



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 304768 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on November 01, 2008 and ended on November 07, 2012. Rent for this unit was \$850.00 per month increasing to \$886.55 on October 01, 2012. Rent was due on the 1st day of each month in advance. The tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 on October 14, 2008. Both parties' attended a move in and a move out inspection of the property. The tenants agree they have not given the landlord their forwarding address in writing.

Unpaid rent

The landlord's agent testifies that the tenants gave late notice to end the tenancy. The notice was dated and received on October 01, 2012 with an effective date of the weekend following the first of November 2012. The landlord's agent testifies that the tenants should have given the landlord notice to end the tenancy by September 30, 2012. The landlord's agent testifies that the unit is still not re-rented and the landlord is still doing repairs and renovations on the unit. The repairs prevented the unit being re-rented for November and the landlord seeks to recover unpaid rent or loss of income for November, 2012 to the sum of \$886.55.

The landlord's agent testifies that the tenant did not move from the rental unit until November 07, 2012 however the tenants did pay the amount of \$220.00 as prorated rent for that week. This amount can be deducted from the rent owed for November. The landlord's agent testifies that the tenants had been given proper notice of a rent increase that started on October, 01, 2012. This was a rent increase of 4.3 percent. The tenants did not pay the rent increase for October, 2012 and the landlord seeks to recover the sum of \$36.55.

The tenants testify that they were not aware that they had to give notice the day before the day that rent is due. The tenants testify that they gave their notice in good faith with their rent for October. The tenants testify that they were aware that the rent increase came into effect on October 01, 2012 however they told the landlord's caretaker that

they would not pay the rent increase until the landlord fixed the problems in the tenants unit. The tenants testify that the landlord would only make repairs or do renovations to any of the units when tenants moved out. Any existing tenants would not get any repairs done.

Damages

The landlord's agent testifies that the tenants painted the rental unit bold colours, purples and brown. This took three coats of paint to cover the walls. The walls also had marks and dents and a hole which had to be repaired before painting could be done.

The trim and baseboards also require painting. The landlords agent testifies that the unit has not been painted by the landlord during the tenancy and the landlord's agent is unsure when the unit was last painted prior to this tenancy in 2008. The landlord seeks to recover the amounts of:

\$1280 for repairs and painting costs for the caretaker

\$680.00 repairs and painting costs for the carpenter

\$360.00 for cleaning

\$658.49 for paint

\$62.55 for paint supplies

\$100.80 for fridge crisper

\$22.40 for screen door repairs

\$112.00 for rug cleaning

\$75.00 for garbage removal

The landlords agent calls their first witness JS who is the caretaker of the property. The witness testifies that they had to paint the entire unit with three coats of paint some of this was required to cover the tenants dark paint and some was to paint the original white paint as it was dirty and there were holes in the walls that they had to patch first. The baseboards also required painting as did the doors which were left scratched. The witness testifies that there was also a hole in the wall behind the door which required patching.

The witness testifies that there was damage to a screen door and the weather stripping on that door had also been scratched by the tenants' cat. The fridge crisper was broken and the plastic trays in the fridge door had been damaged and the tenants had put a plastic piece in its place and screwed this to the fridge door. The witness testifies that he worked for at least 80 hours painting and doing the repairs and they are still working on the unit doing renovations. The witness testifies that the hours claimed for are for the repair work for damage caused by the tenants.

The tenants cross examines the witness and ask the witness what did the witness do in 80 hours. The witness responds that he painted the unit. The tenants ask the witness that if they had only painted one wall in the master bedroom and one wall in another bedroom and one hallway wall why are the tenants responsible for the painting of the entire unit. The witness responds that the other walls were the original white paint but all walls required painting. The tenants ask the witness to explain a charge on the invoice for four two x four pieces of wood if the tenants are not being charged for the renovation. The witness responds that this is a mistake and this wood was for the bathroom renovation. The charge of \$10.36 plus HST should be removed from the landlords claim. The tenants ask the witness to explain about painting the baseboards. The tenant testifies that the unit had very few baseboards because they had been removed between August and November 2009 and there were only odd ones left in the hall. The witness responds that it was the baseboards left that were painted.

The tenant asks the witness about the amount of paint used. The tenant asks the witness why the tenants have been charged for three, five gallons pots of paint when each five gallon pot would be enough to cover 2000 square feet and the unit is only 1400 square feet. The witness responds that the owner already had the paint in place so they did not have to buy the three five gallon pots and just obtained this invoice as a quote to show what it would cost for the paint. The witness testifies that they used 15 gallons of paint on the tenants unit. The tenants asks the witness why on the invoice have the tenants been charged for sanding discs as sanding discs are not used to sand

drywall. The witness responds that he did use the sanding discs to get rid of any thick amounts of drywall filler and then used a finer sander.

