



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNSD FF

Preliminary Issues

The Landlords filed their application under the *Residential Tenancy Act* while the Tenants submitted evidence which related to the *Manufactured Home Park Tenancy Act*.

The parties confirmed that they entered into a Residential Tenancy agreement for use and occupation of a manufactured home which is owned by the Landlords. The Landlords maintain a tenancy agreement with the Manufactured Home Park landlords under the *Manufactured Home Park Tenancy Act*. Based on the foregoing I find that the matter which is before me falls under the *Residential Tenancy Act*.

Upon review of the application for dispute resolution the Landlord requested that the name L.D. be removed from the style of cause as he was not a party to this dispute. She confirmed she added the name to her application as she had initially thought she could not attend the hearing and she was going to get him to act as her agent. Based on the foregoing, the application style of cause was amended, pursuant to section 64 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 25, 2012, by the Landlords to obtain a Monetary Order for: unpaid rent or utilities; for damage to the unit, site or property; to keep all or part of the pet and or security deposits; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlords be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a tenant payment record; a proposed payment schedule; a receipt for carpet cleaning equipment rental; registered mail receipt; photos and a receipt for photo printing; and the tenancy agreement. She confirmed that the Tenants were not sent a copy of the tenancy agreement in their evidence package and said that was because they had a copy of it already.

The Tenants confirmed receipt of the Landlord's evidence. They affirmed that they submitted documentary evidence to the Residential Tenancy Branch but did not send their evidence to the Landlord.

The parties entered into a fixed term tenancy agreement that began on February 1, 2012 and switched to a month to month tenancy after August 1, 2012. Rent was payable on the first of each month in the amount of \$1,050.00 and on January 13, 2012 the Tenants paid \$525.00 as the security deposit. No move in or move out condition inspection report forms were completed. The Tenants vacated the property by October 12, 2012 after receiving a 10 Day Notice for unpaid rent, in person, on October 3, 2012.

The parties confirmed that the Landlord's Agent met with the Tenants on approximately October 12, 2012 and informed them that they did not need to worry about cleaning the rental unit as he and the Landlord would look after cleaning the unit and getting it ready for the new tenants. D.F. also had a telephone conversation with the Agent where she requested additional time to be able to clean the unit and he informed her that they would look after the cleaning. There was no mention of the Tenants being charged for cleaning conducted by the Landlord and/or her agent.

The Landlord confirmed that she re-rented the unit effective November 1, 2012 and that the new tenant was given possession of the unit on October 19, 2012. The new tenant did not start paying rent until November 1, 2012.

The Landlord submitted that she is seeking to recover the accumulated unpaid rent and costs to clean and repair the rental unit as follows:

- 1) \$1750.00 for unpaid rent up to and including October 2012, as noted on the tenant payment ledger provided in evidence.
- 2) \$50.00 for the cost of the carpet machine rental and chemicals. The Landlord did not provide a copy of the receipt for the chemicals however she did provided a receipt which indicated the machine rental was \$43.12.
- 3) \$240.00 for twenty hours at \$12.00 per hour for cleaning the rental unit and painting walls to cover up writing on the walls which was done in pen, pencil, marker, and what appeared to be lipstick. They ended up painting two walls in the kitchen, the master bedroom closet, and some touch up painting around the unit.
- 4) \$1500.00 which is an estimated cost to replace the damaged carpet in the kid's bedroom which was ripped and urinated on plus the master bedroom carpet which had been ripped as supported by the photos. The carpet was approximately two years old when the Landlord purchased the manufactured home in approximately November 2011.

The Tenants confirmed they owed money for outstanding rent however they were of the opinion that the amount was only \$1,250.00. During the course of this proceeding D.F. reviewed the tenant ledger submitted by the Landlord and advised that she could not find an error and could not explain why her total was different.

The Tenants confirmed that their two young children wrote on the walls, and ripped and urinated on their bedroom carpet. They accepted responsibility to replace the kid's bedroom carpet however they did not accept responsibility for the master bedroom carpet. They confirmed the master bedroom carpet was damaged during their tenancy however it was caused by a telephone contractor who was there to install their cable. They confirmed they hired the contractor and it was for internet services they were having installed.

The Tenants disputed the claims for carpet cleaning, cleaning, and painting because they were told not to clean the unit and they were told the Landlord would be painting the unit for the new tenant anyways.

Analysis

The Landlords confirmed that they did not provide the Tenants with a copy of the tenancy agreement in their evidence and the Tenants confirmed that they did not send any of their documents to the Landlord as evidence. Not sending the other party evidence is a contravention of sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore the tenancy agreement and all of the Tenants documentary evidence cannot be considered in my decision. I did however consider the parties' oral testimony and the remainder of the Landlord's evidence which the Tenants confirmed receiving.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the evidence supports the tenancy ended effective October 13, 2012, in accordance with a 10 Day Notice which was issued as a result of the Tenant's breach for non payment of rent. In the absence of evidence to contrary, I accept the tenant payment ledger as provided by the Landlord. Accordingly, I award the Landlord unpaid rent up to and including October 2012 rent in the amount of **\$1,750.00**.

The parties confirmed the Agent took responsibility for cleaning the rental unit and there was no mention or agreement that the Tenants would pay for the cleaning. Therefore, I find the Tenants were relieved of the responsibility to clean the unit and I dismiss the Landlord's claim for carpet cleaning and labour to clean the walls, without leave to reapply.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the aforementioned I find the Tenants breached section 32(3) of the Act, by leaving the rental unit with damage to the carpet and some of the walls at the end of the tenancy.

Upon review of the photographic evidence I accept that the some of the walls needed painting to complete repairs that would be considered more than normal wear and tear. It is not acceptable for tenants to allow their children to damage the rental property by writing on the walls. The Landlord has claimed only for the labour to paint approximately four walls, therefore I award them compensation which is equal to four hours at \$12.00 per hour for the total amount of **\$48.00**.

With respect to the claim for compensation to replace the carpet I find the Landlord provided insufficient evidence to prove or verify the value of the loss or damage claimed. The Landlord acknowledged the work has not been completed and that she was relying on an estimated amount of what she thought it would cost. In an instance where a party is relying on estimates for work not yet performed, I would expect to see a third party provide these estimates. For example, the Landlord has estimated it will cost \$1500.00 to replace the carpet and underlay, yet there is no evidence, such as a quote from a carpet company, to support this estimate.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right when there is insufficient evidence to prove the actual cost of the loss.

Based on the undisputed testimony that the carpet was damaged during the testimony, and considering that the age of the carpet was approximately three years old, I award the Landlord nominal damages in the amount of **\$200.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Accumulated unpaid rent to October 2012	\$1,750.00
Labour to paint the walls	48.00
Damage to carpet	200.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,048.00
LESS: Security Deposit \$525.00 + Interest 0.00	<u>-537.50</u>
Offset amount due to the Landlord	<u>\$1,510.50</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,510.50**. This Order is legally binding and must be served upon the Tenants. In the event the Tenants fail to comply with this Order it may be filed with B.C. Provincial Court and enforced as an order of that court.

This decision is legally binding and 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 25, 2013

Residential Tenancy Branch

