



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MND, MNSD and FF
Tenants: RI, MNSD and FF

Introduction

This hearing was convened on applications by both the landlord and the tenants.

By application of June 16, 2012, the landlord sought a monetary award for unpaid rent, cleaning, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of June 25, 2012, the tenants sought return of rent overpayment arising from an improperly imposed rent increase, return of their security and recovery of the filing fee for this proceeding.

As a matter of note, the landlord concurred with the tenants' claim with respect to the rent increase and the parties agreed that the claim would be settled by a \$350 credit in favour of the tenants.

Issue(s) to be Decided

The landlord's application requires a decision on whether he is entitled to a monetary award for the unpaid rent, damage, cleaning, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

After settlement of the rent increase issue, the tenants' application requires a decision on whether they are entitled to return of the security deposit and recovery of their filing fee.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on May 1, 2011 and ended on May 29, 2012. Rent was \$1,750 per month and the landlord holds a security deposit of \$875 paid on April 17, 2012. The rental unit was brand new when the tenants moved in.

Landlords' Claims

The landlord submitted a series of estimates, receipts, photographic evidence, condition inspection reports and witness statements in support of his claims and on which I find as follows:

Unpaid rent for May 2012 - \$1,750. The tenants concur that they did not pay the rent due on May 1, 2012. However, in later discussions over claims for cleaning, the tenants stated that they left the tenancy on May 29, 2012 to accommodate the wishes of the landlord and they were not permitted sufficient time to clean and repair the rental unit. The landlord stated that the parties had mutually agreed to end the tenancy on May 29, 2012 when he declined to issue the tenants with a 10-day notice to end the tenancy for unpaid rent in order to allow them more time to find new accommodation. I find that there was agreement to end the tenancy on May 29, 2012. Therefore, while I do not accept the tenants' submission that they did not have sufficient time to clean and repair, I do find that the rent should be reduced by two days. At a per diem of \$56.45, I find that the rent should be reduced by two days leaving ($\$1,750 - \$112.90 = \$1,637.10$). In addition, I find that the agreed to improper rent increase should be deducted from the May rent due leaving a balance owing of \$1,287.10.

General cleaning - \$304.00. The landlord submitted an itemized list of cleaning he had done. On the basis of that and the photographic evidence, I find this claim to be fair and proven and it is allowed in full.

Carpet cleaning - \$250. On the basis of a receipt and the photographic evidence, this claim is allowed in full.

Replace refrigerator shelf - \$125. The tenants concurred that the shelf had been broken but questioned the landlord's receipt. The landlord gave explanation that the shelf is on back order and that he will be replacing it at the stated cost. This claim is allowed in full.

Replace large window blind - \$386.40. The tenants challenged this claim on an argument that the blind could have been repaired. The landlord stated that he had asked that question of the supplier but was advised that the damage was beyond repair. I accept the evidence of the landlord and allow the claim.

Unblock toilet - \$60. The tenants acknowledged this problem and stated that they had attempted the task without success and could not afford a plumber. The claim is allowed.

Miscellaneous repairs - \$62.50. This claim combines parts and labour for repair of the garage door, towel racks and drywall in the bathroom, and hooks. It is allowed.

Patio door latch - \$25. The landlord had initially claimed \$50 for cleaning the sliding patio door tracks and repair of the latch, but acknowledged that the track cleaning had been included in the general cleaning claim. The tenants stated that the latch had been defective in some way, but given that they did not report it to the landlord when it occurred, I favour the landlord's version and allow the \$25.

Drywall repair and painting - \$378. This claim includes \$133 in paint and materials and \$275 in labour. The landlord stated that in an effort to match the patches, he painted most of the rental unit. However, he stated that this claim is only for the estimated portion of the work for the patching and paint touch up. On the basis of photographic evidence, I find the claim to be reasonable and it is allowed in full.

Refinish bamboo floors - \$600. The landlord submitted an estimate for replacement of the floors in question at a cost of \$3,000 but claims \$600 for refinishing for doing the work himself. The tenant's submit that the scratching was simply a matter of ordinary wear and tear. I find that the photographic evidence show some scratching staining beyond normal wear and tear, but having some doubt as to the cost of remediation, I reduce the award on this claim to \$300.

Filing fee - \$50. As the landlord's application has substantially succeeded on its merits, I find that he is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$875). As authorized by section 72 of the *Act*, I authorize and order that the landlord retain the security deposit in set off against the balance owed to him by the tenants.

Tenants' Claim

As the matter of the rent increase has been resolved by agreement, and as the security deposit has been awarded to the landlord, I find it is not necessary to canvass the tenants' claims further and that they should remain responsible for their own filing fee.

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

Unpaid rent for May 2012	\$1,287.10
Carpet cleaning	250.00
Replace refrigerator shelf	125.00
Replace large window blind	386.40
Unblock toilet	60.00
Miscellaneous repairs	62.50
Patio door latch	25.00
Drywall repair and painting	378.00
Refinish bamboo floors	300.00
Filing fee	<u>50.00</u>
Sub total	\$3,228.00
Less residue from security deposit	- 875.00
TOTAL	\$2,353.00

Conclusion

The tenants' application is dismissed without leave to reapply.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$2,353.00** for service on the tenants.

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: September 04, 2012.

Residential Tenancy Branch