



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 matter was scheduled to hear the Landlords' application for compensation for damage or loss under the Act, regulation or tenancy agreement; for a monetary order for damage to the rental unit; to apply the security deposit towards partial satisfaction of their monetary award, and to recover the cost of the filing fee from the Tenants.

Both parties appeared and provided affirmed testimony.

An Interim Decision was made on August 25, 2011, which should be read in conjunction with this Decision. The matter was adjourned on August 25, 2011, to allow the Landlord to provide rebuttal evidence to the Tenant's late evidence.

The Landlords testified that they served the Tenants with the Notice of Reconvened Hearing and copies of their rebuttal evidence, by registered mail sent August 31, 2011. The Tenants acknowledged receipt of the Notice and the Landlords' rebuttal evidence.

Issues to be Decided

- Are the Landlords entitled to a monetary award for damage to the rental unit?

Background and Evidence

This tenancy started on November 1, 2006. The Tenants paid a security deposit in the amount of \$440.00 and a pet damage deposit in the amount of \$220.00 on October 20, 2006. Rent at the end of the tenancy was \$973.00, due on the first day of each month.

The tenancy ended on November 30, 2010, as a result of an undisputed One Month Notice to End Tenancy issued by the Landlords on October 23, 2010.

The Landlords gave the following testimony:

The Landlords testified that the previous manager of the rental property conducted a condition inspection at the beginning of the tenancy, but there was no copy of a move-in Condition Inspection Report on the Tenants' file. They testified that the rental property was built in 1990 and that the fixtures were changed 9 years ago.

The Landlords testified that the Tenants did not give them a forwarding address at the end of the tenancy and that they discovered where the Tenants were living in May, 2011, by performing a credit check on the Tenants.

The Landlords testified that the Tenants' dog chewed up the back door frame. They stated that they wrote a caution notice to the Tenants on June 3, 2010, requiring the Tenants to make repairs to the back door frame and weather stripping by June 18, 2010. A copy of the caution notice was provided in evidence.

The Landlords testified that they conducted a routine inspection of the rental unit on June 21, 2010, and noted more damage to the property that they allege was caused by the Tenants and their animals. They testified that the rental unit was also very dirty, with cat feces on the entry carpet. The Landlords testified that the Tenants painted walls bright colours without the Landlords' permission. The Landlords provided photographs of the rental unit taken on June 21, 2010.

The Landlords testified that a caution notice was provided to the Tenants on June 22, 2010, attaching a list of the damages and required repairs. A copy of the caution notice and list were provided in evidence.

The Landlords testified that along with the Notice to End Tenancy issued October 23, 2010, the Landlords provided a check list of required cleaning to be done at the end of the tenancy. The Landlords provided a copy of the Notice to End Tenancy and check list.

The Landlords testified that another inspection was completed, with the Tenants present, on October 29, 2010. They stated that a list was drawn up, setting forth the repairs that were the Tenants' responsibility and those that were the Landlords' responsibility, which the male Tenant signed. The Landlords provided a copy of the list in evidence. The Landlords testified that the parties agreed to perform the move-out condition inspection on November 30, 2010, at 11:00 a.m.

The Landlords testified that the Tenants did not participate in the move-out inspection on November 30, 2010. They stated that the damages caused by the Tenants were not repaired or were substandard; light fixtures were missing; a gasket and seal were broken on the stove; holes in the walls had not been repaired with the correct filler; the paint in the two brightly coloured bedrooms was showing through the new paint; there were dents in the 5 year old fridge; the carpets had not been professionally cleaned; there were holes in the carpets; blinds were broken; a stairwell spindle was missing; the floors were dirty; the bi-fold closet doors were not hung; the windows were not cleaned;

window screens were damaged beyond repair; the electric baseboard heaters were dirty; a ceiling in one of the bedrooms was dirty; there was a green paint mark on the bathroom wall; the weather stripping was missing from the rear door; the tap set in the kitchen was broken; and the back door was not repaired properly. The Landlords provided photographs of the rental unit taken on November 30, 2010.

The Landlords testified that the Tenants did not return the keys to the rental unit and therefore the Landlords seek to recover the cost of replacing the lock and cutting a new key.

