



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled for 9:00 to deal with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet deposit. The landlord was the only party present at the commencement of the hearing. The landlord provided two registered mail tracking numbers as proof of service of the hearing documents upon the tenants. The landlord confirmed the registered mail was successfully delivered to the tenants at their forwarding address.

I determined that I did not have a copy of the landlord's evidence that was served upon the tenants. The landlord was adamant he personally delivered the evidence to the Kelowna Residential Tenancy Office. The landlord was asked to provide the evidence again after the teleconference call ended with the strict instructions that only the documents provided to the tenants would be accepted. An evidence package was delivered to the Residential Tenancy Branch the day following the hearing and I was satisfied that the documents contained therein are the same documents described during the hearing.

The tenants appeared at the teleconference call approximately 43 minutes after the hearing commenced. The female tenant stated she was late due to work obligations. However, in speaking with the male tenant I heard that he and his wife were late because they erroneously thought the hearing started at 10:00 a.m. After hearing the landlord's submissions I summarized what I had heard from the landlord and provided the tenants' an opportunity to respond.

The tenants also confirmed receipt of the landlord's evidence and I have accepted and considered the evidence in making this decision. The landlord confirmed receiving the tenants' evidence and I have accepted and considered the tenants' evidence in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent from the tenants for the month of November 2010?
2. Has the landlord established an entitlement to compensation for cleaning and repair costs?
3. Should the tenants' be credited with double the security deposit and pet deposit?

Background and Evidence

The tenancy commenced approximately four years ago and the tenants paid a \$700.00 security deposit and a \$700.00 pet deposit at the commencement of the tenancy. The tenants were required to pay rent of \$1,400.00 on the 1st day of every month. On September 29, 2010 the tenants wrote a notice to end their tenancy effective October 31, 2010 and sent it to the landlord via registered mail. The tenants vacated the rental unit October 31, 2010.

It was in dispute as to whether a move-in condition inspection report was done; however, neither party provided me with a copy of such a report. It was undisputed that a move-out inspection report was not completed by the landlord.

In making this application, the landlord claimed a total amount of \$2,126.87 in compensation which was comprised of loss of rent of \$1,400.00 and damages totalling \$726.87.

Loss of rent

The landlord is seeking to recover loss of rent for the month of November 2010 in the amount of \$1,400.00. The landlord was of the position that the tenant's gave insufficient notice to end the tenancy for October 31, 2010. The landlord submitted that he did not receive the tenant's notice to end tenancy until October 6, 2010. Upon enquiry, the landlord also testified as follows:

- The landlord did not have a conversation with the tenants about ending their tenancy after receiving their notice to end tenancy;
- The landlord commenced advertising efforts on November 12, 2010 and did not get the unit re-rented until late December 2010;
- the landlord did not advertise sooner than November 12, 2010 because the unit needed cleaning and repairs before it could be shown to prospective tenants; and,

- prior to the tenancy ending he had observed the rental unit in a cluttered condition.

The tenants claimed that they telephoned the landlord September 28, 2010 to give the landlord verbal notice to end tenancy and the landlord indicated ending the tenancy at the end of October 2010 would not be a problem. The landlord then requested a written notice which they mailed on September 30, 2010. The registered mail tracking number revealed that Canada Post made an attempted delivery to the landlord on October 1, 2010 and the landlord picked it up on October 6, 2010. The tenants also submitted that had the landlord informed them that they would be held responsible for November 2010 rent they would have continued to reside in the unit in November 2010.

Damages

The landlord provided various receipts for supplies and materials but did not itemize the amounts claimed. During the hearing the landlord verbally provided the following breakdown of the amounts claimed:

<u>Item</u>	<u>Amount claimed</u>	<u>Landlord's Reason</u>	<u>Tenants' response</u>
Paint, rollers, brushes, painter's tape	30.00 + 10.00 + 9.00 + 9.00 + 5.00	Tenants damaged drywall by using sticky picture hangers. Tenants painted fireplace wall without permission.	Landlord's agent told the tenants to use the sticky picture hangers. The landlord had commented how much he liked the accent wall they painted.
Light bulbs	6.00 + 11.00	Tenants did not replace burned out bulbs.	No response.
Cleaning solution	12.00	Tenants did not thoroughly clean unit	Left unit clean.
Drywall anchors	2.50	Reinstall towel bar pulled from wall	Towel bar was not installed properly.
Drywall compound, putty knife, sanding block	6.00 + 4.00 + 3.00	Repair drywall from picture hangers.	Used picture hangers at instruction of landlord's agent.
Toilet seat	27.00	10 year old seat broken by tenants. Tenants replaced toilet seat with inferior, ill fitting seat.	Toilet seat broke Christmas Day and replaced with what they could find that day.
Light fixture	16.00	10 year old fixture broken	Acknowledge fixture

		by tenants.	broken.
Stove chip	5.00	Enamel paint purchased to cover chip.	Never noticed chip in stove.
Carpet cleaning	<u>188.00</u>	Stains in carpet. Hired professional cleaner.	Borrowed cleaner from a friend.
Sub-total	350.50		
Claim for damages	<u>726.87</u>		
Remainder for landlord's labour	376.37	3 days, 2 people, 11 hours/day to clean and repair	Tenants left unit clean and undamaged.

Forwarding address

In the tenants' evidence package they provided a copy of a note dated November 8, 2010 which contains their forwarding address. The tenants submitted that they gave this note to the landlord's agent who picked up the keys for the rental unit.