The tenant asks the witness about the hole in the wall and states this hole was there when they moved into the unit and was caused by the door knob as there was no door stopper in place. The witness responds that when the witness matched the hole to the door knob it did not line up. The tenant testifies that that was because the door had been changed and it was noticed at the start of their tenancy after the move in report was done and the tenants had informed the caretaker in place at that time.

The landlord's agent calls their second witness RK. This witness explains that he is a carpenter working for the landlord on this unit. The witness testifies that he spent 60 hours working on this unit doing painting and repairs. The witness testifies that he filled holes in the walls caused from nail holes and tacks and decals that had been glued to the walls, the mouldings were also scratched and needed painting.

The tenant cross examines this witness and asks the witness about which walls had decals and which mouldings were damaged. The witness responds that a bedroom wall was scratched and damaged from furniture and decals and wherever there was furniture there were dents in the walls. The witness testifies that every door had dents and scratches. The tenant asks the witness if it took the witness 60 hours to fill a few holes with filler. The witness responds that he spent 34 hours between November 15 and November 30 and since then he has worked a total of 60 hours. The tenant asks the witness why they are being charged 80 hours for the caretakers work and another 60 hours for this witnesses work when it seems as if they have done the same work.

The landlord's agent testifies that the tenants had been charged for carpet cleaning and cleaning of the unit. The landlord's agent states that the carpet cleaning charge can be removed from the claim as the landlord decided to replace the carpets. The cleaning charge can also be removed as the cleanup will be for a builder clean when the renovations in the unit are completed.

The landlord's agent testifies that they do not have an invoice for the fridge crispers or door trays as these items have not yet been replaced and the landlord may replace the fridge instead. The landlord's agent testifies that she is not aware of how old the fridge is but it is not a new fridge. The landlord's agent withdraws the claim for the fridge crispers.

The landlord seeks to recover the amount of \$22.40 for the screen door. The landlord seeks to recover the sum of \$62.55 for painting supplies less the 10.36 plus HST for the wood included in error.

The tenants do not dispute the landlords claim for the screen door but do dispute the landlords claim for painting supplies and the sanding disc and wood.

The landlord testifies that the tenants left a washer and dryer at the unit along with a hockey net. The landlord seeks to recover the amount of \$75.00 for the time and labour to remove the washer and dryer and the dump fees. The landlord's agent testifies that they found out later that the hockey net was not removed by the landlord's agents.

The tenants dispute the landlords claim. The tenants testify that the washer and dryer were both working and in good condition. The tenants testify that they had left them at the unit for someone else and they dispute the landlord's claim that these were taken to the dump. The tenants testify that the hockey net had also been left for someone else and was not left on the landlord's property but was on City property.

The landlord's agent calls their third witness GP. The witness testifies that she was the caretaker for the building when the tenants moved into the unit. The witness agrees that when the tenants moved in there was a hole in the wall from the door handle. This had been missed on the inspection report and was brought to the witness's attention later by the tenants. The landlord asks the witness if the witness can recall when the unit was last painted. The witness testifies that she does not recall if the unit was or was not painted when the landlord last had a painter on site.

The tenant's testify that the unit was not in prime condition when they moved in and the landlord had scheduled a renovation but this did not happen. The walls were not of a good quality and any alleged damaged done during the tenancy would be no more than normal wear and tear or was already in place at the start of the tenancy. The tenants testify that there were all ready pin holes in the walls and the walls and trim had only ever been primed. The tenants testify that they asked the landlord to paint the walls and trim as they were dirty but the landlord said the tenants could do it themselves.

The tenants testify that they found very shoddy work on the drywall and the handrail was not up to code so the landlord did replace that but did not sand or paint the handrail of walls. The landlord also replaced a smoke detector and a hole was cut out of the wall at that time but was never repaired and the tenants just covered it with furniture. The tenants testify that the ceiling in the bathroom was never finished and had only ever been primed. This caused the ceiling to peel and mould to appear. The tenants testify that there was a water leak in the unit and a water stain appeared on the rug which again the landlord never dealt with during their tenancy. The tenants testify that they painted the mouldings with a good quality semi gloss paint however none of the other mouldings such as the window sills, remaining baseboards were painted and these areas had only been primed by the landlord.

