



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order as compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. During the hearing the tenant consented to the landlords' retention of the security deposit as an offset to any compensation to which the landlords might establish entitlement.

Issues to be decided

- Whether the landlords are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

The parties agree that tenancy began on June 1, 2005. Monthly rent was \$500.00 and a security deposit of \$250.00 was collected. Both parties participated in the completion of a move-in condition inspection and report at the start of tenancy.

On September 2, 2010, the tenant gave verbal notice of intent to end the tenancy, and then vacated the unit on or about September 25, 2010. A move-out condition inspection and report were completed by the landlords without the participation of the tenant.

After the end of tenancy, the landlords determined that considerable cleaning, repairs and rubbish removal were required. Additionally, the landlords found extensive electrical wiring which had been installed in a shed without proper authority. The landlords claim that as a result of all the remedial work required in the unit and the shed, the property was not immediately suitable for new renters. During the hearing the landlords testified that they had not advertised for renters and that by word of mouth new renters are presently close to taking possession.

The tenant claimed that the landlords failed to properly maintain the unit during his tenancy, and that the electrical wiring in the shed had been installed before the start of his tenancy.

Evidence submitted by the parties includes, but is not necessarily limited to photographs, invoices and receipts.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ The particular attention of the parties is drawn to the following sections of the Act:

Section 23: Condition inspection: start of tenancy

Section 24: Consequences for tenant and landlord if report requirements not met

Section 32: Landlord and tenant obligations to repair and maintain

Section 35: Condition inspection: end of tenancy

Section 36: Consequences for tenant and landlord if report requirements not met

Section 37: Leaving the rental unit at the end of a tenancy

Section 45: Tenant's notice

The multiple aspects of the landlords' claim and my related findings are as follows:

\$500.00*: *loss of rental income October/10:* The tenant does not dispute that his notice to end tenancy was not given in accordance with the Act. Specifically, notice was not in writing and it was not given one full month in advance. I find that this, in combination with the landlords' need to undertake certain cleaning, repairs and rubbish removal, have resulted in the landlords' establishment of entitlement to the full amount claimed.

\$500.00*: *loss of rental income November/10:* Based on the documentary evidence and testimony, as earlier noted I find that the unit was in need of cleaning, repairs & rubbish removal following the end of tenancy. In consideration of the time required to make the property suitable for new renters, I find that the landlords' have established entitlement to the full amount claimed.

\$2,000.00: *loss of rental income combined for December/10, January, February & March/11:* I find on a balance of probabilities that 4 months over and above October and November 2010 were not required by the landlords in relation to making the property suitable for new renters. Further, there is no evidence that the landlords undertook to mitigate their loss of rental income by advertising for new renters. In the result, this aspect of the application is hereby dismissed.

\$2,990.40: cost of electrical contractor. Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlords have failed to meet the burden of proving that the tenant was responsible for “electrical system damage” and “illegal modification of system.” Rather, I find that the subject modifications were made prior to the start of this tenancy, even while the landlords claim to have discovered them after the end of the tenancy. This aspect of the claim is therefore dismissed.

\$368.48: hydro re-hookup. Based on the documentary evidence and testimony, as well as other related findings set out here, I find that the landlords have met the burden of proving that the actions or inactions of the tenant led directly to this cost. In the result, this aspect of the claim is hereby dismissed.

\$234.08*: professional carpet cleaning and stain removal. Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and provides in part as follows:

CARPETS

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlords have established entitlement to the full amount claimed.

\$420.00*: miscellaneous labour associated with cleaning, repairs and rubbish removal. This calculation reflects time spent by both landlords at an hourly rate of \$10.00 over 42 hours. Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlords have established entitlement to the full amount claimed.

\$300.00 (reduction from original claim of \$2,000.00) demolition of grow-op: Included in the landlords’ evidence is a quote in the amount of \$2,000.00 for “Building demo and clean up of demo debris.” During the hearing the landlords testified that they no longer plan to demolish the shed. In the result, this aspect of the claim is hereby dismissed.

\$319.20: cost of new flooring in living room. Based on the documentary evidence and testimony, as well as consideration of normal wear and tear, and the landlords’ decision to replace carpet with hardwood flooring, I find that the landlords have established entitlement limited to \$100.00*.

\$29.89: cost of new baseboard. I find that all baseboard was likely installed prior to the start of tenancy and that it sustained normal wear and tear. Replacement of baseboard in the living room arises from removal of carpet and installation of hardwood flooring, while replacement in the bathroom arises from replacement of lino. Based on the documentary evidence and testimony I find that the landlords have established entitlement limited to \$10.00*.

\$55.51*: cost of lino for bathroom. During the hearing the tenant testified that he does not dispute his responsibility for this aspect of the claim. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$35.73: channel to re-connect new flooring to old. I find that this cost derives directly out of the landlords' decision to replace carpet with hardwood flooring. As a result, this aspect of the claim is hereby dismissed.

\$335.00: replacing hot water tank. During the hearing the landlords did not dispute the tenant's claim that the hot water tank was in excess of 10 years old (manufactured in 1997). Residential Tenancy Policy Guideline # 37 speaks to the "Useful Life of Work Done or Thing Purchased," and sets the useful life of domestic hot water tanks at 10 years. Accordingly, this aspect of the application is hereby dismissed.

\$100.00: filing fee. As the landlords have achieved limited success with their application, I find they have established entitlement limited to \$50.00*.

Following from all of the above, I find that the landlords have established a claim of \$1,869.59. I order that the landlords retain the security deposit of \$250.00, plus interest of \$8.84 (total: \$258.84) and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,610.75 (\$1,869.59 - \$258.84).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of \$1,610.75. Should it be necessary, this order may be served on the tenant, filed in the 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*.

DATE: April 20, 2011

Residential Tenancy Branch