



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to rental unit, unpaid rent, to retain all or part of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 17, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail to the forwarding address provided in writing by the tenant on February 28, 2011. A Canada Post tracking number was provided as evidence of service. The landlord had checked the Canada Post web site and noted that the tenant had received the mail.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Preliminary Matter

On June 7, 2011, the landlord served the tenant additional evidence via courier service. The landlord stated that she has a receipt which indicated the tenant signed accepting the delivery on June 8, 2011. I found the evidence had been sufficiently served to the tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental property?

Is the landlord entitled to compensation for unpaid rent and loss of rent revenue?

May the landlords retain the deposits paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on October 15, 2009; the tenant gave Notice and vacated on February 28, 2011. Rent was \$2,700.00 per month due on the first day of each month.

Security and pet deposits were paid in the sum of \$1,350.00 each on September 22, 2009 and October 13, 2009, respectively.

The home is 3,600 square feet in size. There had been 5 people living in the home.

The landlord has made the following claim:

Unpaid Rent and Fees	
Late move out – 2 days	174.19
Loss of March, 2011 rent revenue	2,700.00
Late fee X 11	275.00
NSF fees	10.00
Utilities	
BC hydro reconnect fee	153.89
Damage	
Wood stove handle	42.56
Drywall repair	560.00
New laundry room lock	21.02
Missing 10 keys – loss	50.00
Replace door trim in lower master Bedroom	35.10
Replace window sill, upper bedroom	20.00
Replace towel rack, downstairs bathroom	25.00
Paint all walls that had been damaged	1,232.00
Key cutting new lock	5.35
Washer and dryer rusted – loss of value	400.00
Cleaning	
Inside and decks	1,148.80
Collect and store tenant's belongings	300.00
Dump fees	60.00
Garbage bags	18.83
Steam cleaner purchased	111.99
TOTAL	8,693.73

The landlord stated that when rent was paid in February, 2011, the landlord accepted an envelope with a cash payment and that he gave the tenant a receipt. The landlord

was working at the time and just handed the tenant the receipt, without counting the cash or filling in the amount paid on the receipt. When the payment was counted it was short \$1,350.00.

The landlord provided a copy of a move-in and move-out condition inspection report plus a copy of a final notice to compete a condition inspection scheduled for March 1, 2011. When the landlord arrived at the rental unit on March 1, 2011, the tenants were not ready and had not yet moved out. The inspection was rescheduled for March 3, 2011, at 1 p.m.; the tenant did not attend. The landlord completed the report and took photographs of the rental unit and property; which were submitted as evidence.

A copy of a note signed by the tenant indicated that the tenant would attend at the unit on March 3, 2011, at 1 p.m. for the inspection; the tenant had also agreed to pay a pro-rated amount for 2 days of over-holding.

Once the tenants had given notice ending the tenancy the landlord had shown the property in February at which point they discovered that the hydro service had been disconnected; the toilets were not being flushed and the property was not in a state suitable for showing to prospective occupants. Advertisements for the unit ceased. Until this point the landlord had found the tenants to be conscientious.

As the rental property was left in such a state of disarray, the landlord could not rent the unit out effective March 1, 2011. The landlord has claimed loss of March rent revenue as a result of the tenant's failure to maintain the property in a reasonably clean state; which resulted in an inability to place new occupants in the home until it could be cleaned and advertised.

The landlord stated that in 2010 rent was paid on February 9, May 8, April 10 and August 4; the February and November rent cheques were returned as NSF. The landlord has claimed late fees as provided by the tenancy agreement submitted as evidence in the sum of \$25.00 for each month payment was late. The landlord has claimed \$10.00 NSF fees for February 2010 and November, 2010; the tenancy agreement provides for this fee; copies of the bank charges were provided as evidence.

The landlord submitted a copy of an April 8, 2011, BC Hydro bill for the property, which indicated a charge in the sum of \$153.89 to reconnect the service the tenants had allowed to lapse. The bill covered the period from February 15, 2011, onward.

