



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Equitable Real Estate Investment Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

In response to the landlord's application, the tenant made a documentary submission which includes details related to certain compensation sought from the landlord. This compensation pertains broadly to the tenant's allegation that there was mould in the unit, that the landlord is responsible for the mould, that the mould damaged certain of the tenant's possessions, and that the mould directly gave rise to the tenant's decision to end the tenancy. However, the tenant has not filed an application for dispute resolution. Accordingly, the tenant was informed that in order to pursue a claim against the landlord, she will be required to file a separate application for dispute resolution.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on October 1, 2011. The tenancy agreement names one tenant who is the tenant named in the landlord's application. The tenancy agreement also names another tenant who was in attendance to the hearing. The second tenant is identified on the tenancy agreement as an "ADULT persons (age 19 or older) other than the tenant(s) to occupy the rental unit." As both of these individuals resided together in the unit during the term of the tenancy, and as both attended the hearing and gave affirmed testimony, for

convenience, reference henceforth in this decision will be made to them as “the tenants.”

Pursuant to the tenancy agreement, monthly rent is due and payable in advance on the first day of each month. At the outset of tenancy rent was \$1,250.00. Effective October 1, 2012 rent became \$1,303.00. A security deposit of \$625.00 was collected, and a move-in condition inspection report was completed.

By e-mail dated December 10, 2012, the tenants gave notice to end tenancy, and rent was paid up to December 31, 2012. The tenants testified that they effectively vacated the unit by on or about December 16, 2012. The tenants also testified that in mid to late December 2012 they requested that the landlord meet with them to complete a move-out condition inspection. However, the landlord's agent testified that it was a very busy time of year and no one was available for the task at that time. The landlord's agent also testified that the landlord was aware the tenants had effectively vacated the unit around mid-December.

Subsequently, the landlord's agent contacted the tenants on or about January 14, 2013, and it was agreed that a move-out condition inspection would be undertaken on January 30, 2013. The tenants testified that they were given no indication by the landlord's agent that the time agreed to would present any particular challenge for the landlord.

There is apparently no dispute that the tenants informed the landlord of their forwarding address on January 2, 2013. Neither is there apparently any dispute that the landlord began on-line advertising for new renters on or about January 9, 2013.

New renters moved into the unit on February 9, 2013. The landlord's agent testified that occupancy was delayed from February 1, 2013 as a result of the landlord's determination on January 30, 2013, during the move-out condition inspection, that certain cleaning and painting were required in the unit. The landlord's determination in this regard forms the basis of the landlord's claim for loss of rental income for the period from February 1 to 8, 2013, when the cleaning and painting were completed.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the landlord's claim and my findings around each are set out below.

\$1,303.00: *unpaid rent / loss of rental income for January 2013.*

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I find that notice given by the tenants to end tenancy does not comply with the above statutory provisions, I also find there was an inordinate delay between the time when notice to end tenancy was given on December 10, 2012, and January 9, 2013 when the landlord commenced on-line advertising for new renters. In the result, I find that the landlord has established entitlement limited to **\$651.50**, which is half the rent for January 2013 ($\$1,303.00 \div 2$).

\$372.32: *unpaid rent for February.*

Further to the findings set out immediately above, as previously noted, the tenants requested a move-out condition inspection well prior to the time when it was completed on January 30, 2013. I find that the tenants ought not to be held responsible for the

landlord's loss of rental income for 8 days in February 2013, as a result of the landlord's inability to make a representative available for a move-out condition inspection in December 2012. Additionally, as previously noted, the tenants testified that they were not instructed by the landlord's agent that a move-out condition inspection scheduled for January 30, 2013 would or may present particular challenge(s) for the landlord. Further, there is no indication that painting undertaken in the unit was required for any purpose other than addressing reasonable wear and tear. In summary, this aspect of the application is therefore dismissed.

\$22.50: *laundry charges – November to December 2012.*

As the tenants do not deny that these charges arise directly out of their use of laundry facilities in the building, I find that the landlord has established entitlement to the full amount claimed.

\$133.95: *blind cleaning.*

Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading, INTERNAL WINDOW COVERINGS, provides in part as follows:

3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

The landlord's agent testified that the blinds in the unit were new at the start of this tenancy. While the tenants testified that they cleaned the blinds towards the end of tenancy, the move-out condition inspection report documents that blinds were in need of cleaning in the "Living Rooms / Family Rooms," the "Kitchen," the "Dining Areas," and the "Bedrooms." Documentary evidence includes a receipt for the cost incurred by the landlord for cleaning the blinds.

I find that the landlord has met the burden of proving entitlement to the full cost claimed.

\$120.00: *unit cleaning.*

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

I note there is no mention on the move-out condition inspection report of a need for cleaning beyond the blinds, as already addressed above, and “stove needs cleaning.” Accordingly, I find there is insufficient evidence that the unit was not left “reasonably clean” at the end of tenancy, and this aspect of the application is therefore dismissed.

\$509.00: *replacement stove.*

While the move-out condition inspection report notes that the “stove needs cleaning,” there is no indication on the report that the stove is damaged and / or that it is apparently in need of either repair or replacement.

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and estimates the useful life of a stove to be 15 years. During the hearing the landlord’s agent estimated that the age of the stove requiring replacement was approximately 15 years. Following from all the foregoing, this aspect of the application is hereby dismissed.

\$50.00: *filing fee.*

As the landlord has achieved more than a nominal measure of success with this application, I find that the landlord has established entitlement to full recovery of the filing fee.

Sub-total: **\$857.95** (\$651.50 + \$22.50 + \$133.95 + \$50.00)

I order that the landlord retain the security deposit of **\$625.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$232.95** (\$857.95 - \$625.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$232.95**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court

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: March 21, 2013

Residential Tenancy Branch

