



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC and FF

Introduction

This hearing was originally scheduled for January 25, 2013, but was adjourned to the present session as the tenancy had ended and the landlord no longer needed the Order of Possession but sought to amend her application to address substantial damage to the rental unit.

The amendment and additional evidence were not available in time to meet the service requirements under the rules of procedure as noted in my Interim Decision of January 25, 2013.

The amended application now seeks a monetary award for damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the tenants' security deposit in set off against the balance owed.

As a matter of note, the same tenant and the landlord attended both sittings of this hearing. Despite having been served with the Notice of Hearing sent to him by registered mail, the other tenant did not call in to the number provided to enable his participation in the telephone conference call hearing which proceeded in his absence.

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: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable.

Claims for damage or loss under the legislation or rental agreement require that the claimant make reasonable effort to minimize the loss. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on October 1, 2012 and ended on January 1, 2013 pursuant to a Notice to End Tenancy for cause. Rent was \$1,600 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy.

There were two tenants on the rental agreement, and two other persons lived with them as occupants. Occupants do not have the rights and responsibilities of tenants under the *Act*.

As a matter of note, the attending tenant gave evidence, agreed to by the landlord, that he had left the tenancy two weeks earlier than the end of tenancy. He stated, and a diarized accounting by the landlord verified, that the rental building was in reasonable condition up to December 20, 2012 when she attended for a showing to prospective tenants.

Apparently, matters took a turn for the worse on December 30, 2012 when the landlord was called to the property to attend to a noise complaint to find a number of police cars and young adults gathered in the street.

The tenants rescheduled the move-out condition inspection set for December 31, 2012 to January 1, 2013. The landlord had, on November 30, 2012, given the tenants a copy of cleaning to be done at the end of the tenancy and a schedule of costs that could result if the work was left for the landlord. The tenants signed the document.

The landlord submitted into evidence a copy of the move-out condition inspection report, photographs and receipts for repairs to the rental unit in support of the following claims on which I find as follows:

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Loss of rent for January 2013 - \$1,600. The landlord stated that because of the extreme mess and need of repair in which the rental unit was left, it was not possible for her to begin a new tenancy in January 2013. The landlord stated that because of the time needed for cleaning and repairs, the rental unit remained vacant at the time of the hearing, but she claims loss for January only. On the basis of photographic evidence, the condition inspection reports and the landlords proven claims for damages, I find that the landlord is entitled to an award for loss of rent for January and the claim is allowed in full.

Materials for replacing large, broken front window - \$371.35. This claim, supported by a third-party receipt, was not contested by the tenant and it is allowed in full.

Materials for repairing walls & painting - \$114.72. The tenant was given the opportunity to examine and question the receipts submitted by landlord and did not contest the need for the expenditures. The claim is allowed in full.

Materials for general repairs and replacement entry door - \$189.47. Again, the tenant did not contest the need for these materials and on the basis of photographic evidence and receipts, the claim is allowed in full.

Materials to replace bi-fold doors, fence and hardware - \$61.60. On the basis of photographic evidence and receipts and the lack of any evidence to the contrary, this claim is allowed in full.

Furniture, garbage and mattress removal - \$622. The landlord had submitted a photograph of the garage which was full of garbage which she believed contained all of the refuse generated during the three-month tenancy.

She gave evidence that during the move-out condition inspection, she had asked the tenants about removing the furniture. They said it was not theirs and authorized the landlord to dispose of it as she saw fit.

The landlord stated, and the attending tenant concurred, that the items in question were not in the rental unit at the beginning of the tenancy. Therefore, I find that the tenants were responsible for returning the rental unit to the landlord as they had found it and this claim, supported by a third party receipt, is allowed in full.

Cleaning and labour charges - \$1,655. The landlord submitted a 26 item spreadsheet detailing charges for cleaning and repair labour and the tenant was given the opportunity to cross-examine on any particular charge. For example, the landlord was asked about an \$80 charge for hanging a door and gave explanation the labour included wood working to inset the hinges and drilling for the latching mechanism. The tenant did not point to any inordinate charges and the claim is allowed in full.

Filing fee - \$50. As the landlord's application has substantially succeeded on its merits, I find that she is entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$800). As authorized by section 72 of the *Act*, I order that the landlord retain the security deposit in set off against the balance owed.

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

Loss of rent for January 2013	\$1,600.00
Materials for replacing large, broken front window	371.35
Materials for repairing walls & painting	114.72
Materials for general repair & replacement entry doors	189.47
Materials to replace bi-fold doors, fence and hardware	61.60
Furniture, garbage and mattress removal	622.00
Cleaning and labour charges	1,655.00
Filing fee	<u>50.00</u>
Sub total	\$4,664.14
Less retained security deposit (No interest due)	- 800.00
TOTAL	\$3,864.14

Conclusion

In addition to authorization to retain the security deposit in set off against the balance owed, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,864.14** 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 25, 2013

Residential Tenancy Branch