A receipt for a wood stove handle was provided as evidence. The tenant had acknowledged breaking the handle when it was forced open.

The landlord provided a March 11, 2011, receipt issued for drywall work completed in the home. Photographs of drywall damage were provided by the landlord. The tenant had used nails in the walls, caused a hole from a door knob and ripped the drywall next the fireplace. The tenant had applied some drywall mud to the holes but did not

complete the work. Locks installed by the tenants had also left holes in trim, which had to be repaired. The landlord hired someone to refill, sand and paint the damaged areas.

The tenant changed the lock in the laundry room; the landlord provided a receipt for a replacement lock.

There were 5 occupants of the home; keys had been given to each person. The landlord did not receive any of the keys at the end of the tenancy. The cost claimed is for the cost of producing these keys.

A photograph of broken door trim was supplied as evidence. A receipt for wood and trim was submitted as evidence.

A window sill in an upper bedroom was cracked; the landlord provided a photograph of the damage to this window. The landlord repaired this window by reinforcing it with screws; claiming \$20.00 labour.

The towel rack in the lower bathroom was pulled from the wall; the landlord claimed replacement of the rack; a receipt was not provided. A photograph showed that the rack was pulled from the wall.

The landlord provided 2 quotes for painting; they hired the less costly company and have claimed a portion of the \$6,160.00 quote; a receipt was not provided. The lower level of the home was painted approximately 3 years prior to the start of the tenancy. The remaining walls were painted 1 year prior to the start of the tenancy; approximately October 2008. The landlord could not paint small portions of the walls, after having to complete the drywall repairs.

The landlord supplied a receipt for keys that had to be cut for the new locks they installed as a result of not receiving any of the keys from the tenants.

The tenant placed the washing machine and dryer outside. The machines were approximately 3 years old. The tenants used the dryer vent as an ashtray; photographs of the outside of the machines were submitted as evidence. The landlord stated that machines have lost value due to the rust that developed on the inside of the lids. The landlord may have to replace the machines if new occupants insist.

Initially the landlord hired a cleaner based on a quote of \$358.40. It then became apparent that the cleaning required much more time and the landlord gave the cleaner permission to complete the work, which included a further charge of \$548.80. The receipts detailed the areas cleaned such as all cupboards, counters, the stove, and oven, removal of dog feces, mould from window sills, garbage, and cigarette butts. The landlord stated the stove was so dirty it was not able to be fully cleaned, despite repeated attempts. Photographs of the property were supplied as evidence of the need for cleaning. The outside decks had to be power washed due to the dog feces left behind.

On March 3, 2011, the landlord found numerous belongings that were left behind; the landlord does not believe they are worth more than \$500.00 but has retained them in their garage. The landlord is claiming for the time taken to gather the items and for storage.

The landlord supplied receipts for garbage bags purchased.

The landlord purchased a steam cleaner to remove mould that the tenants had allowed to grow in the unit. One bedroom was particularly bad; the landlord believes that the tenants did not use that room and it had not been heated.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of the tenant at this hearing; having been served with Notice of the hearing, I find, on the balance of probabilities that the landlord is entitled to the following compensation:

Unpaid Rent and Fees	Claimed	Accepted
Late move out – 2 days	174.19	174.19
Loss of March, 2011 rent revenue	2,700.00	2,700.00
Late fee X 11	275.00	125.00
NSF fees	10.00	10.00
Utilities		
BC hydro reconnect fee	153.89	153.89
Damage		
Wood stove handle	42.56	42.56
Drywall repair	560.00	560.00
New laundry room lock	21.02	21.02
Missing 10 keys – loss	50.00	0
Replace door trim in lower master Bedroom	35.10	35.10
Replace window sill, upper bedroom	20.00	0
Replace towel rack, downstairs bathroom	25.00	0
Paint walls that had been damaged	1,232.00	300.00
Key cutting new lock	5.35	5.35
Washer and dryer rusted – loss of value	400.00	0

