



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: MNDC; FF

Landlords' application: MND; MNR; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks compensation for damage or loss under the Residential Tenancy Act (the "Act"); and to recover the cost of the filing fee from the Landlords.

The Landlords seek a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act; and to recover the cost of the filing fee from the Tenant.

The Landlords and their witness gave affirmed testimony at the Hearing.

The Landlords' witness testified that she served the Notice of Hearing documents and copies of the Landlords' documentary evidence, by handing the documents to the Tenant at her place of employment, on August 3, 2011, at 2:35 p.m.

Based on the affirmed testimony of the Landlords' witness, I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing continued in her absence.

Both matters were scheduled to be heard by teleconference at 9:00 a.m., August 11, 2011. The Landlords signed into the conference on time and were ready to proceed. The Tenant did not sign into the conference and therefore her application is dismissed without leave to reapply. The Hearing continued in the Tenant's absence with respect to the Landlords' application.

Preliminary Matters

At the outset of the Hearing, the Landlords stated that they were withdrawing their application for a monetary award for unpaid rent. Therefore, the Hearing proceeded with respect to their claim for damages and compensation for damage or loss.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order pursuant to the provisions of Sections 7 and 67 of the Act?

Background and Evidence

The Landlords provided the following testimony:

The Tenant is one Landlord's niece and the other Landlord's cousin.

The Landlords testified that the Tenancy began on October 17, 2008. No security deposit was required. At the beginning of the tenancy the Tenant paid \$1,000.00 per month for the rental unit, which is the upstairs suite of a house. Later on in the tenancy, the Tenant paid only \$300.00 in rent. Rent did not include utilities. There was no move-in condition inspection at the beginning of the tenancy.

The Landlords testified that their realtor was witness to the condition of the rental unit at the time they purchased it. The tenancy began just after they had purchased it. The realtor was not available to give testimony. The Landlords' witness testified that she spoke to the realtor about the condition of the rental unit when the Tenant moved in. She testified that the realtor told her:

- The baseboards and moldings were all in good condition;
- There were no broken windows;
- The closets were in good condition;
- The appliances were in good condition;
- There were no holes in the walls or ceilings;
- The walls had been painted approximately 2 years prior to the sale;
- There were additional baseboards stored in the basement, enough to finish the upstairs laundry room; and
- The exterior of the house required some paint and "TLC".

The Landlords testified that the Tenant had a mature tree removed from the front yard without the Landlords' permission. They stated that the removal of the tree caused the ground to become saturated when it rained, which caused water damage to the basement. The Landlords provided a letter from the Tenant's neighbor in evidence in support of their testimony with respect to the removal of the tree.

The Landlords testified that the tenancy ended on December 31, 2010. At 1:00 p.m. on December 31, 2010, the Landlords arrived at the rental unit to perform a move-out inspection, but the Tenant was very aggressive and told the Landlords that she refused

to move out until the following day. The RCMP were called and the Tenant walked out. The Landlords submitted that therefore there was no opportunity to perform the inspection. The Landlords provided 173 photographs of the rental unit in evidence.

They stated that Tenant did not clean the rental unit, left a lot of garbage on the rental property, caused a lot of damage to the rental unit, and took the fridge, washer and dryer with her.

The Landlords testified that the Tenant caused the following damage:

- holes in the walls;
- graffiti on the walls;
- screen door damaged;
- electrical box damaged;
- cigarette burns and stains on the carpets;
- door and wall mouldings, light switches, door handles, hinges, baseboards, curtain rods, window coverings and a carpet in the basement were removed by the Tenant;
- vapour barrier and insulation was removed from a closet;
- Tenant knocked the water drain pipe off the wall and pulled the washing machine hose out and off the wall in the laundry room;
- cook top was broken; and
- windows were broken.

The Landlords testified that it would have been more expensive to repair the stove top than to replace it. They stated that the cook top was about 9 years old, but was in good condition at the beginning of the tenancy. The Landlords replaced the cook top for \$282.23.

The Landlords testified that the carpet was approximately 2 years old and in good condition when they purchased the rental unit in 2008. The Landlords testified that they steam cleaned the carpets at a cost of \$120.25, but that the stains did not come out and the Landlords did not realize the extent of the damage to the carpets until they were cleaned. The Landlords provided an estimate to replace the carpet, underlay and some linoleum in the amount of \$6,511.00.

The Landlords replaced the broken windows at a cost of \$297.92 for the windows and \$23.72 for expanding foam.

