



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNDC 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

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

The Landlords testified the service of their hearing documents was done in person to the male Tenant's place of employment. The male Tenant was not there at the time so they were left with one of his co-workers who ensured they would be delivered to the Tenant. The male Tenant confirms he received the Landlords' application for dispute resolution March 16, 2010 when a co-worker handed it to him.

The Landlords' evidence was sent registered mail on March 14, 2010 to the male Tenant's place of employment. The male Tenant testified he did not receive the evidence package until March 22, 2010, which he explained was late. After a brief discussion all parties wished to proceed with this hearing today. I advised I would explain which evidence would be considered in my written decision.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective October 15, 2010 which was set to switch to a month to month tenancy after October 15, 2011. Rent was payable on the 15th of each month, based on the written agreement, in the amount of \$2,500.00. A security deposit of \$1,250.00 was paid September 15, 2010.

The Landlords testified that after they entered into the written tenancy agreement the Tenants provided them with two post dated cheques for \$625.00 each and were dated October 15, 2011 and October 23, 2010 for payment of two weeks rent for October. They advised the Tenants requested that they change the date rent was due from the 15th to the 1st of each month as this worked better for them. They were provided with two posted dated cheques for \$2,500.00 each and dated November 1, 2010 and December 1, 2010 respectively. Then on November 1, 2010 the Tenants advised they had written these two post dated cheques on the wrong bank account and asked the Landlords to return them. The Landlords returned the cheques to the Tenants and when they failed to pay the \$2,500.00 for November 1, 2010 the female Landlord continued to attempt to collect the rent. Then on November 20, 2010 the male Tenant met with the female Landlord and handed her a cheque. She said that he told her "this isn't the amount you are expecting but you have our security deposit and we know you aren't going to give that back to us". The cheque was for \$333.33 as supported by the copy they provided in their evidence.

They continued to try and collect the unpaid rent from the Tenants and when that failed they made an application for an Order of Possession and a Monetary Order through the Direct Request process on December 1, 2010. This application was dismissed on December 6, 2010, because they had not filled out the paperwork properly. During this time the Tenants notified the Landlords they would be vacating the property and on December 3, 2010 they met at the rental unit and the keys were returned to the Landlord.

The Landlords confirmed they did not conduct move-in or move-out inspection reports as they did not know they were required. They are seeking monetary compensation for unpaid rent, late payment fee calculated at 15% per day, \$200.00 for cleaning the house and \$540.00 for painting one bedroom. The Landlords testified the Tenants did not clean the house and that they painted a bedroom a lime green color, leaving tape stuck all over, which is a breach of their tenancy agreement. This is supported by their photographic and documentary evidence. They provided copies of invoices for the cleaning and painting for the work that was performed during the month of December 2010.

The Tenants testified they made no verbal agreement with the Landlords to change the payment due date of their monthly rent payment. They claim they wrote two postdated cheques dated November 15, 2010 and December 15, 2010. They argued they gave the Landlords \$1,250.00 in cash plus \$1,250.00 in a cheque on October 15, 2010. They did not have evidence to support they paid \$1,250.00 in cash.

The Tenants argued they left the property December 2, 2010 because they had their new place by November 30, 2010 and they held onto the keys until December 3, 2010 because the Landlord was not able to meet them on the second. When they met the Landlord to return the keys nothing was mentioned about a move out inspection.

They claim they cleaned the unit so why would the Landlord pay a company to clean the unit. They also state that there was no move-in inspection report so the Landlord could not prove they painted the bedroom. They later stated the bedroom was that green color when they moved into the unit and the Landlords had agreed to fix it for them after they moved in. They pointed out that the Landlords provided photos which show the green bedroom, with no tape, and questioned why they did not provide photos of the rest of the house if it was dirty.

The Tenants questioned the credibility of the invoices provided in the Landlords' evidence and the letter from their previous landlord. They claim the invoices are not valid, the address of the painter is not valid, the cleaner is not a professional cleaner, there is no GST number, and the postal code is incorrect on the invoice. They state their previous landlord is these Landlords' friend so her letter should not be considered.

When I asked the Tenants why they paid \$333.33 on November 20, 2010 they said they had previously given the Landlord cash in the amount of \$1,085.00 and the Landlord refused to give them receipts for the cash payments. When we reviewed the previous payments made the Tenants' changed their previous testimony about providing one cheque of \$1,250.00 in October 2010, to two cheques of \$625.00 each.

