



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, to keep all or part of the security deposit, a monetary order for damages, money owed or compensation for damage or loss, other and recovery of the filing fee. Both parties attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began January 19, 2009 and was renewed August 1, 2010 with monthly rent of \$2850.00; the tenants paid a security deposit of \$1350.00.

The landlord testified that the tenant vacated the rental unit with thoroughly cleaning the unit, there was damage to the unit, utilities were unpaid, and the landlord suffered a loss of rental income for the month of September 2011. This tenancy was the first in this rental unit with it never being occupied prior to this tenancy.

The landlord contacted the tenant and arranged move out inspections on August 31, 2011, September 3, 2011 and September 9, 2011. The landlord stated that on the first inspection date the tenant had not thoroughly cleaned the rental unit, on the second date the tenant got upset and left partway through the inspection and the tenant did not attend the rental unit on the third inspection date.

The tenant stated that he was present at the first and second inspection but that he was never notified of the third inspection date. The landlord reiterated that they had sent the notice for the third inspection by registered mail to the tenant.

The landlord in this application is seeking compensation for the following:

House and Carpet Cleaning	\$336.00
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BC Hydro Bill	\$23.87
Shaw TV Bill	\$763.24
Painting, Wall Touch Up	\$336.00
Storage Room Lock	\$218.40
Switch Plate, Drain Cap, Bi-Fold Door Etc.	\$324.97
Ceiling Repair	\$336.00
Travel Expenses	\$100.00
NSF Cheque Charges 6 @ 35.00	\$210.00
Loss of Rental Income for 33 Days	\$3135.00
Total Claim	\$5800.42

House and Carpet Cleaning \$336.00

The landlord stated that the tenant did not clean the rental unit and that the carpets had stains on it. The landlords questioned the ability to come back at a later date to claim for damage to the carpet but as the unit is re-tenanted and the repairs not completed, the landlords choose to continue with their claim.

The tenant stated that he cleaned the carpets and then had them professionally cleaned and that the stain was no longer visible. The landlords maintain that a stain remained in the master bedroom even after they had the carpet cleaned a third time.

The tenant stated that while the landlord's photos show the stove, kitchen cabinets and other areas of the rental unit not clean, that he in fact finished cleaning these areas the same day the photos were taken which was August 31, 2011 during the first move out inspection. The tenant stated that the credibility of the landlord's claim should be questioned as the landlord took the photos prior to completion of the tenant cleaning the rental unit.

BC Hydro Bill \$16.94 and \$23.87

The tenant acknowledged that the \$16.94 hydro bill was his and he would be responsible for paying that amount however the tenant questioned why the landlord was claiming the \$23.87 hydro bill for the month after he vacated the rental unit. The landlords stated that they are claiming this amount as they had to leave the hydro on in order for the cleaning and repairs to be completed.

Shaw TV Bill \$763.24

The tenant stated that the Shaw bill came to the rental unit in his name and he question why the landlords had opened his mail and were claiming this amount in their application. The landlords stated that they were unsure if they were responsible for any bills coming to the rental unit and that was why the Shaw bill was included, the landlords did not comment on why they opened the tenant's personal mail.

Painting, Wall Touch Up \$336.00

The landlords stated that the walls were very dinged and marked up and that they had to be touched up with paint. There was also a damaged corner that had to be repaired

and painted and an area in the second bedroom where the plaster and paint had been pulled off the wall. The tenant stated that the corner was damaged and there were some dings and marks on the walls but that he believed this to be normal wear and tear in a 2.5 year tenancy. The tenant did acknowledge that the wall in the second bedroom had been damaged when removing a poster board from the wall.

Storage Room Lock \$218.40

The landlord stated that they had to replace the lock on the storage room that had been damaged. The tenant acknowledged that the lock had been damaged but he did not believe it had been damaged by him. The tenant stated that he noticed the handle bent approximately 6 weeks prior to the end of the tenancy and as the lockers are in a public area and he thought that someone had attempted to break in to the locker. The tenant did not notify the landlord that the lock was broken when he noticed it.

Switch Plate, Drain Cap, Bi-Fold Door Etc \$324.97.

