



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement, retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the initial fixed term of tenancy was from June 1, 2008 to May 31, 2009. Thereafter, tenancy continued on a month-to-month basis. Monthly rent at the outset of tenancy was \$1,400.00, and it was due and payable in advance on the first day of each month. Effective April 1, 2010, rent was increased by \$40.00 to \$1,440.00. A security deposit of \$700.00 was collected on or about May 1, 2008, and a pet damage deposit of \$300.00 was collected on or about September 2, 2008. By way of cheque dated September 1, 2010, the tenant paid a key deposit to the landlord in the amount of \$75.00. A move-in condition inspection report was completed with the participation of both parties on May 31, 2008.

By way of text message on May 1, 2012, the tenant gave notice to end tenancy effective May 31, 2012. Subsequently, by letter dated May 1, 2012, the tenant gave written notice to this same effect. Thereafter, the tenant vacated the unit on May 31, 2012.

A move-out condition inspection was undertaken by the tenant, the landlord and the landlord's agent on June 1, 2012, however, a move-out condition inspection report was not completed on that occasion. The landlord claims that a 6 hour time-out was offered to the tenant to consider whether any dispute around the disposition of the security / pet

damage deposits in relation to cleaning or repairs in the unit, could be resolved directly between them. It is not entirely clear what the respective understandings of the parties were at that stage in relation to the completion of the move-out condition inspection report itself. In any event, the tenant left the unit and informed the landlord by letter dated later that same day (June 1, 2012), of her forwarding address, and requested the return of her “damage deposit.”

The landlord wanted to meet again with the tenant at the unit in order to complete the move-out condition inspection report, however, despite the exchange of communications between the parties, the scheduling of another mutually agreeable time did not occur. Ultimately, a move-out condition inspection report was completed by the landlord on June 3, 2012 without the participation of the tenant.

Despite advertising, the landlord testified that new renters were not found for the unit until July 1, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more, can be accessed via the website: www.rto.gov.bc.ca

Certain sections of the Act which bear directly on the circumstances of this dispute are referred to below.

Section 45 of the Act speaks to **Tenant’s notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In relation to the start of tenancy, section 23 of the Act speaks to **Condition inspection: start of tenancy or new pet**, while section 24 of the Act addresses **Consequences for tenant and landlord if report requirements not met**. As previously noted, the parties undertook together to complete a move-in condition inspection and report.

In regard to the end of tenancy, section 35 of the Act speaks to **Condition inspection: end of tenancy**, while section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The various aspects of the landlord's application and my findings around each are set out below. The totality of documentary evidence submitted by the parties includes, but is not limited to, photographs, receipts, transcripts of text messages, correspondence between the parties, and receipts. While all of the documentary evidence and testimony has been carefully considered, not all details included in same are necessarily referred to in this decision.

\$1,450.00: unpaid rent / loss of rental income. I find that the tenant's procedure for giving notice to end tenancy does not comply with the relevant statutory provisions set

out in section 45 of the Act, as above. In short, 1 full month's notice to end tenancy is required but was not given. I also find that the landlord undertook to mitigate his loss by advertising the unit and showing the unit to prospective renters in a timely fashion after receiving the tenant's notice. However, despite this, new renters were not found until effective July 1, 2012. In the result, I find that the landlord has established entitlement limited to **\$1,440.00***, which is the level of rent applicable to the subject tenancy.

\$725.00: liquidated damages. Residential Tenancy Policy Guideline # 4 speaks to "Liquidated Damages," in part as follows:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

In this case, the tenancy agreement makes reference in clause # 14 to "Ending the Tenancy" and refers to certain relevant provisions in the Act. Beyond this, a related and monetarily non-specific provision in the attached "Additional Tenancy Terms" provides:

Monetary charges apply for early termination of lease agreement.

