



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application of February 23, 2012 for a monetary award for unpaid rent/loss of rent, cleaning and repair of the rental unit, and recovery of the filing fee for this proceeding after the tenants breached the fixed term agreement by leaving the tenancy early.

While the landlord did not specify damage to the rental unit on the application, such items were included on the move-out condition inspection report and in other evidence, so I have amended the application to select MND on the list of claims. In addition, the tenants surrendered the security deposit on the move-out condition inspection report, and I have amended the application to select MNSD to indicate that it is factored in to calculations of the award to the landlord.

In addition, the landlord advised that new tenants did not take possession of the rental until February 15, 2012 rather than February 1, 2012 as anticipated in the original application. I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application as requested.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain the security deposit in set off against any balance found to be owed. Claims in damages take into account move-in/move out condition inspection reports, whether damages are proven, attributable to the tenants and proven and reasonable as to amounts claimed, depreciation and normal wear and tear. The burden of proof falls to the claimant.

Background, Evidence and Analysis

This tenancy began on October 1, 2011. Rent was \$1,100 per month and the landlord holds a security deposit of \$550 paid on September 14, 2011.

During the hearing, the landlord gave evidence that the tenants had advised him by an email of January 3, 2012 that due to loss of employment they would be unable to continue with the tenancy. The tenants did not pay the rent for January 2012 and moved out by January 9, 2012 when the parties completed the move-out condition inspection report together. The landlord sent the tenants a demand letter on January 18, 2012 for payment for damages and made the present application on February 23, 2012.

The landlord submitted the following claims supported by receipts and move-in/move-out condition inspection reports and on which I find as follows:

Unpaid rent/loss of rent for January and one-half of February 2012 - \$1,650.

Section 45(2)(b) of the *Act* permits tenants in a fixed term rental agreement to give notice to end the tenancy only on a date that is not earlier than the end date set by the fixed term agreement, September 30, 2012 in the present matter. Section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to the non-compliance of the other with the agreement or legislation, then the non-compliant party must compensate the other for that loss. Accordingly, I find that the tenants must compensate the landlord for the loss of rent and this claim is allowed in full.

NSF and late fees - \$75. As provided for in the rental agreement and *Regulation 7*, , and as acknowledged by the tenants, the landlord is entitled to recover a \$25 late fee for the December 2011 rent, plus NSF fees of \$25 for each of December 2011 and January 2012. This claim is allowed in full.

Move-in and move-out fees - \$200. The tenants concurred that they were responsible for and had not paid move-in and move-out fees of \$100 each as required by the Strata bylaws in place in the rental building.

Liquidated damages - \$477.90. While the liquidated damages clause in the rental agreement sets the amount at \$700, the landlord askeded that the claim be reduced to the actual costs of \$477.90. This claim is allowed in full.

Replace mirrored closet sliding glass door - \$152.32. The move-in condition inspection report notes that the door in question was off the track at the time. The parties concurred that it had not been repaired during the tenancy. I find that the damage to the door was the result of the landlord's delay in having it repaired and dismiss the claim.

Repair towel rack and toilet roll holder - \$198.19. The move-in condition inspection reports note that both of these items were loose at the beginning of the tenancy and the move-out report states that the towel rack had fallen off entirely. The landlord stated that this had not been reported to him. I find that these items should have been repaired by the landlord at the beginning of the tenancy and that the landlord is responsible for the repair. This claim is dismissed.

Repair dishwasher - \$105.22. The landlord gave evidence that the tenants advised him on December 30, 2011 that the dishwasher was leaking and would not drain. The landlord stated that a service provider who had unclogged it and who provided a receipt for the claimed amount advised him that among the items found in the drain were plastic tooth picks. The dishwasher is approximately four years old. The tenants stated that they had never used plastic tooth picks and had been careful not to put anything in the dishwasher that didn't belong in it. The landlord stated that the appliance worked well at the beginning of the tenancy. I find that it cannot be said for certain that the tenants caused the problem with the dishwasher as it is not uncommon for a small item stuck in a drain to cause an accumulation of debris over time. In addition there were no children in the rental unit who might have put something in the washer that didn't belong there. Therefore, I find some doubt as to whether the tenants were responsible for the problem and I grant the benefit of doubt to the tenants. This claim is dismissed.

Service Garburator - \$153.32. Given that dishwashers and garburators feed into the same drain, I have the same doubt with respect to its failure to operate due to being plugged as I did with the dishwasher. I again grant the benefit of doubt to the tenants. The claim is dismissed.

General cleaning - \$80. The tenants concur with this claim and it is allowed in full.

Filing fee - \$50. Having found merit in the application, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$600). As agreed by the tenants, the landlord may retain the security and pet damage deposits in set off against the balance owed.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Unpaid rent for Jan. and one-half of Feb. 2012	\$1,650.00
Move-in and move-out fees	200.00
Liquidated damages	477.90
General cleaning	80.00
Filing fee	50.00
Sub total	\$2,532.90
Less retained security deposit (no interest due)	- 550.00
TOTAL remaining owed to landlord	\$1,982.90

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by Monetary Order for **\$1,982.90**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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: April 26, 2012.

Residential Tenancy Branch