.

The Landlords testified that they had a verbal lease for a fixed term period of one year

and on September 20, 2010 the Tenants provided them with written notice to end their tenancy effective October 31, 2010. The Tenants did not pay rent for October 2010 and moved out on approximately October 4, 2010. Their forwarding address was included in their notice to end the tenancy.

The Landlords confirmed they re-rented the house as of November 1, 2010 therefore they were reducing their claim for loss of rent down to \$975.00 to cover the lost rent for October 2010. The remainder of their claim relates to the following damages:

- \$150.00 to repair a hole in the hardwood floors. These floors are approximately 60 -70 years old but were refinished on May 24, 2010, as supported by their documentary evidence. They have not repaired the damage and this claim is an estimated cost to have someone come out to repair, re-shine and re-polish the floor.
- \$4,480.00 to repaint the unit. The Landlords stated they had a verbal agreement with the Tenants that they were allowed to repaint the unit but that they had to use neutral colors and to repaint the fireplace mantel. They attended the unit and saw paint samples of the colors the Tenants wanted to use. They approved the colors however once they were placed on the walls in the unit they were a different color so they told the Tenants they would have to repaint to a neutral color at the end of the tenancy. The Tenants had used 7 or 8 different colors inside the unit. This claim is based on an estimate which includes costs to repaint all the walls, ceilings, trim, doors, and exterior window trims to match. The unit has not been repainted.
- \$75.00 for yard maintenance for the month of October 2010. The Tenants vacated the unit prior to the Landlord acquiring new tenants so the Landlords were left to maintain the yard. They could not provide exact dates of when they attended to the yard work however they do know the lawn had to be cut twice and leaves had to be raked.
- \$34.22 to place an advertisement to re-rent the unit. No receipt was provided in their evidence however they testified they had to pay this amount to re-rent the unit.

The Tenants testified and denied entering into a fixed term tenancy agreement. They stated they had a verbal agreement for a month to month tenancy. When they first took possession of the rental property they spent several hours to clean up the "disaster" of trash left in the yard. They knew the house was an older house and they agreed to help the Landlords in getting the unit cleaned up.

When they realized the Landlords were not going to replace the roof they felt the house was not up to code and was unsafe to live in. The Landlords were only interested in patching small leaks as they appeared instead of replacing the rotted out roof. They provided their notice to end tenancy as stated by the Landlords which was effective October 31, 2010; however they felt they could not stay in the unit for risk of the roof falling in so they vacated the property October 4, 2010. They did not pay rent for October 1, 2010 and requested the Landlords keep their security deposit as October rent and to cover the cost of repainting part of the unit.

In response to the Landlords' claims the Tenants stated:

- They did accidentally drop a curtain rod in the doorway between the living room and dining room which caused a small dent in the floor which is about 5 square millimetres. There were no other damages to the floor and they consider this small dent normal wear on a hardwood floor.
- It was the Tenants' understanding that the Landlords approved the paint colors they had chosen. They confirm there was one back bedroom that was not pre-approved colors along with the window trim in their daughter's room that was painted purple. They accept that these two rooms require some painting but that the remainder of the house was painted with pre-approved colors. They did not paint the ceilings and did not paint the fireplace mantel. They are of the opinion that the paint job inside the house was much better after they painted because the previous paint job was a bad job.
- They agreed to maintain the yard while they occupied the unit and are not responsible for the yard maintenance for a period after their tenancy ended.

In closing the Tenants stated they knew this was an old house but that they had no idea it was structurally unsound. They spent many hours cleaning up this property and having to move so soon was a huge loss for them. They feel the amount of their security deposit is the amount they owe the Landlords.

Analysis

I have carefully considered all of the testimony, photos, and the volumes of documentary evidence provided by each party which are pertinent to the issues before me.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said,

section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45 (1) of the Act provides a tenant may end a periodic tenancy by providing the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. The evidence in this case supports the Tenants provided notice to end the tenancy effective October 31, 2010, in accordance with the Act. The being said the Tenants did not continue the tenancy until October 31, 2010, rather they vacated the property October 4, 2010 without paying October 1, 2010 rent.

Section 44 (1) (d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. The evidence supports this tenancy ended October 4, 2010, when the Tenants vacated the property in breach of the Act, causing the Landlords to suffer a loss of rent of \$975.00 for October 2010. Based on the aforementioned I find the Landlords have met the burden of proof of loss of rent and I approve their claim of **\$975.00.**

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 repair or replacement cost by the depreciation of the original item.

The evidence supports the Tenants caused a small dent in the 60-70 year old hardwood flooring and the Landlords based their claim on an estimated amount of \$150.00. This floor has long surpassed its useful life of 20 years, the useful life indicated in the *Residential Tenancy Policy Guidelines*. Based on the aforementioned I find the Landlords provided insufficient evidence to meet the burden of proving the actual

amount required to compensate for the loss or to prove the Tenant's breached the Act, regulation or tenancy agreement for damage over and above normal wear and tear. Therefore I dismiss the Landlords' claim of \$150.00 without leave to reapply.

The Tenants accepted responsibility for having to repaint the window trim in their daughter's bedroom and the four walls in the other back bedroom. The evidence supports the Landlords approved the other paint colors chosen by the Tenants. There is opposing testimony as to the condition of the walls and fireplace mantel at the onset of the tenancy. The Landlords have based their claim on an estimated cost and have not initiated repainting the unit. Based on the aforementioned, and in the absence of a move-in inspection report, I find the Landlords provided insufficient evidence to support the actual cost of their loss. That being said the Tenants have accepted responsibility for part of this claim; therefore, I award the Landlords a nominal amount for painting in the amount of **\$240.00** for labour and materials to paint four walls and one window trim.

The Landlords have sought \$75.00 for yard maintenance for the month of October 2010 but could not provide evidence of the dates and amount of time they spent maintaining the yard. Having found above, that this tenancy ended October 4, 2010, I find the Tenant's obligations to maintain the yard ended on the same date. Therefore I dismiss the Landlords' claim of \$75.00 without leave to reapply.

The Landlords seek \$34.22 for the cost to place an advertisement to re-rent the unit. In the absence of a copy of the advertising invoice I find the Landlords have provided insufficient evidence to support the actual cost of their loss and therefore the claim is dismissed without leave to reapply.

The Landlords have been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Loss of Rent for October 2010	\$975.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,265.00
Less Security Deposit of \$487.50 plus interest of \$0.00	- 487.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$777.50

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Landlords’ decision will be accompanied by a Monetary Order for **\$777.50**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court 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: February 21, 2011.

Residential Tenancy Branch