The Landlords seek a monetary award in the amount of \$9,773.17 for materials and labour required to clean the rental unit; paint; and make the required repairs. The Landlords provided a detailed calculation with respect to their monetary claim, along with copies of receipts and invoices.

The Tenants gave the following testimony:

The Tenants testified that there was a condition inspection report completed at the beginning of the tenancy, but that they could not find their copy.

The Tenants testified that they did not participate in the move-out condition inspection because one of the Tenants was called into work. The Tenants agreed that they did not send an agent for the condition inspection and that they did not return the key to the rental unit.

The Tenants testified that they repaired the back door frame. They stated that the Landlords agreed that it was adequately repaired, but that it needed weather stripping and a J channel.

The Tenants agreed that they were responsible for damage to the rubber seal on the oven and the torn screens.

The Tenants testified that they shampooed the carpets at the end of the tenancy and provided a receipt for the carpet shampooer in evidence.

The Tenants testified that they removed the covers from the light fixtures because they were loose and the Tenants were afraid they might fall off. The Tenants testified that they left the covers in the rental unit.

The Tenants testified that they had permission to repaint the two bedrooms, that the Landlord saw the brightly coloured walls and said it looked nice. The Tenants testified

that they paid a painter \$200.00 to put a base coat over the brightly coloured walls at the end of the tenancy and provided a copy of the invoice in evidence.

The Tenants testified that there were no blinds on the windows at the beginning of the tenancy and that the blinds belonged to the Tenants.

The Tenants stated that some of the damages the Landlords attribute to the Tenants were there at the beginning of the tenancy, including: the closet doors were off their racks at the beginning of the tenancy and never repaired by the Landlords; the outside light did not have a cover at the beginning of the tenancy; the carpet had rips in it at the beginning of the tenancy and had to be covered with an area rug so the children would not hurt their feet on exposed nails; the siding to the right of the back door was already damaged at the beginning of the tenancy; the kitchen faucet was loose and leaked at the beginning of the tenancy; and the rental unit was in need of paint at the beginning of the tenancy.

The Tenants provided letters from 4 witnesses attesting to the state of the rental unit at the beginning of the tenancy. One of the witnesses was the former property manager.

The Tenants testified that they had to replace the toilet themselves during the tenancy because it was broken and the Landlord would not replace it.

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.

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 Tenants 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 Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlords did not provide documentary evidence of the condition of the rental unit at the beginning of the tenancy. The Tenants provided written statements from witnesses to the state of the rental unit at the beginning of the tenancy. One of the

statements is from the property manager who participated in the move-in condition inspection and also the person who signed the tenancy agreement as the landlord. Her written statement indicates that there was some “wear and tear to unit on move-in also no window covering was supplied the tenants had to buy their own blinds or curtains.”

A written statement from another witness states, in part, “There were cracks in the walls, it was unpainted (unfinished).”

A written statement from another witness, who states he helped the Tenants clean the rental unit at the beginning of the tenancy, states, in part, “no blinds crack in the wall, No doors on the closets, down stairs bathroom toilet was broken, Burned marks in the kitchen floors, and stains in the carpets and hole. The walls were not painted, the fan in the living room wasn’t working properly. It was a mess.”

The Tenants also provided a written statement from the tenant who lived in the rental unit from 2003 to 2005, prior to the Tenants. She states that the “walls were left uncompleted (no primer, no sanding, no finished paint)”; “the closet doors were broken the tracks at the top were bent and none had proper closing capabilities”; “there were burn holes through the linoleum as well as in the carpeted areas, through the entire unit”.

The Landlords provided a handwritten list of repairs that were identified at the inspection on October 29, 2010, and who would carry out the repairs (Landlord or Tenant). The male Landlord and the male Tenant both signed the list, and I find that this indicates agreement to its contents.

