



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$4232.38 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- When the tenant left the rental unit they had not completed the cleaning and as a result further cleaning had to be done.
- The tenants were in the rental unit for two and half years and had not cleaned the carpets when they left and as a result the carpets were left dirty and in need of cleaning.

- The tenants left the kitchen linoleum scuffed and marked and as a result the linoleum had to be cleaned as well.
- The tenants chipped the stove during the tenancy and the tenants agreed to pay \$65.00 to repair the stove.
- This rental unit was last painted in 2009 however it had to be painted again when the tenants vacated due to marks and nail holes, and gouges in the gyprock. I have not charged for materials, I am only charging for labour.
- The tenants breached a fixed term tenancy agreement that ran to June 30, 2012, and as a result he had advertising costs to try and re-rent the unit.
- The rental unit did not re-rent right away and therefore he also had to keep the heat on in the unit and pay for the heating costs.
- He also lost three months rent because the tenants breached the tenancy agreement.

The applicant is therefore requesting an order as follows:

Cleaning	\$96.00
Carpet cleaning	\$95.20
Lino floor cleaning	\$50.00
Repair chip on stove	\$65.00
Painting	\$96.00
Advertising costs	\$280.88
Fortis-B.C. utility costs(reduced)	\$136.90
Three months lost rental revenue	\$3300.00
Filing fee	\$50.00
Total	\$4169.98

The applicant therefore requests an order to keep the full security deposit of \$500.00 towards this claim and request for a monetary order be issued for the difference.

The respondent testified that:

- On the move out inspection report the landlord wrote down total deductions of \$220.20 and this included costs for cleaning, carpet cleaning, painting, and repairing the chipped stove. At the time this is the amount the landlord told them they would be charged, and therefore they feel the landlord should be bound by this amount.
- They did not leave any damage to the walls of the rental unit beyond normal wear and tear and therefore they do not believe they should be charged anything further for painting.
- They did not completely clean the rental unit however they could not move out the stove and fridge to clean underneath and therefore do not believe they should be charged for that portion of the cleaning.
- They also do not believe they should be charged anything further for advertising, utility costs, or any further rent past the end of tenancy, because they were not in a fixed term tenancy agreement.
- The landlord knew they did not want a fixed term tenancy agreement, and therefore an agreement was written that **if** they were to stay till June 30, 2012 they would get a \$45.00 per month rent rebate, however the understanding was if they were unable to stay to the end of June 2012 they would not get the rebate.
- They therefore do not believe that they should have to pay any further rent past the end of the tenancy.
- Further if it is found that this was a fixed term tenancy, and they still do not believe it is, they believe that the landlord did not mitigate his loss as the unit was not shown at all until after they vacated. Rental vacancy rates were very low at the time and they fail to see why the unit was not even shown in more than a month.

In response to the tenant's testimony the landlord testified that:

- He did not agree to total deductions of \$220.20 on the move out inspection report, and in fact it is noted further down on the report that actual costs rather than estimates will be charged.
- The \$45.00 rent rebate was a rent rebate given because the tenants agreed to a fixed term to the end of June 2012, and therefore the tenants are liable for rent right to the end of the term.
- Vacancy rates may have been low at the time, however a brand-new 12 unit building was built right across the street and as a result it was difficult to rent an older unit right across from a brand-new unit.

Analysis

First of all it is my finding that the \$220.20 listed under total deductions on the move out inspection report, was only an estimate and the landlord is not bound by that amount especially given Note #3 on the lower portion of the move out inspection report that states that actual costs rather than estimates will be charged.

General cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. However in this case it is my decision that the landlord has shown that the tenant failed to meet the "reasonable" standard of cleanliness required.

Therefore I am willing to allow a portion of landlords claim for cleaning. The landlord has claimed a total of eight hours for cleaning and therefore since a portion of that can be expected to bring the unit to the high standard wanted for a new tenant, I will allow 50% of the \$96.00 claim for a total of \$48.00.

Carpet cleaning and lino cleaning

I allow the landlords claim for carpet cleaning and lino cleaning. It's reasonable to expect that the carpets should be cleaned after this length of a tenancy, and the photo evidence clearly shows that the lino floor needed cleaning.

Repair chip on stove

I will allow the claim for repairing the chip on the stove, as this damage was caused by the tenants.

Painting

I deny the claim for painting. Landlords should expect to have to paint the rental unit approximately every three years, and since according to the landlord's testimony this unit was last painted in 2009, the landlord cannot pass on this painting charge to the tenant. Further it's my finding that the tenant left the walls in the rental unit in reasonable condition with no damage beyond normal wear and tear.

Tenancy agreement

It is my finding that the tenancy agreement signed on July 25, 2011 is very ambiguous and it does not clearly state that this is a fixed term tenancy running to June 30, 2012.

In the tenancy agreement the landlord has written that it is agreed that a rent rebate of \$45 per month will be allowed if the tenant rents until June 30, 2012. The clause certainly gives an incentive to the tenant to stay to June 30, 2012, but it is my finding that it does not bind the tenant to a fixed term.

Therefore since the tenant gave a proper one month Notice to End Tenancy, it is my decision that the tenant is not required to pay any rent, or utilities past the end of the tenancy, nor can the tenant be held liable for the landlords advertising costs.

The tenant however did not stay to the end of June 2012, and therefore does not qualify for the rebate, and must pay the landlord the \$45.00 per month that was deducted as an incentive to stay to the end of June. The tenant got the rebate of \$45 a month for six months and therefore must pay \$270.00 to the landlord.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Cleaning 50% of \$96.00	\$48.00
Carpet cleaning	\$95.20
Lino floor cleaning	\$50.00
Repair chipped stove	\$65.00
Repay rent rebate	\$270.00
Filing fee	\$50.00
Total	\$578.20

Conclusion

I have allowed \$570.20 of the landlords claim and I therefore order that the landlord may retain the full security deposit of \$500.00 and I have issued a monetary order in the amount of \$78.20.

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 25, 2012.

Residential Tenancy Branch