



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC FF

Preliminary Issue

The Landlord confirmed they were the applicant and they had made an error in filing their application on the form for a Tenant's Application for Dispute Resolution. The details of their claim are as noted on the form.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order 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 Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in person from the Landlord to the male Tenant. 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. The landlord confirmed no documentary evidence was filed in support of their application.

Issue(s) to be Decided

1. Did the Tenant breach the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord 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 Tenants had resided in the rental unit from approximately April 2007 and vacated at the end of November 2010. Rent at the end of the tenancy was payable in the amount of \$940.00. On or before April 1, 2007 the Tenants paid \$462.50 as a security deposit.

The Landlord testified they are seeking three months of unpaid rent for September, 2010, October, 2010, and November 2010 of \$2,820.00 (3 x \$940.00) as the Tenants rent payments were returned NSF. He clarified that there had been some problems with previous property managers and he was hired to take over the management of this building on October 11, 2010. Shortly after his arrival he issued the Tenants an eviction notice for unpaid rent. He was aware of problems with the Strata Corporation and building construction so he worked to assist the Tenants in getting their issues resolved.

The Landlord is seeking NSF charges of \$50.00 for each of the months of September, October and November 2010. The Landlord did not know the exact amount charged to them by their bank and he did not have access to the tenancy agreement during the hearing to confirm or deny if NSF charges were noted in the agreement.

The Landlord advised they are seeking \$2,200.00 to remove the flooring from the kitchen, living room and bedroom which the Tenants had installed without permission. The amount claimed is based on an estimate they had obtained prior to the hearing. The work has not been completed as they are awaiting the outcome of this hearing. The Landlord stated that it does not matter to them if the work completed by the Tenants looks better or not as the fact remains they are tenants and not owners and are not permitted to conduct renovations without the Landlord's prior approval. He advised the building was built in 1973 and he was not aware of the age of the flooring that had been removed by the Tenants.

The Tenants testified and confirmed they did not pay rent for September, October or November 2010. They stated that they had several e-mail conversations with the Landlords advising them they would pay their rent as soon as they fix the problems. They did not have an Order granting them the authority to withhold their rent and they did not make an application to the *Residential Tenancy Branch* to seek a resolution to their problem. They confirmed they resided in the unit for the entire period between April 2007 and the end of November 2010. The keys were returned to the Landlord's manager who came to the building and on December 1, 2010 signed a paper which states the unit was "in good condition" and the keys were returned.

The Tenants questioned the Landlord's claim for NSF charges as they did pay their rent with cheques. Rent was paid by automatic withdrawal so the Landlords would not have had NSF charges.

The Tenants advised they did not do anything with the kitchen linoleum it was in the unit the entire time of their tenancy. They confirmed they removed the living room carpet and replaced it with laminate flooring and they removed the bedroom carpet and replaced it with new carpet. They stated that the existing carpet was very old and had "stuff" coming out of it with mold around the edges. They requested that it be changed for several weeks at the beginning of their tenancy and when the Landlord failed to respond to their requests they discussed the issue with the property manager at that time. They had verbal permission from this property manager, who is now deceased, to remove the existing carpet and replace it with new flooring, as long as it was at the Tenants' cost. After the work was completed they were told that they would receive one free month's rent for having to pay for the laminate and carpet, however that never happened.

The Landlord responded by stating the Tenants do not have his e-mail address so they could not have communicated with him via e-mail. He stated the person they gave the keys to on December 1, 2010 was a cleaner and not a property manager. He confirmed these Tenants had had problems with previous managers however they were very difficult to deal with from the onset of his employment.

The Tenants advised their e-mails were sent to the Landlord's e-mail address which is the only e-mail they were provided with so that does not mean they did not have e-mail communication.

Analysis

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 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. There is no provision in the Act that gives a tenant the authority to withhold rent while they are waiting for a landlord to act upon their requests. The evidence supports the Tenants resided in the rental unit for the period being claimed for unpaid rent by the Landlord. Based on the aforementioned I find the Landlord has met the burden of proof for loss, as listed above, and I hereby approve their claim for three months of unpaid rent in the amount of **\$2,820.00**.

The Landlord has claimed \$150.00 for NSF charges. In the presence of the Tenants' opposing testimony that their rent was paid by automatic withdrawal, and in the absence of documentary evidence to support the Landlord was actually charged NSF fees of \$150.00, I find the Landlord has provided insufficient evidence to meet the burden of proof for their loss and I dismiss their claim of \$150.00, without leave to reapply.

The evidence supports the Tenants removed the living room and bedroom carpet then replaced them with laminate flooring and new carpet. There is opposing testimony pertaining to whether the Tenants had permission to conduct this work and given that their permission was verbal from a previous property manager, who is now deceased, there is no opportunity to prove for certain if permission was granted or denied. The Landlord has made the claim based on his testimony that they received an estimate to remove and reinstall the floor, however there is no documentary evidence before me to support when the estimate was obtained and from whom. As of today's date the work has not been completed. After considering the aforementioned and the Landlord's testimony that "it does not matter to us if it looks better" I find there to be insufficient evidence to meet the burden of proof that the Landlord suffered a loss and at what cost. Therefore I dismiss the Landlord's claim of \$2,200.00 to remove and reinstall the flooring, without leave to reapply.

The Landlord has been partially successful with his claim; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is 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 for September, October, and November 2010 (3 x \$940.00)	\$2,820.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$2,870.00
Less Security Deposit of \$462.50 plus interest of \$12.24	<u>- 474.74</u>
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,395.26

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$2,395.26**. 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: April 20, 2011.

Residential Tenancy Branch