



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlords who are seeking a monetary order for unpaid rent, damages and compensation for damage and loss and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence.

Issue(s) to be Decided

Is the landlord entitled to the monetary award sought?

Summary of Background and Evidence

The parties signed a Tenancy Agreement on May 10, 2012 entering into a one year fixed term tenancy commencing June 1, 2012 ending May 31, 2013. Rent was fixed at \$1,650.00 per month and the tenant paid a security deposit of \$825.00 on June 1, 2012. The tenant's mother, SJA signed a Rent Guarantee Agreement as guarantor for the tenant AA.

A Condition Inspection Report was submitted into evidence signed by both parties at move in. The report indicates that all aspects of the rental unit were in "Good Condition".

During the course of the tenancy the landlord received seven by-law infraction notices from the strata property management company regarding "excessive noise" emanating from the rental unit such as yelling, screaming, playing loud music throughout the night and the "prominent smell of marijuana smoke". The landlord received fines from the strata management company totalling \$650.00 which included one fine of \$200.00 and cleaning charges of \$50.00 based on an allegation that the tenant's girlfriend vomited in the elevator and failed to clean the elevator afterwards. When the landlord discussed the matter with the tenant the tenant denied that the woman was his girlfriend. The

landlord viewed the surveillance camera recordings supplied by the strata management company and FOB access records which the landlord says proves the tenant has been lying and that it was his girlfriend and the main door was accessed with the tenant's FOB. The landlord therefore claims \$600.00 in strata fines and the \$50.00 clean up costs.

As a result of the complaints from the strata corporation, the landlord issued a one month Notice to End Tenancy for Cause on September 7, 2012 with an effective date of October 31, 2012. The landlord testified that he served the he heard nothing from the tenant with respect to the Notice and the October 1, 2012 rent cheque was not honoured by the tenants' bank. The landlord submitted the NSF cheque into evidence.

The landlord posted a 24 hour notice to enter the suite on the door on October 5, 2012 and attended to inspect the suite on October 7, 2012 at which time they discovered that the tenant that the tenant had vacated the rental unit. The landlords submit that they also discovered that the bathroom door and closet doors with large holes in the, that the fire alarm was removed, that there was pop spraying on the ceiling, that the carpet was ruined and there were many scratches and stains on the walls. The landlord submitted 18 photographs taken on October 7, 2012 depicting the damage. The landlord says that the tenant did not leave a forwarding address nor did he complete a move-out inspection. The landlord says that the access FOB and keys to the entry, common area, and mailbox and storage locker were returned to the resident manager on October 11, 2012.

The landlord claims the following sums:

October rent unpaid	\$1,650.00
NSF Charges	25.00
Fines and elevator clean up charges	650.00
Replace carpeting and make repairs to the rental unit (WBH Construction invoice)	2,543.52
Cleaning expenses 20.00 x 2 persons x 5 hours	200.00
Trip charges for landlord's time	100.00
Total	\$5,168.52

This total differs from the sum sought in the landlord's application of \$4,443.53. The landlord also seeks to retain the security deposit and recover the filing fee paid for this application.

The tenant questioned how long the hearing would take stating that he did not have time for this. The tenant states that he was angry that the landlord's served his mother with the Application for Dispute Resolution and that he has several witnesses to prove that he did provide his forwarding address to the landlord and it was not necessary to serve his mother.

The testified that he does not agree with any of the claims the landlord has made save the damage to the door. The tenant says that the landlord's are trying to solicit money from his mentally ill mother to accomplish renovations to their apartment and to seek retribution for "...perceived slights on my part". The tenant says the landlords have made unexpected and unannounced visits to the rental unit on a number of occasions including to serve him with an eviction and at one point they were in his rental unit as he emerged from the shower. The tenant says he has his own claims to make with respect to the harassing conduct of the landlords.

Although the tenant agreed that he did damage a door, the tenant questioned the authenticity of the invoice from WBH Construction with respect to the door and other repairs.

While the tenant does agree that he damaged a door in the rental unit he says the Addendum to the Lease "Move-Out Cost Schedule" for cleaning and repairs shows the door to be \$95.00. The tenant submits that the charges for painting the door are not accurate because doors can be purchased already painted; the tenant noted that if the Arbitrator had ever shopped at Home Depot she would be aware of this. The tenant agrees that there was a missing door knob but questions the cost of replacing the knob.

The tenant noted that the WBH invoice setting out the cost of repairs refers to replacing carpets however the tenant says he has evidence to show that the landlords did not reinstall carpets but that they removed the carpets and laid laminate flooring. The tenant says all the landlords are trying to do is to get the tenant to pay for their renovations. The tenant submitted photographs obtained from Craigslist which he says show the subject rental unit since the end of this tenancy. The tenant says this proves that the landlords installed laminate flooring and that they put the apartment back up for rent after the renovations. The tenant submits that he is "...completely shocked they did this and also appalled at their apparent idiocy". Because of this the tenant says he doubts all the evidence submitted by the landlords and "Due to this HUGE breach of legal etiquette and obvious disregard for RTB, their procedure and your intelligence..." the tenant requests that the case be "...thrown out..." and that the Arbitrator order the return of the full security deposit. The tenant submits that if this does not happen he will

provide statements from numerous people and a copy of all email conversations to prove how underhanded the landlords have been.