The landlord denied there was a note with the keys. The landlord called his witness, the person who picked up the keys from the male tenant, and the witness denied there was a note with the keys.

The landlord claimed that he had never seen the note dated November 8, 2010 until receiving the tenants' evidence package. The landlord explained he would have made this application sooner had he received a forwarding address on November 8, 2010. Rather, the landlord received the tenant's forwarding address in writing by way of the letter they wrote to him on January 6, 2011.

Analysis

Upon review of all of the evidence before me I make the following findings with respect to the landlord's claims.

Loss of rent

To end a month-to-month tenancy, a tenant is required to give written notice to be effective one full month after the landlord receives the notice. Having heard the landlord told the tenant's to put their notice in writing I am satisfied the landlord did not waive his entitlement to written notice.

Where a party mails a document, section 90 of the Act deems that it is received five days later. The tenants mailed their written notice on September 30, 2010. Thus, I accept that their written notice was not received until five days later and the notice was

insufficient to end the tenancy for October 31, 2010. Therefore, the tenant's violated the Act by giving insufficient notice.

Section 7 of the Act provides that where a party violates the Act, the party that suffers a loss as a result of that violation may seek compensation from that party. However, section 7 also requires that a party that claims for compensation must do whatever is reasonable to minimize the damage or loss.

In this case, I find the landlord did not take reasonable action to minimize the loss of rent for November 2010. The landlord did not make efforts to advertise the unit for rent upon receiving the tenants' notice. The landlord explained that he did not advertise sooner because he had observed the rental unit in a cluttered condition in months prior. However, the landlord did not provide evidence that he requested the tenants prepare the unit for showings to prospective tenants. Nor did the landlord put the tenants on notice that he accepted their notice effective October 31, 2010 with the intent to claim for loss of rent for November 2010. Therefore, I deny the landlord's request to recover loss of rent from the tenants due to his failure to mitigate his loss.

Damages

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 replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

I have also referred to Residential Tenancy Policy Guideline 1: Landlord & Tenant Responsibility for Residential Premises in making the following findings and awards.

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>	<u>Reason</u>
Paint, rollers, brushes, painter's tape	30.00 + 10.00 + 9.00 + 9.00 + 5.00	Nil	Landlords are expected to paint at reasonable intervals. Interior paint has useful life of approximately 4 years. Given length of tenancy, paint at end of useful life.
Light bulbs	6.00 + 11.00	17.00	Tenants responsible for replacing burnt out light bulbs.
Cleaning solution	12.00	12.00	Photographs show additional cleaning

			required.
Drywall anchors	2.50	2.50	Photographs show towel bar hanging from wall
Drywall compound, putty knife, sanding block	6.00 + 4.00 + 3.00	13.00	Photographs show damage to walls from picture hangers. Tenants responsible for repairing damage they cause.
Toilet seat	27.00	Nil	Insufficient evidence toilet seat installed by tenants was inferior or ill fitting.
Light fixture	16.00	5.33	Light fixtures have limited life of approximately 15 years. Awarded landlord remaining 5 years of useful life. Award calculated as 5/15 of cost of replacement fixture.
Stove chip	5.00	Nil	Insufficient evidence of chip.
Carpet cleaning	188.00	188.00	Landlord established carpets cleaned professionally as stains were present at end of tenancy. Tenants did not provide sufficient evidence they had sufficiently cleaned the carpets.
Landlord's labour	376.37	100.00	Estimated 8 hours necessary to attend to cleaning and damages for which I have found tenants responsible.
Totals	726.87	337.83	

Based on the above, the landlord has been awarded \$337.83 for damages to the rental unit. In light of the landlord's relative success in this application I award the landlord a portion of the filing fee in the amount of \$7.94 [$\$50.00 \times \$337.83 \text{ awarded} / \$2,126.87 \text{ claimed}$].

Forwarding address

Where a tenant asserts they have given the landlord a forwarding address in writing the tenant has the onus to prove this occurred. I found the disputed verbal testimony to be insufficient proof of service of the forwarding address on November 8, 2010 as asserted by the tenants. Upon review of the tenants' other correspondence to the landlord after the tenancy ended I find no mention of providing a forwarding address to the landlord on November 8, 2010. Further, I found the tenants' credibility lacking compared to the

landlords' credibility upon hearing the tenants give two different reasons why they appeared late for the hearing. Therefore, I accept that the landlord received the tenants' forwarding address in writing by way of the tenants' letter dated January 6, 2011.

Since the landlord filed this application on January 17, 2011 I find the landlord within the time limit to make a claim against the security deposit and pet deposit and the deposits are not doubled. Therefore, the tenants are credited with the single amount of the deposits plus accrued interest on the deposits which I estimate to be \$35.31.

Monetary Order

The landlord has established an entitlement to compensation from the tenants in the total amount of: \$345.77 [\$337.83 for damages and cleaning + 7.94 for the filing fee]. Since the landlord continues to hold a security deposit and pet deposit and accrued interest of \$1,435.31 I ORDER the landlord to refund the difference of \$1,089.54 to the tenants.

Provided with the tenants' copy of this decision is a Monetary Order in the amount of \$1,089.54 to ensure the landlord pays the tenants as ordered. The tenants may enforce the Monetary Order by serving it upon the landlord and filing it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been awarded compensation totalling \$345.77. The landlord has been ordered to return the balance of the deposits and interest in the amount of \$1,089.54 to the tenants. The tenants have been provided a Monetary Order in the amount of \$1,089.54 to serve upon the landlord.

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: May 31, 2011.

Residential Tenancy Branch