The Landlords testified that the fridge that the Tenant took was worth approximately \$150.00. The Landlords replaced the fridge with a new one and provided the receipt in the amount of \$805.27.

The Landlords testified that originally, one of the Landlords was going to move into the rental unit and semi-retire, but that they had racked up significant losses on a line of credit while repairing the rental unit and therefore could no longer afford to do so.

The Landlords reside in a different province and are seeking to recover the costs of meals and gasoline. The Landlords also seek to recover the costs of developing photographs (\$104.74) and typing expenses (3 hours @ \$25.00 per hour).

The Landlords provided 276 receipts and estimates in support of their monetary claim, which totals \$31,885.17. The Landlords are abandoning any amount over \$25,000.00.

Analysis

This is the Landlords' claim for damage or loss under the Act and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlords seek to recover the costs of travelling to the rental unit from their home, as well as the cost of meals while cleaning and repairing the rental unit. The Landlords choose to operate their business from another province and I dismiss this portion of their claim.

I dismiss the Landlords claim with respect to recovery of the costs of developing photographs and typing their evidentiary materials as these are not costs that are contemplated or recoverable under the provisions of the Act.

The majority of the Landlords' claim is for their labour in cleaning and repairing the rental unit. The Landlords claim for this labour totals \$16,400.00 for 848 hours of work. I find this portion of the Landlords' claim to be excessive. However, based on the

undisputed testimony and documentary evidence provided, I do accept that there was considerable work required to clean and repair the rental unit. I award the Landlords the sum of **\$2,800.00** (2 weeks @ 8 hours a day @ \$25.00 per hour) for this portion of their claim.

I allow the Landlords' claim for the cost of the handyman's labour costs in the amount of **\$600.00**, pursuant to the receipt provided in evidence.

The Landlords provided a receipt in the amount of \$805.27 for the cost of a new fridge, however they testified that the fridge that was removed by the Tenant was worth \$150.00. I allow this portion of their claim in the amount of **\$150.00**.

The Landlords provided a receipt in the amount of \$282.23 for the cost of replacing the cook top, however the cook top that was damaged was not new. I allow this portion of the Landlords' claim in the amount of **\$100.00**.

The estimate for the cost of replacing the carpet includes linoleum, which was not included in the list of the Landlords' damage claim. The Residential Tenancy Branch Policy Guidelines determine the useful life for carpets to be 10 years. Therefore, I find that the carpets were approximately 60% through their useful life, and award the Landlords the amount of **\$1,697.60** based on the estimate provided (\$4,244 for carpet, supplies and labour x 40%).

The Landlords provided receipts totalling \$652.35 for cleaning supplies, which I find to be unreasonable. Some of the receipts date well past the end of the tenancy date. I find that the Landlords are entitled to recover something for the cost of cleaning supplies, and provide them with a nominal amount of **\$50.00** for this portion of their claim.

I have carefully gone through all of the receipts and estimates provided. Some of the receipts include the costs of unrelated items, such as soft drinks. Based on the undisputed testimony and documentary evidence of the Landlords and their witness, I find that the Landlords have proven the balance of their claim, as follows:

Description	Amount
Cost of replacing tree and remedial landscaping	\$219.99
Cost of steam cleaning the carpet	\$120.25
Cost of repairing closets, doors and repairing/painting walls and ceilings	\$934.25
Cost of replacing damaged screen door	\$107.72

Cost of new lock	\$16.82
Dump fees	\$39.00
Cost of replacing window coverings (used)	\$56.89
Cost of installing new windows	\$321.64
Cost to repair washing machine pipes and hose	\$23.72
Cost to repair electrical box and outlets	\$92.23
Cost to replace door and wall mouldings	\$436.73
TOTAL	\$2,469.24

The Landlord has established a total claim, calculated as follows:

As itemized above	\$2,469.24
Cleaning supplies	\$50.00
Replace carpets	\$1,697.60
Replace cook top	\$100.00
Replace fridge	\$150.00
Handyman	\$600.00
Landlords' labour	<u>\$2,800.00</u>
TOTAL AWARD	\$6,866.84

The Landlords have been partially successful in their claim and are entitled to recover the cost of the **\$100.00** filing fee from the Tenant.

Conclusion

The Tenant's application is **dismissed without leave to reapply**.

The Landlords' application for a monetary award for unpaid rent is **dismissed as withdrawn**.

I hereby provide the Landlords with a Monetary Order in the amount of **\$6,966.84** for service upon the Tenant. This Order may be filed in the Provincial Court 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: August 23, 2011.

Residential Tenancy Branch