The tenants and landlords have provided photographs and a copy of the move in and move out condition inspection report in documentary evidence along with invoices, time sheets and other documentary evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses

Unpaid rent

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

A tenant is therefore not permitted to withhold any rent even if the tenant feels the landlord has not complied with the *Act*. The tenant recourse would be pay the rent due and file an application seeking an Order for the landlord to make repairs. Consequently I find in favor of the landlords claim for unpaid rent for October of **\$36.55**.

I refer the parties to s. 45(1) of the *Act* states:

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.

However, I refer the parties to s. 7(2) of the *Act* that provides for the landlords obligation to mitigate any loss which includes a loss for rental income. The landlord's agent has testified that along with repairs the landlord is renovating the unit and this work is still continuing at this time. Therefore it is my decision that the landlord did not attempt to mitigate the loss by advertising the unit for rent effective when the tenants vacated the unit and instead the landlord began to renovate the unit. Therefore the landlord may not hold the tenants responsible for a loss of rental income if the landlord intended to renovate the unit instead of re-renting it in November, 2012. I therefore deny this section of the landlords claim for \$666.55.

Damages

I have considered the landlords application for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having reviewed the documentary evidence and testimony of the parties I find the move in condition inspection report only shows that the unit was in a satisfactory condition at the start of the tenancy and many of the named deficiencies have not been documented such as damage to the walls. The landlord's agent is unable to determine when the unit was last painted by the landlord and the landlord has provided no evidence to show that any damage mentioned at the hearing is any more than normal wear and tear. The tenants contradict the landlord's agent's testimony and that of the landlord's first two witnesses that the tenants were responsible for painting the entire unit as the tenants have claimed they only painted a few walls in a darker colour but had the landlord's permission to do so. The tenants argue that the landlord has not shown how much paint

was used to paint the walls which the tenants had painted a darker colour and the tenants should not have to pay to have the entire unit repainting when this is the landlord's responsibility.

The tenants do however agree that the screen was damaged by their cat. The tenants argue that the landlord is simply doing renovations to the unit and expecting the tenants to pay for this work. The landlords witness argues that the tenants are only being charged for the damage cause by the tenants and not the renovations.

Having considered the arguments and having applied the test for damage and loss claims I am not satisfied that the landlord has met the burden of proof that the tenants are responsible for all of the costs claimed to paint the unit. The tenants agree that they did paint some walls a darker colour and a tenant is required to therefore restore these walls to the original colour at the end of the tenancy. I do not find however that this would take 15 gallons of paint to do this work. Therefore I limit the landlords claim for paint to **\$150.00**. I find as the landlord is responsible to paint a rental unit at regular intervals that the landlord would have needed to paint the rest of the unit and would therefore need supplies to do so. Therefore I deny the landlords claim for painting supplies.

With regard to the amount of hours for two men to paint the walls and do minor repairs; I am not satisfied that it would take two men a total of 114 hours to do minor repairs and paint a 1400 square foot unit even considering that the tenants can only be held responsible for the painting costs for the walls painted by the tenants. Therefore I limit the landlords claim for labour to **\$300.00**.

The landlord's agent has withdrawn the landlords claim for cleaning, for rug cleaning and for the fridge crisper during the hearing

The tenants do not dispute the landlords claim that their cat damaged the screen therefore I find in favor of the landlords claim for **\$22.40**.

With regard to the landlords claim for garbage removal; The landlord has provided no documentary evidence such as in invoice from the transfer station to show that the tenants' washer and dryer were removed from the property. As the tenants have raised doubts that the landlord did remove these appliances and I have no corroborating evidence to the contrary I must deny the landlords claim for \$75.00.

As the landlord has been partially successful with their claim I find the landlord may recover half the filing fee from the tenants to the amount of **\$25.00**.

I find the landlord is entitled to keep part of the tenants security and pet deposits of **\$900.00** plus accrued interest of **\$2.91** pursuant to s. 38(4)(b) of the *Act*.

The balance of the security and pet deposits must be returned to the tenants as shown below and the tenants will receive a Monetary Order for the following amount:

Security and pet deposit plus accrued interest	\$902.91
Less unpaid rent and loss of rental income	(-\$36.55)
Less paint	(-\$150.00)
Less labour to repaint darker walls	(-\$300.00)
Less damaged screen	(-\$22.40)
Less filing fee	(-\$25.00)
Total amount due to the tenant	\$368.96

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep the sum of **\$533.95** from the tenants' security and pet deposits. The balance of which must be returned to the tenants.

A Monetary Order has been issued to the tenants for the amount of **\$368.96**. The order must be served on the landlord and is enforceable through the Provincial Court 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 08, 2013

Residential Tenancy Branch