The tenant says he vacated the rental unit sometime at the end of September and that it was cleaned on October 1 or 2, 2012. The tenant says he offered to pay for October's rent in full one-third of the way through October so long as he would be given access back to the suite however the landlords deactivated the FOB that was in his possession. To prove that he tried to pay October's rent the tenant also submitted a letter from his mother stating that her son tried to pay October's rent but the landlord's refused to accept the money.

The tenant disagrees with all of the invoices for fines from the strata management company. The tenant says the landlord once told him he was on the strata council so the tenant believes the landlord used his influence to have the fines and/or infraction letters manufactured.

The tenant says he does agree that whoever "puked" in the elevator was coming to his suite however he does not know who the individual was. The tenant says it was not his ex-girlfriend as claimed and the tenant says he cannot identify the individual from the pictures he has seen.

The tenant's witness LB was sworn. LB testified that she has 7.5 years cleaning experience and that she cleaned the rental unit at move out from top to bottom. LB testified that when she moved the fridge and stove she found such an accumulation of dirt that she believes this dirt was from the previous tenants. LB states that such an amount of dirt and grime in the rental unit it could not have occurred during this short tenancy.

The tenant submitted several other unsworn, unsigned witness statements. The tenant also submitted on-line banking records to show that he paid Budget City Movers \$298.71 to move him out of the rental unit on September 27, 2012 and several pieces of email correspondence between the tenant and the landlords.

Analysis

With respect to the landlords' claim for October rent I find this to be appropriate. The evidence shows that the tenant was served with a one month Notice to End Tenancy for Cause effective October 31, 2012 which he did not dispute. The tenant has not provided evidence to show that he supplied written notice to the landlords to end his tenancy earlier than the effective date on the Notice and he therefore owes rent for the

notice period. Further, as the rent cheque for October 1 was returned due to insufficient funds, I find it appropriate that the tenant pay the fee for that transaction in the sum of \$25.0 as claimed.

With respect to the claims for fines levied by the strata corporation I am not satisfied that the strata corporation has applied a fair, evidence based process sufficient to prove their claims against the landlord and/or his tenant. While I have no jurisdiction to determine whether these fines should be imposed on the landlord, I find that there has been insufficient evidence to prove that the tenant was engaged in the conduct alleged and I therefore dismiss the claims for strata fines save the claim of \$200.00 for vomiting in the elevator and the \$50. 00 clean up costs. I will allow these claims because the tenant admitted it was one of his guests, although unknown, who vomited in the elevator and a tenant, is responsible for the conduct of his guests.

With respect to the claims for repairs in the sum of \$2,543.52 I understand that the landlords may have chosen to replace the carpet with laminate. I am not concerned with this nor am I concerned with using the term “carpet flooring” as opposed to “laminate flooring” in the invoice. The question for my determination is: Was it necessary to replace the carpets as a result of damage caused by the tenant? I find that the landlord has failed to bring sufficient evidence to prove to me that the carpets could not be cleaned and it was absolutely necessary to replace them. I therefore dismiss this claim.

With respect to the claim for painting and repairs to doors I find these sums to be appropriate. I find the photographic evidence supplied by the landlords to be compelling. The damage to the door is severe and when combined with the tenant’s aggressive manner demonstrated at the hearing, I find, based on a balance of probabilities, that it is reasonable and probable to conclude that the tenant is capable of causing the type of damage depicted. With respect to the costs involved, while the landlord initially quoted \$95.00 for the doors there has been insufficient evidence to show that this estimate included labour. Overall I find that the claim of \$200.00 in this regard plus \$24.00 in GST costs to be appropriate.

With respect to the cleaning costs I will accept the sworn testimony of the tenant’s witness with respect this issue and find that the rental unit, while damaged was cleaned by the tenant or his cleaning person at the end of this tenancy.

With respect to the landlords claim for “time” in the sum of \$100.00 the only recovery of costs I may award is the \$50.00 filing fee and I will allow the landlord to recover this sum.

Having made a monetary award in favour of the landlord I will allow the landlord to retain the security deposit in partial satisfaction of this claim.

October rent unpaid	\$1,650.00
NSF Fee	25.00
Fines and elevator clean up charges	250.00
Replace carpeting and make repairs to the rental unit (WBH Construction invoice)	224.00
Filing Fee	50.00
Security Deposit (no interest accrued)	-825.00
Total Monetary Award in Favour of the Landlord	<u>\$1,374.00</u>

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial 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 14, 2013

Residential Tenancy Branch