In the circumstances of this dispute, a month-to-month tenancy was ended without proper notice; it is not that a fixed term tenancy was ended prematurely. The remedy available to the landlord is by way of an application for dispute resolution which sets out specific claims arising from inadequate notice, such as a claim for loss of rental income for example. In summary, there is no liquidated damages clause *per se* in the tenancy agreement or the "Additional Tenancy Terms," and the Act and Residential Tenancy Policy Guidelines set out available remedies in the event of inadequate notice to end a month-to-month tenancy. In short, this aspect of the application is hereby dismissed.

\$850.00: cleaning & drywall repairs. The landlord testified that he and landlord "CL" undertook this work themselves, and that no professional contractors were hired. The calculation of total cost is based on 21.25 hours @ \$40.00 per hour. First, I find that an hourly rate of \$20.00 is more reasonable under the circumstances. Second, I find that even while the tenant undertook to complete some cleaning and repairs, there was additional cleaning and repairs required. However, I also note that there was approximately 4 years of normal wear and tear reflected in the condition of the unit at the end of tenancy. In summary, on a balance of probabilities I find that the landlord has established entitlement limited to **\$160.00***, which is calculated on the basis of 8 hours @ \$20.00 per hour.

\$925.00: painting. It is understood that the entire unit was last painted sometime in 2007. In consideration of the tenancy's having ended at the end of May 2012, the age of the interior paint at that time was approximately 5 years. Residential Tenancy Policy Guideline # 40 (the "Guideline") speaks to the "Useful Life of Building Elements," and provides that the useful life of interior paint is 4 years. Accordingly, this aspect of the application is hereby dismissed with the exception noted below.

The exception to the age of interior paint occurred in the master bedroom which was painted approximately 8 months prior to the end of the tenancy. In his documentary submission the landlord has estimated a cost of \$200.00 for painting the master bedroom. In consideration, in part, of normal wear and tear over a period of approximately 8 months, and in view of the useful life of interior paint of 4 years (48 months), I find on a balance of probabilities that the landlord has established entitlement limited to **\$75.00***.

\$310.00: supplies. Following from all of the related findings set out above, I find on a balance of probabilities that the landlord has established entitlement limited to **\$50.00***.

\$450.24: re-keying. The landlord testified that the quantum for this aspect of the claim is based on a quote, and that as no actual purchase has been made, there is no receipt in evidence. The landlord further testified that he hoped the tenant would return the key, such that no actual expenditure would be necessary. For her part, the tenant claims to have lost the key. In the result, as the re-keying has not been undertaken and no cost has been incurred, this aspect of the application is hereby dismissed.

\$200.00: curtain & curtain rod replacement. The Guideline, as above, provides that the useful life of "drapes" is 10 years. There is no conclusive evidence before me in relation to the age of the curtains at issue before the start of this tenancy. Further, whatever the age of the curtains at the start of tenancy, they sustained approximately 4 years worth of normal wear and tear during the tenancy itself.

As to the curtain rod, there is no mention of its being damaged in any way on the move-in condition inspection report, however, photographs taken at the end of tenancy show it bent in one location. This damage is also noted on the move-out condition inspection report.

As the replacement(s) were "in stock" and no related receipts are in evidence, I find on a balance of probabilities that the landlord has established entitlement limited to **\$25.00***.

\$50.00*: filing fee. As the landlord has achieved some measure of success with this application, I find that he has established entitlement to the full amount claimed.

Entitlement Sub-total: \$1,800.00

Following from all of the above, I find that the landlord has established entitlement to a claim of **\$1,800.00**. I order that the landlord retain the security deposit of \$700.00 (plus interest of \$7.03), the pet damage deposit of \$300.00 (plus interest of \$1.49), and the key deposit of \$75.00 (total: **\$1,083.52**) and I grant the landlord a monetary order for the balance owed of **\$716.48** (\$1,800.00 - \$1,083.52).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$716.48**. Should it be necessary, this order may be served on the tenant, filed in the 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 24, 2012.

Residential Tenancy Branch