



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNDC, MND, MNSD and FF
Tenant: MNSD

Introduction

This hearing was convened on applications by both the landlords and one of the tenants.

The landlords' application of October 31, 2012 sought a monetary award for damage to the rental unit, loss of rent and recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off.

The tenant's application of January 14, 2013 sought an order for return of the security deposit in double.

The applications presented a number of anomalies, addressed as preliminary matters:

1. The tenancy ended formally ended on September 30, 2012 by mutual agreement after a Notice to End Tenancy for unpaid rent had been served. The female tenant left the tenancy several weeks earlier without having provided a forwarding address;
2. The tenant's application was made in the name of the male tenant only;
3. The male tenant provided the landlord with a forwarding address for a local social agency and the landlord did not receive the tenant's actual address until eight days before the hearing. The landlord had previously served the tenants with the notice of hearing and subsequent evidence by way of the social agency address given by the male tenant. The tenant made claim that he had not received the landlords' latest evidence.

4. The female tenant attended the hearing and although she had not provided a forwarding address for service, she acknowledged that the male tenant had provided the notice of hearing to her some two weeks before the hearing.

While the landlord did not have her resident address, I found that by her own accounting and her attendance at the hearing, the female tenant did receive the notice of hearing from the male tenant some two weeks before the hearing. Therefore, as authorized under section 71(2)(c), I find that the female tenant was sufficiently served for the purposes of the *Act* and would be held jointly accountable the landlord's claims.

Similarly, as the landlord served her evidence to the address given by the male tenant as his forwarding address at or about the time the tenant made application with his actual address, I find the evidence in question was sufficiently served for the purposes of the *Act* and is referenced in the decision.

Issue(s) to be Decided

The landlords' application requires a decision on whether they are entitled to a monetary award for claims submitted and authorization to retain the deposits in set off.

The tenant's application requires a decision on whether he is entitled to return of the security deposit and whether the amounts should be doubled.

Background, Evidence and Analysis

This tenancy began on June 1, 2010 and ended on September 30, 2012. Rent was \$835 at the beginning of the tenancy and the landlord holds a security deposit of \$417.50.

Tenant's Claim

As to the tenant's claim, the male tenant submitted a copy of his undated email to the landlord providing his forwarding address. The parties concur that it was sometime between October 15, 2012 and October 31, 2012.

As the landlords applied to claim against the deposit on October 31, 2012 and as section 38(1) of the *Act* provides the landlords 15 days from receipt of the forwarding address to claim against the deposit, I find that the landlords' application was on time.

The tenant further submitted that the landlords had extinguished their right to claim on the deposit as there had been no move-in or move-out condition inspection reports. In fact, the landlords had submitted a copy of the move-in condition inspection report. In addition, the landlords gave evidence that the tenant had asked that the inspection be completed on September 29, 2012, but the tenant did not appear. The tenant stated that his move out had taken longer than expected, but when he was unable to reach the landlords who had gone out of town. I find that the failed condition inspection report was a result of the tenant providing the failed date and the deposit remains available for claim.

Therefore, the tenant's application is dismissed without leave to reapply.

Landlords' Claims

The landlords have submitted a number of claims, supported by photographs, receipts and accounting of staff time on which I find as follows:

One week loss of rent - \$231. The landlords stated that it had taken three weeks to prepare the rental unit for new tenants – largely because of the strong odour of tobacco smoke left by the tenants, despite the fact that the rental agreement prohibited smoking in the rental unit. However, the landlords claim only one week's loss of rent. I find the landlords' additional work was a result of the tenants' breach of the rental agreement. This claim is allowed in full.

Labour to wash all surfaces with TSP - \$120. The landlords stated that it was necessary to scrub all surfaces in the rental unit in order address the smoking odours, a task that took six hours at \$20 per hour. The male tenant claimed that he had cleaned the entire rental unit for six hours, including washing walls. The landlords stated that, nonetheless, remaining stains and odours required their work. I prefer the evidence of the landlord and this claim is allowed in full.

Repaint the rental unit - \$421.13. This claim is based on \$121.13 for paint and \$300 for labour. However, the landlords gave evidence that the unit had last been painted five years earlier. Standard depreciation tables place the useful life of interior paint at four years. Therefore, I find that the paint was fully depreciated and make no award on this claim.

Clean window gutters - \$40. While the male tenant claimed to have done this work himself at the end of the tenancy, the landlord's photographs show a thick accumulation of mold which the male tenant stated had been a result of the landlords washing the exterior windows. I find that the tenants are responsible for this housekeeping task and the claim is allowed.

Clean baseboards and floors - \$20. On the basis of photographic evidence, I find this claim is proven and it is allowed in full.

Clean oven and stove top - \$20. This claim is addressed under a following claim for replacement of the stove.

Clean kitchen cupboards - \$20. On the basis of photographic evidence, I find this claim is proven and it is allowed in full.

Clean tub and surround - \$20. While I find that a claim is justified, I believe this work would have been accomplished in less than an hour and I award \$10 on the claim.

Clean fan hood - \$10. On the basis of photographic evidence, I find that this claim should be allowed.

Replace stove - \$603.68. The landlords submit that the stove top and oven were had so much build up of baked in material that it was impossible to clean the stove to a standard that would be acceptable to new tenants and they had to replace it. The landlords stated that the stove was three years old. I note that a previously cited claim for cleaning the stove asked for \$20 for one hour's labour. I cannot accept that a three-year old stove could not be restored with expert cleaning and that the choice to replace it instead was a decision by the landlords and a cost they must absorb in large. However, I will allow \$100 on the claim for diminishment of value.

Filing fee - \$50. 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 deposits - (\$417.50). As empowered by section 72 of the Act, I authorize the landlords to retain the security deposit in set off against the amount owed to them from the security and pet damage deposits.

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

One week loss of rent	\$231.00
Labour to wash all surfaces with TSP	120.00
Clean window gutters	40.00
Clean baseboards and floors	20.00
Clean kitchen cupboards	20.00
Clean tub and surround	10.00
Clean fan hood	10.00
Replace/clean stove	100.00
Filing fee	50.00
Sub total	\$601.00
Less retained security deposit (No interest due)	- 417.50
TOTAL	\$183.50

Conclusion

The tenant's application is dismissed on its merits without leave to reapply.

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 **\$183.50** 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: January 28, 2013

Residential Tenancy Branch