Cleaning		
Inside and decks	1,148.80	1,148.80
Collect and store tenant's belongings	300.00	0
Dump fees	60.00	60.00
Garbage bags	18.83	18.83
Steam cleaner purchased	111.99	0
TOTAL	8,693.73	5,354.74

In the absence of any evidence of a partial month's rent having been paid in February, I dismiss that portion of the claim. The landlord did not provide a copy of the partially completed receipt he had given to the tenant, or any other evidence supporting the claim that one half of the rent was not paid; therefore, I find that the landlord has failed to prove rent was not paid.

I find that the landlord is entitled to over-holding costs for March 1 and 2, 2011, as claimed, as the tenants did not remove all of their belongings and continued to occupy the home.

I find that the landlord's decision to cease advertising the unit was reasonable, due to the lack of hydro services and that the unpalatable state of the home resulted in the landlord's loss of March, 2011, rent revenue. The tenants had allowed the hydro to be disconnected and had allowed the property to decline to such a state that the landlord could be expected to delay showing the unit until it was cleaned and power was restored. Therefore, I find the landlord is entitled to loss of March, 2011, rent revenue. Further, the tenant's over-held several days in to March. I have accepted the landlord's testimony that further showing of the unit was pointless until it had been cleaned.

I find, based on the testimony of the landlord and the tenancy agreement terms, that the landlord is entitled to late fees for February, May, April, August and November 2010; plus NSF fees for February and November 2010. The November rent payment is deemed late as the cheque was NSF.

Based on the BC Hydro bill dated April 8, 2011, I find that the landlord is entitled to costs incurred to reconnect the power service. The tenant allowed the power to be disconnected; resulting in fees to the landlord that could have been avoided had the tenant ensured continuity of service, which I find would be a reasonable practice.

Based on the evidence before me and the receipts submitted by the landlord I find that the tenants are responsible for costs beyond what I find is reasonable wear and tear for the wood stove handle, drywall repair, the laundry room lock, the wood trim repair, cutting new keys, cleaning, dump fees and garbage bags.

In relation to the painting costs claimed by the landlord I have considered Residential Tenancy Branch policy which suggests that a rental unit should be repainted approximately every 4 years. I find this to be a reasonable stance.

Residential Tenancy Branch policy also suggests that a dispute resolution officer may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to the painting costs claimed.

I find that the lower level of the home could reasonably be expected to have required painting as it had last been painted over 3 years ago. In relation to the upper level of the home, I find, in the absence of verification of the amount paid such as an invoice for work completed, that the landlord is entitled to nominal compensation in the sum of \$300.00. I have reached this decision by considering the photographs supplied that show the need for painting and the quotes submitted for painting of the entire home.

There is no evidence before me of the cost of the 10 keys given at the start of the tenancy; this portion of the claim is dismissed.

I have dismissed the claim for repair of the cracked window sill; I find that the time taken to insert several screws is minimal.

There is no evidence before me of any damage to the towel rack; it was hanging from the wall, but did not appear damaged. This portion of the claim is dismissed.

In the absence of evidence that the washing machine and dryer have been rendered inoperable or unsuitable for use, that portion of the claim is dismissed.

I have not provided any compensation for the time of the landlord, as landlord's can be expected to spend a reasonable amount of time managing and caring for their rental properties. I find that the amount claimed for cleaning has provided the landlord with reasonable compensation.

There is no evidence before me of the storage of any belongings that are valued in excess of \$500.00; therefore the storage and time claim is dismissed.

As the landlord's have retained the steam cleaner for their future use, I dismiss the claim for the cost of that item.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit and pet deposits in the amount of \$2,700.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$5,454.74, which is comprised of \$5,354.74 in compensation and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security and pet deposits in the amount of \$2,700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,654.74. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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*.

Dated: June 29, 2011.

Residential Tenancy Branch