



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

This hearing was convened on application by the landlords application of June 27, 2012 seeking a monetary award for unpaid rent, loss of rent, 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.

As a matter of note, the tenant and her advocate noted that this was a co-tenancy until February 2012 when the male tenant left and on that basis claimed to be only partially responsible for any award to the landlords. The applicability of joint and several liability was explained and, while the Residential Tenancy *Act* does not address tenant to tenant disputes, the attending tenant is at liberty to seek recovery of her co-tenant's share of any award through a Small Claim Court action against him..

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

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 February 1, 2008 and the tenant vacated on April 14, 2012 having given notice that day. Rent was \$1,200 per month and the landlord holds a security deposit of \$600 paid on February 1, 2008.

The landlord submitted a series of receipts, copies of email exchanges with the tenant and with suppliers and copy of the condition inspection reports in support of their claims and on which I find as follows:

Unpaid rent - \$4,800. The tenant concurs that she did not pay rent for the four months of December 2011, January 2012, February 2012 and April of 2012. March 2012 rent was paid. The landlords stated that the tenant had advised them that she was having difficulty paying the rent following a spousal separation. She told them she was anticipating a substantial child-tax credit to bring the account up to date, but did not do so. This claim is allowed in full.

Loss of rent for May 2012 - \$1,200. The tenant advised the landlords by telephone on April 14, 2012 that she had vacated the rental unit on that day, and at the urging of the landlords, she provided the notice in writing. Section 45 of the *Act* provides that tenants notice to end tenancy must give at least one-month's notice following the next rent due date after notice is served. In the present matter, the notice given on April 14, 2012 would have an end of tenancy date of May 31, 2012. The landlords stated that because of the state in which the rental unit was left, it took some time to prepare it. They hired a property manager to try to find a new tenant as soon as possible but were unable to begin a new tenancy until June 1, 2012.

The tenant's advocate pointed out that on the tenant's notice letter of April 14, 2012, the tenant had acknowledged all unpaid rent but had stroked out the loss of rent for May, a change initialled by the landlords' agent. While I do not find the change to the tenant's acknowledgement of the indebtedness extinguished the landlords' right to claim the loss of rent, the landlords withdrew the claim, one of several abundantly fair gestures expressed by the landlords during the hearing.

Master bedroom carpet replacement - \$702.98. The landlords submit this claim on the grounds that the carpet in question was so badly stained in required replacement. Standard depreciation tables place the useful life of standard carpeting at 10 years and the landlords stated the carpet in question was approximately six years old. Therefore, I allowed 40 per cent of this claim for a total of \$281.19.

Repair/replace dryer exhaust pipe - \$520. The landlords gave evidence, supported by a brief explanation from an installer that at the beginning of the tenancy, the tenants had hooked up their own washer and dryer and, in the process, had incorrectly added dryer venting that ran vertically and exhausted into the attic. The male tenant had claimed to be competent in such work.

The explanation given by the landlord stated that vertical exhaust piping can create a fire hazard due to dust accumulation, and exhausting inside the building was a cause of moisture build up and consequent mold. The claim was for removal of the faulty installation and replacement with a conforming system. As there was no proper venting at the beginning of the tenancy, I find that an award for the full amount would constitute betterment. However, I find that the landlord is entitled to half of the claim for the cost of dismantling and repair of the existing insulation and for consequent mold removal during the cleaning of the rental unit. The award is \$260.

General cleaning - \$300. The landlords submitted a professional estimate for the cleaning of his amount but stated that they did the work themselves for at least six hours each. I will allow \$20 per person hour on this claim for a total of \$240.

Wall repairs supplies- \$25.81. This claim, supported by receipt from Cloverdale Paint is allowed in full.

Wall patching supplies and bulbs - \$23.22. This claim was supported by a receipt from Home Depot and it is allowed in full.

Replacement door & hardware & tiling supplies - \$135.93. The landlord submitted a receipt from Windsor Plywood in support of this claim and it is allowed in full.

Replace master bedroom door handle - \$46.82. This claim was supported by a receipt from Windsor Plywood and it is allowed in full.

Remove materials left behind - \$16. While the tenant contested the need for this charge from Comox Strathcona Waste Management for dump fees, I prefer the evidence of the landlords and allow the claim in full.

Labour for painting, repairs & tile replacement - \$364.72. This landlord reduced this claim to \$292 on the grounds that some of the time included in the invoice had been for duties other than on the rental unit. I am not persuaded by the tenant's submission

that the damaged tile was the result of an uneven sub-floor and I allow the \$292 claimed by the landlord.

Trailer rental for hauling - \$22.40. This amount was billed to the landlord by a supplier who removed refuse from the rental unit. I do not accept the tenant's claim that no refuse was left behind and allow the claim in full.

Cleaning supplies - \$14.32. This claim is allowed in full.

Filing fee - \$100. As the landlords' application has substantially succeeded on its merits, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$600). As agreed by the tenant, I authorize that the landlords retain the security deposit in set off against the balance owed to them by the tenants.

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

Unpaid rent for Dec./11, Jan., Feb. & April 2012	\$4,800.00
Repair/replace dryer exhaust pipe	260.00
General cleaning	240.00
Wall repairs supplies	25.81
Wall patching supplies and bulbs	23.22
Replacement door & hardware & tiling supplies	135.93
Replace master bedroom door handle	46.82
Remove materials left behind	16.00
Labour for painting, repairs & tile replacement	364.72
Trailer rental for hauling	22.40
Cleaning supplies	14.32
Filing fee	<u>100.00</u>
Sub total	\$6,330.41
Less retained security deposit	- 600.00
Less interest	<u>- 8.24</u>
TOTAL	\$5,722.17

I would note that I find to be highly credible the landlords statement that they spent an additional \$3,000, which they have not claimed, to remediate the rental unit. Combined with the fact that they took the tenant at her word that she would make good on the growing rent arrears, I take it as a further indication that the landlords have done all

within their power to be considerate of the tenant and her three children and minimize losses for both parties.

Conclusion

In addition to authorization to retain the security deposit in set off, the landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$5,722.17** for service on the tenant.

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 06, 2012.

Residential Tenancy Branch