



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 23, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?

Background and Evidence

This tenancy started on March 16, 2011 as a fixed term tenancy for 1 year and then was renewed on April 1, 2012 as a fixed term tenancy with an expiry date of March 31, 2013. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on March 16, 2011. The tenancy ended on August 30, 2012 as a result of the Tenants giving one month notice to the Landlord by email. A move in condition inspection report was completed and signed on March 16, 2011 and a move out condition inspection report was completed and signed on August 30, 2012.

The Landlord said the Tenants moved into a freshly painted rental unit that was in excellent condition at the start of the tenancy. The Landlord said he submitted a move in and move out condition inspection report that shows this was the case. The report is signed by the Tenant on move in and move out. The Landlord continued to say the Tenants left the rental unit in very poor condition and as a result the Landlord is making the following monetary claim.

- The Landlord said the unit needed painting as there was excessive hole repairs and staining on the walls and the doors were chipped and scratched. The Landlord said he hired a professional painter to do the work and the cost of the repairs and painting was \$910.24. The Landlord said he submitted the condition inspection report, receipts and photographs to support his claim.
- The Landlord said the stove top was damaged, but he has not replaced it as of yet and he included an estimated cost to replace the stove top of \$2,014.80. The Landlord submitted photographs to support his claim.
- The Landlord continued to say that the carpet was excessively stained and there were burn marks in it; therefore the Landlord said the carpet must be replaced. The Landlord said he has not replaced the carpet yet, but he submitted a cost estimate of \$3,568.32 to replace the carpets. Photographs and a cost estimate were submitted to support the claim.
- The Landlord said he hired a cleaning service to clean the rental unit after the Tenants moved out at a cost to him of \$177.31. The Landlord submitted the invoice and photos to support the claim.
- The Landlord continued to say the Tenants are responsible for the September, 2012 rent of \$1,200.00 as they moved out of the unit before the end of the fixed term tenancy and he was only able to rent the unit for October 1, 2012; therefore the Landlord has lost the rent for September, 2012. The Landlord continue to say that because the Tenants cancelled their September, 2012 rent cheque he also had to pay a \$5.00 bank charge which he is claiming in the application as well.
- The Landlord also requested to recover the filing fee that he paid for this application of \$100.00.

The Tenants said they were surprised and upset by the Landlord's application as they thought they had left on good terms and the tenancy was finished on August 30, 2012. The Tenant said the Landlord did not tell them about the issues with the unit and they first saw the Landlord's claims in his application. The Tenant said they did sign the move in and move out condition reports, but they said they did not remember walking through the unit with the Landlord. The Tenant said the unit was freshly painted when they moved in, but there were chips and scratches on the doors from the start of the tenancy. The Tenant provided photographs date stamped March 16, 2011 to support their position that the doors were scratched on move in. The Landlord said photos can be date stamped for any date and the Landlord said the move in condition report indicates the doors were in good condition.

The Tenants continued to say that the scratches on the stove top may have happened during their tenancy or may be from the previous tenancy and it may have been from fry pans, but the Tenant said it is normal wear and tear. The Tenant said they did not seriously damage the stove top.

With regards to the carpet the Tenant said they vacuumed the carpets when they left, but the carpets were stained and in poor shape. The Tenant said the Landlord's wife said at the start of the tenancy that the carpets were poor quality and should be replaced. The Landlord said the carpets were in good condition at the start of the tenancy as indicated in the move in condition inspection report.

The Tenant said they did not understand how the cleaning bill could be \$177.31 as they had two friends clean the unit before they left. The Tenant said they thought the unit was cleaned and the Landlord did not say anything during the move out walk through about the cleanliness of the unit. The Landlord said the move out condition inspection report indicates the unit was not clean.

The Tenant continued to say they thought the Landlord had rented the unit as of September 7, 2012 and that is why they cancelled their September, 2012 rent cheque. The Tenant said they understand that they are responsible for the September, 2012 rent of \$1,200.00 because they broke a fixed term tenancy and the Landlord lost the rent for September, 2012.

The Tenant closed their remarks by saying they were in difficult times when they moved out of the unit and they thought there was poor communication between themselves and the Landlord.

The Landlord said in closing the unit was left in very poor condition and he understands that monetary claims for damages must be work that is completed and supported by a paid invoice. The Landlord said he will reapply after the work is done to the carpets and the stove top.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did give the Landlord one month notice on July 31, 2012 that they were move out August 30, 2012, but this date is before the end of the fixed term tenancy which was March 31, 2013; therefore the Tenants are responsible for the rent until the unit is rented to a new tenant. I accept the Landlord's testimony that the unit was rented October 1, 2012; therefore the Landlord has lost the rent of \$1,200.00 for September, 2012. Consequently I find for the Landlord and award the Landlord the September rent of \$1,200.00 and the bank charges of \$5.00 for the Tenants' cancelled cheque.

With respect to the cleaning invoice of \$177.31, I find the move out condition in section report indicates the unit was dirty and the Tenant signed the report; therefore I find for the Landlord and award the cleaning costs of \$177.31 to the Landlord.

Both parties agreed the unit was freshly painted on move in and the condition inspection report does not indicate any wall or door issues. As well the move out report indicates damage to both the walls and the doors; therefore I find the damages claimed by the Landlord for repairs and painting of the walls is warranted and I award the Landlord the amount of the invoices that he submitted in the amount of \$910.24.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the damage to the stove top and the carpets, these items have not been repaired therefore no actual loss is proven. I dismiss the Landlord's claim for the stove top damage in the amount of \$2,014.80 and the Landlord's claim to replace the carpets in the amount of \$3,568.32 with leave to reapply.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,200.00
	Bank charge	\$ 5.00
	Painting and repairs	\$ 910.24
	Cleaning	\$ 177.31
	Recover filing fee	\$ 100.00
	Subtotal:	\$2,392.55
Less:	Security Deposit	\$ 600.00
	Subtotal:	\$ 600.00
	Balance Owing	\$ 1,792.55

Conclusion

A Monetary Order in the amount of \$1,792.55 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 22, 2013

Residential Tenancy Branch