The list identifies the following:

TENANTS’ WORK	LANDLORDS’ WORK
Back right bedroom needs painting to cover red and blue paint	Closet doors need repairing or replacing
Back left bedroom needs painting to cover green paint, missing light glasses	
Hallway: missing light globes, glass; missing spindle, stairway railings	
Upstairs bathrooms: missing towel rail and toilet roll holder	Fan needs cleaning (done Nov. 17) Caulking – bath tub
Downstairs toilet: toilet roll holder missing; paint over area Tenant painted; whole room needs painting	Toilet tank needs repairing (done Nov. 17) Fan needs cleaning (done Nov. 17)
Dining room: glass on light/fan missing	

Front door: door casing missing above door; replace all missing light bulbs Hallway: hole in drywall at bottom of stairs	
Windows: replace missing window screens, upstairs bedroom; repair or replace damaged screens, two in the kitchen, one in the living room	
Back door: porch light glass globe missing; J channel and weather strip missing	
Fridge and freezer and stove dirty, carpets need cleaning.	

The list also indicates that the move-out condition inspection will take place on November 30, 2011, at 11:00 a.m.

The Landlords seek recovery of the cost of professionally cleaning the carpet. The tenancy agreement provides that the Tenant is responsible for professional cleaning of the carpet at the end of the tenancy if the carpets were professionally cleaned at the beginning of the tenancy. The Landlord has provided evidence that the carpets were professionally cleaned at the beginning of the tenancy. The carpet cleaning invoice the Tenants provided is not for a professional cleaner. Therefore, I find that the Landlords have established this portion of their claim in the amount of **\$84.00**.

The Tenants acknowledged that they did not return the keys to the Landlords and therefore I find the Landlords are entitled to the cost of a new front door lock in the amount of **\$18.47** and the cost of cutting an extra key for the lock amount of **\$3.01**.

The Tenants acknowledged damaging the stove seal and therefore I find the Landlords are entitled to recover the cost of a new seal in the amount of **\$38.86**.

The Tenants acknowledged that they were responsible for the damaged screens. I find that the Landlords have established an award of **\$16.80** for screen repair.

Based on the testimony and documentary evidence of both parties (for example, the hand written list of repairs required on October 29, 2011), I find that the Landlords have established their claim for the cost of replacing the weather stripping on the door (**\$81.78**); one towel bar (**\$11.18**); the door trim (**\$48.08**); the outside lamp glass (**\$2.23**); a toilet paper holder (**\$3.23**); and drywall repair (**\$27.10**).

The Landlords provided a blanket statement with respect to their labour costs, indicating that they spent 137 hours repairing items in the rental unit at \$20.00 per hour for a total

claim of \$2,740.00. The Landlords did not provide a detailed breakdown of their labour costs in repairing the items I have awarded above, and therefore I award the Landlords a nominal amount of **\$200.00** (10 hours @ \$20.00 per hour) for these repairs.

The Landlords' claim for painting includes material costs of \$613.81 and 123 hours of labour at \$20.00 (totaling \$3,073.81). I would expect to see a claim of this size for painting the entire inside of a rental unit. The Landlords did not provide sufficient evidence to support a claim against the Tenants for re-painting the entire rental unit.

The photographs taken at the end of the tenancy indicate that the bright colours on the walls were still clearly showing through the new paint the Tenants applied. I find that the Landlords have established an award for the cost and labour in repainting the two bedrooms, however the Landlords did not provide a clear breakdown of the labour and paint costs for the bedrooms only. Therefore, I award the Landlords a nominal amount of \$250.00 for each room, for the cost of paint and labour, totaling **\$500.00**.

I find that the Landlords did not provide sufficient evidence to support the remainder of their claims and they are dismissed.

The Landlords have established a total monetary award in the amount of **\$1,034.74**.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit, pet damage deposit and accrued interest towards partial satisfaction of their monetary claim. Interest on the deposits has accrued in the amount of **\$20.65**.

The Landlords has been only partially successful in their application and I find that they are entitled to recover 1/9th of the cost of the \$100.00 filing fee from the Tenants, in the amount of **\$11.11**.

I find that the Landlords are entitled to a Monetary Order against the Tenants, calculated as follows:

Damages pursuant to the provisions of Section 67 of the Act	\$1,034.74
Partial recovery of the filing fee	<u>\$11.11</u>
Subtotal	\$1,045.85
Less deposits and accrued interest	<u>- \$680.65</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$365.20

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$365.20** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 06, 2011.

Residential Tenancy Branch