



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by registered mail, the tenants did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

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 tenancy began on November 5, 2009. Monthly rent was due and payable in advance on the first day of each month. Rent at the start of tenancy was \$1,100.00, however, later in the tenancy rent was increased to \$1,150.00. A security deposit of \$550.00 was collected. The landlord testified that the unit was brand new at the start of tenancy, and that these were the first tenants.

In September 2012, the landlord was informed by her property manager that the tenants had abandoned the unit. No notice was given by the tenants, no rent had been paid for September 2012, and no keys / key fobs had been returned.

The landlord contacted the tenants and the tenants' parent(s) by telephone, and all confirmed the post office box mailing address used by the landlord and her property manager for sending the hearing package and other related documents to the tenants.

The landlord mailed a "notice of a final opportunity to schedule a condition inspection" form to the tenants with respect to a condition inspection at 1:00 p.m., Friday, September 27, 2012. However, the tenants did not appear. In summary, the landlord found a unit in need of extensive cleaning and repairs. Following the completion of cleaning and repairs, new renters were found effective November 15, 2012.

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

At the outset, the attention of the parties is drawn to certain statutory provisions and guidelines which have particular relevance to the circumstances of this dispute.

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, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Further, Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant - Responsibility for Residential Premises" in considerable detail.

Based on the documentary evidence which includes, but is not limited to, photographs and detailed receipts, as well as the affirmed / undisputed testimony of the landlord, the various aspects of the landlord's claim and my findings around each are set out below.

\$88.48: *carpet cleaning.*

I find that the landlord has established entitlement to the full amount claimed.

\$306.88: *unit cleaning.*

I find that the landlord has established entitlement to the full amount claimed.

\$843.00: *miscellaneous labour and materials for repairs throughout the unit.*

I find that the landlord has established entitlement to the full amount claimed.

\$750.00: *painting throughout the unit.*

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of interior paint is 4 years. I find that the paint sustained 3 years of wear and tear during the course of a nearly 3 year tenancy (75% of a 4 year useful life). In the result, I find that the landlord has established entitlement limited to **\$187.50**, or 25% of the cost claimed.

\$560.26: *replacement of bedroom flooring.*

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of carpet is 10 years. I find that the carpet sustained 3 years wear and tear during the course of a nearly 3 year tenancy (30% of a 10 year useful life). In the result, I find that the landlord has established entitlement limited to **\$392.18**, or 70% of the cost claimed.

\$288.26: *cost of labour arising from replacement of bedroom flooring.*

I find that the landlord has established entitlement to the full amount claimed.

\$18.08: *new keys (mail box & front door).*

I find that the landlord has established entitlement to the full amount claimed.

\$150.00: *new fobs (x 3).*

I find that the landlord has established entitlement to the full amount claimed.

\$1,150.00: *unpaid rent for September 2012;*

\$1,150.00: *loss of rental income for October 2012;*

\$575.00: *loss of rental income from November 1 to 14, 2012.*

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

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.

I find that the tenants' manner of ending the periodic tenancy did not comply with the statutory provisions set out above. I further find that the landlord undertook to mitigate her loss of rent / rental income by completing the required cleaning and repairs as soon as possible, and then advertising for new renters in a timely fashion.

Following from all the foregoing, I find that the landlord has established entitlement to the full amount(s) claimed.

\$76.06: *advertising for new renters.*

I find that a cost such as this would likely have been incurred by the landlord, irrespective of how the tenancy ended. In the result, I consider this to be the landlord's cost of doing business and this aspect of the application is therefore dismissed.

\$50.00: *registered mail.*

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord's application is hereby dismissed.

\$100.00: *filing fee.*

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

Sub-total: **\$5,249.38.**

I order that the landlord retain the security deposit of **\$550.00**, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$4,699.38** (\$5,249.38 - \$550.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4,699.38**. This order may be served on the tenants, 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 25, 2013

Residential Tenancy Branch

