



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Haven Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as 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 and her agent attended and gave affirmed testimony.

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

Evidence submitted by the landlord also includes the Canada Post tracking numbers for packages of documentary evidence which were sent to the tenants, subsequent to service of the hearing package.

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 original fixed term of tenancy was from March 15, 2005 to March 31, 2006. Thereafter, the tenancy agreement provides that tenancy will continue on a month-to-month basis. Monthly rent of \$1,725.00 is due and payable in advance on the first day of each month, and a security deposit of \$862.50 was collected on February 8, 2005. A move-in condition inspection report was completed with the participation of both parties.

By way of e-mail dated November 30, 2012, the tenants gave notice to end tenancy “on or before” December 31, 2012. However, it was not until on or about January 7, 2013 when the tenants had completely removed all of their possessions. On that same date, a move-out condition inspection report was completed with the participation of both parties. The tenants provided their forwarding address on the report, and the landlord’s application for dispute resolution was filed 15 days later on January 22, 2013.

At the end of this tenancy, the landlord found a unit in need of cleaning and repairs. Following the completion of cleaning and repairs, new renters took possession of the unit effective February 1, 2013. The landlord testified that advertising for new renters began in December 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

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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

Section 7 of the Act speaks to **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 the 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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord and her agent, and in consideration of the relevant statutory provisions, the various aspects of the landlord's claim and my findings around each are set out below.

\$1,920.80: *repairs to miscellaneous damage.*

Relevant documentary evidence includes, but is not necessarily limited to, the comparative results of move-in and move-out condition inspection reports, photographs, e-mail exchanges between the parties, and an invoice dated January 21, 2013.

The landlord and the landlord's agent testified that the hourly cost of labour assessed for all of the miscellaneous repairs is identical: \$35.00 / hour. The total number of hours

billed is 49, with the cost of labour calculated to be \$1,715.00 (49 hours x \$35.00 per hour). A 12% HST (BC) tax has been calculated as \$205.80 (\$1,715.00 x 12%).

However, I note that the particular tasks identified on the invoice appear to reflect labour ranging from relatively unskilled to skilled. In view of this, and in consideration of the effects of normal wear and tear to be remedied following an approximate 7 year tenancy, I find that the landlord has established entitlement to a claim in the limited amount of **\$1,509.20**, which is calculated as follows:

49 hours x \$27.50 per hour = \$1,347.50

PLUS 12% tax of \$161.70 (12% x \$1,347.50)

\$166.48: *replacement of damaged / missing items.*

Relevant documentary evidence includes, but is not necessarily limited to, the comparative results of move-in and move-out condition inspection reports, photographs, e-mail exchanges between the parties and a receipt(s). In summary, I find that the landlord has established entitlement to the full amount claimed.

\$78.28: *replacement of damaged door sets.*

For reasons similar to those set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

\$154.44: *replacement of blinds and smoke alarms.*

For reasons similar to those set out above, I find that the landlord has established entitlement to the full amount claimed.

\$424.48: *dump fee.*

For reasons similar to those set out above, I find that the landlord has established entitlement to the full amount claimed.

\$6,071.70 (\$4,251.70 + \$1,820.00): *carpet replacement + carpet installation.*

Residential Tenancy Policy Guideline # 40 addresses the "Useful Life of Building Elements," and provides that the useful life of carpet is 10 years. The landlord testified that carpet was new when this tenancy began. Accordingly, I find that the carpet

sustained approximately 7 years (70%) of its “useful life” during what was a tenancy of the same approximate duration.

Having considered the evidence which includes, but is not necessarily limited to, the comparative results of the move-in and move-out condition inspection reports, photographs and receipts, I find that the landlord has established entitlement to compensation in the limited amount of **\$1,821.51**, which is 30% of the total cost of replacing and installing the carpet.

\$1,725.00: *loss of rental income for January 2013.*

I find that the landlord undertook in a timely manner in December 2012, to advertise for new renters following receipt of the tenants’ notice to end tenancy.

While the tenants gave notice that tenancy would end effective December 31, 2012, by failing to remove all of their possessions until on or about January 7, 2013, I find that the tenants retained possession, or “over-held” the unit.

However, I also find that following a tenancy of approximately 7 years, prior to re-renting the unit it would be usual for a landlord to take time to address the effects of normal wear and tear. In summary, I find that the landlord has established entitlement to a claim in the limited amount of **\$862.50**, which is half the amount claimed.

\$100.00: *filing fee.*

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

Sub-total: **\$5,116.89**

I order that the landlord retain the security deposit of \$862.50 plus interest of \$30.54 (total: **\$893.04**), and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$4,223.85** (\$5,116.89 - \$893.04).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$4,223.85**. Should it be necessary, 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: April 17, 2013

Residential Tenancy Branch