The Tenants stated they provided the Landlords with verbal notice to end their tenancy and had found tenants to sublet the unit but the Landlords refused. They questioned the return of their security deposit when they handed their keys back and the Landlord laughed and said they were not getting it back. They claim they asked the Landlord to use the male Tenant's work address as their forwarding address and this address was provided with their information when they first applied to rent the house so their forwarding address was provided in order to return their security deposit. The Tenants requested that my decision be sent to them at their new address as listed on the first page of this document.

In closing the Landlords stated they tried to work with the Tenants until they were stabilized; however the Tenants switched from being nice to irate. Their previous landlord is not a friend of theirs. The bedroom was not painted green at the onset of the tenancy and the Landlords have several neighbors that can testify to that. This experience was their first for renting their home and they stated they will never do this again.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

A significant factor in my considerations is the credibility of the Tenants. I am required to consider the Tenants' evidence not on the basis of whether their testimony "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Tenants contradicted their own testimony during the hearing as follows: 1) when arguing the Landlord's evidence should not be considered because it was sent to the male Tenant's work address causing delay in receiving it; 2) later testifying they should be returned their security deposit because they provided their forwarding address, the male Tenant's work address; 3) initially stating they provided cash of \$1250.00 and one cheque of \$1250.00 for October 15 to November 14, 2010; 4) later testifying they provided two cheques of \$625.00 each; only after the Landlord stated they could provide additional evidence to support this. The Tenants' arguments were primarily an attack on the veracity of the Landlords rather than documentary evidence to support their testimony. As per the aforementioned, I favour the Landlords' evidence over the Tenants and I will consider all of the documentary evidence before me in accordance with section 3.5 of the *Residential Tenancy Branch Rules of Procedure*.

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(2) of the Act provides that a tenant may end a fixed term tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement. In this case the end of the fixed term tenancy was October 15, 2011; therefore the Tenants could not provide notice to end this tenancy prior to this date.

The evidence supports the Landlords issued a 10 Day Notice to End Tenancy for unpaid rent and applied through the Direct Request Process to obtain an Order of Possession on December 1, 2010. I accept that on a balance of probabilities, it was the Landlords' actions of filing their application that prompted the Tenants to vacate the rental unit on December 2, 2010, because they had breached section 26 of the Act by failing to pay their rent. Based on the aforementioned I hereby approve the Landlords' claim of **\$2,327.97** for unpaid rent up to December 2, 2010 (Amount due \$3,911.30 less payments of \$625.00, 625.00, and 333.33).

The Landlords have sought late payment fees in the amount of 15% per day of unpaid rent, as provided in their tenancy agreement and supported in their evidence. Section 7 of the Regulations provides that a Landlord may claim a maximum of \$25.00 per month for late payment fees provided that late payment fees are included in the tenancy agreement. Based on the aforementioned I hereby approve the Landlords' claim in the amount of **\$50.00** (2 x \$25.00 for late payment of November and December rent).

The tenancy agreement provides that the Tenants are not to alter the rental property without prior written permission from the Landlords. After careful consideration of the photographs I find that on a balance of probabilities a home owner would not paint in such a reckless manner as to leave paint on the carpet, baseboards, and ceiling. Therefore, I accept the evidence that a bedroom was painted lime green during the tenancy causing the Landlords to suffer a loss to repair and repaint. I hereby approve the Landlords' claim of **\$540.00**.

Having found above that the Tenants vacated the property based on the Landlords' application for an Order of Possession, I accept that on a balance of probabilities the

Tenants failed to clean the unit before moving out. Therefore I find there to be sufficient evidence to support the Landlords' claim. I hereby approve their claim for cleaning in the amount of **\$200.00**.

The Landlords have been primarily 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:

Unpaid rent between November 1 to December 2, 2010	\$2,327.97
Late payment fees	50.00
Painting and repair of bedroom	540.00
Cleaning of rental unit	200.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,167.97
Less Security Deposit of \$1250.00 plus interest of \$0.00	- 1,250.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,917.97

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

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,917.97**. 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: March 30, 2011.

Residential Tenancy Branch