The landlords stated that the bathroom fan had been damaged, light bulbs not replaced, a sink drain broken, the garbage disposal blocked and the bi-fold door broken. The tenant stated that this was another example of the landlord's not being forthcoming in their claim as he fixed the bathroom fan the same day he took the photo, he left multiple light bulbs for the landlord to use (the landlord's denied this) and that the bi-fold door had not been properly installed by the developer and did not fit and the sink drain simply had to be reattached. The tenant also noted that the landlord did not check the garbage disposal when he was there and the landlord acknowledged that they found that there were issues with the disposal after the tenant had left.

Ceiling Repair \$336.00

The landlords stated that they had to have the kitchen ceiling repaired and repainted as it had been damaged by the tenant. The tenant acknowledged that his girlfriend had accidentally damaged the ceiling when removing items from her book bag.

Travel Expenses \$100.00

The landlord notes on the tenancy agreement addendum at #2, 2-4 *'tenants agrees to pay landlords additional \$100.00 to cover landlord's trips and time consumed'*. The landlords are claiming this amount as they had to travel from their home to the rental unit.

NSF Cheque Charges 6 @ 35.00 \$210.00

The landlord stated that the tenant bounced his rent cheque on 6 different occasions and the tenancy agreement addendum at #6 states *'If your cheque bounced, there will be a \$35.00 charge in addition to monthly rent'*. The tenant acknowledged that he had bounced the rent cheques but stated that on each occasion he went to the landlord's residence with a new cheque and paid an additional \$50.00 cash to the landlords each time; the landlord's denied this.

Loss of Rental Income for 33 Days \$3135.00

The landlords stated that it took them the entire month of September to get the rental unit back in rentable condition. The tenant challenged this statement in part due to the amount of work that had to be completed and the fact that during the month of August the landlord's made no effort to advertise or show the suite to prospective tenants.

The tenant stated that he wished to bring his own claim forward and address the issue of the landlord locking him out of the rental unit, opening his personal mail and not returning his security deposit. The tenant was advised that he would have to file his own application through this office to make a claim against the landlord and that his issues would not be heard today as this hearing was in relation to the landlord's application only.

Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord is entitled to a monetary order for damages, cleaning costs and loss. The move out condition inspection report and photographic evidence submitted by the landlord do establish that some repairs and cleaning was required in the rental unit after the tenant vacated. It must be noted however that some of the items listed on the move out condition inspection report were discovered and noted on the move out condition inspection report by the landlord after the tenant had vacated and that some of the items depicted in the landlord's photos were in fact repaired and cleaned by the tenant.

There must also be a level of reasonableness applied when considering the repairs and cleaning that was required and the length of time the landlord took to complete the repair and cleaning. Consideration must also be given to the fact that the landlord's made no effort to secure new tenants for September 2011 and that up until August 31, 2011 the landlord's had not been to the rental unit and did not know it's condition.

There is directly contradicting testimony regarding the NSF cheque charges however the landlords in their addendum note a returned cheque fee of \$35.00 which is outside of the Act. The tenant insists that he paid \$50.00 cash for each returned cheque but has not provided any evidence of this.

The landlords claim for \$100.00 for travel expenses as noted in the tenancy agreement addendum is an unconscionable term and not allowed under the Act.

Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep

the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Therefore I find that the landlords are entitled to compensation in the limited amounts of:

	Claim	Award
BC Hydro Bill	\$16.94	\$0.00
BC Hydro Bill	\$23.87	\$5.53
Shaw TV Bill	\$763.24	\$0.00
Painting, Wall Touch Up	\$336.00	\$336.00
Storage Room Lock	\$218.40	\$218.40
Switch Plate, Drain Cap, Bi-Fold Door Etc.	\$324.97	\$162.48
Ceiling Repair	\$336.00	\$336.00
Travel Expenses	\$100.00	\$0.00
NSF Cheque Charges 6 @ 35.00	\$210.00	\$150.00
Loss of Rental Income for 33 Days	\$3135.00	\$665.00
Total Claim	\$5800.42	\$2097.41

Accordingly I find that the landlord is entitled to a monetary order for \$2097.41.

As the landlord has been successful in their application the landlord is entitled to recovery of the filing fee however the landlord's claim was over \$5000.00 and the filing fee paid should have been \$100.00 and not \$50.00. Therefore the \$50.00 filing fee paid will not be returned and this will cancel out the landlord's having to pay the additional \$50.00 as required.

Conclusion

I find that the landlord has established a monetary claim for \$2097.41 in damages, cleaning costs and loss. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$1350.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$747.41**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 14, 2011.

Residential Tenancy Branch