



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated or were represented in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the 2 year fixed term of tenancy was from May 12, 2010 to May 12, 2012. Monthly rent was \$950.00, and was due and payable in advance on the 12th day of each month. A security deposit of \$500.00 was collected near the start of tenancy. A move-in condition inspection report was not completed.

Arising from rent which was unpaid when due on December 12, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated December 13, 2010. The tenants' agent acknowledged being personally served with the notice on that same date. A copy of the notice was submitted into evidence. Subsequently, the tenants made no further payment toward rent and vacated the unit on December 23, 2010. A move-out condition inspection report was not completed.

The landlord testified that following the end of tenancy, she did not advertise for new renters and, instead, family members moved into the unit.

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 or new pet**

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

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**

In reviewing the landlord's itemized submission of costs, I note there appear to be some duplications or overlaps. Based on the documentary evidence (which includes photographs) and the testimony of the parties, the aspects of the landlord's claim and my findings around each are set out below.

\$950.00: unpaid rent for the period December 12, 2010 to January 11, 2011. During the hearing the tenants' agent did not dispute that rent was not paid when due on December 12, 2010, or anytime afterwards. Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides in part:

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As earlier noted, the landlord did not undertake to mitigate her loss of rental income following the departure of the tenants by advertising for new renters, rather, family members of the tenant's moved into the unit. As well, however, I am persuaded that the landlord was required to undertake certain cleaning and repairs following the departure of the tenants in order to make the unit suitable for occupancy; further details in this regard are set out below. In the result, based on the documentary evidence and testimony I find that the landlord has established entitlement limited to \$712.50*, which is 75% of the amount claimed.

\$700.00: miscellaneous cleanup and repairs. The landlord testified that she has no receipts in support of any particular purchases subsequent to the end of this tenancy, and that the figure shown is a reflection, in part, of costs incurred to undertake certain cleanup and repairs prior to the start of this tenancy. While there are no move-in and move-out condition inspection reports in evidence, there are photographs, and the bulk of this aspect of the claim appears to arise from labour devoted to cleaning and certain repairs. Having considered the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement limited to \$320.00*;

this is calculated on the basis of labour during 2 eight hour days at a rate of \$20.00 per hour.

\$250.00: *hauling shingles to junk and to the landfill.* The landlord testified that as this task has not been undertaken, no labour has been expended and no costs have been incurred. Further, I am unable to conclude that all shingles remaining on the property belonged to the tenants. Accordingly, this aspect of the application is hereby dismissed.

\$660.00: *restoring the original barbed wire fence.* Once again, the landlord testified that as this work has not been undertaken, no labour has been expended and no costs have been incurred. In the result, this aspect of the application is hereby dismissed with the proviso that, should any restorative work be undertaken, compensation for the landlord's labour is included in the award above for \$320.00.

\$25.00: *restoring deck to original condition.* In addition to the absence of either a move-in or move-out condition inspection report, and as no restorative work has presently been undertaken, this aspect of the claim is hereby dismissed.

\$198.00: *cleaning 2 sofas and 2 loveseats.* For reasons similar to the reasons set out immediately above, this aspect of the claim is hereby dismissed.

\$124.00: *Kilz primer to cover dog urine on subfloor.* For reasons similar to the reasons set out immediately above, this aspect of the claim is hereby dismissed.

\$1,509.00: *cost to restore landscaping to original condition.* The landlord testified that this figure was estimated on the basis of her consideration of two quotes obtained. I am not persuaded that the landlord intends to undertake any restorative landscaping, mainly as a result mainly of branches being removed from trees by the tenants, or that any significant restorative work is indicated. In the result, this aspect of the application is hereby dismissed.

\$399.00: *electrician to disconnect tenants' illegal wiring.* I find that there is insufficient evidence that the electrical wiring met the requirements of code prior to the start of tenancy. Accordingly, the aspect of the claim concerning costs incurred for electrical inspection and labour is hereby dismissed.

\$184.00: *replacement and installation of stairway carpet.* The landlord testified that this carpet was newly installed near the start of the tenancy. The tenants' agent acknowledged that the tenants had not cleaned the carpet at the end of tenancy. As well, the tenants owned dogs who were permitted into the house. In short, I find on a

balance of probabilities that the landlord has established entitlement limited to **\$92.00*** which is half the amount claimed.

\$50.00*: *filing fee*. As the landlord has achieved a measure of success with her application, I find that she has established entitlement to the full amount claimed.

Sub-total: \$1,174.50

As for the monetary order, I find that the landlord has established a claim of **\$1,174.50**, the details of which are set out above. I order that the landlord retain the security deposit of **\$500.00** and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$674.50** (\$1,174.50 - \$500.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$674.50**. Should it be necessary, this order may be served on the tenants, 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: June 2, 2011

Residential Tenancy Branch