



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and damages; for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents to the Tenant, by registered mail, on February 18, 2013. He stated that he also sent the Tenant copies of his documentary evidence on April 25, 2013. The Tenant acknowledged service of the documents.

The Tenant testified that she sent copies of her documentary evidence and her electronic evidence to the Landlord by express post on April 24, 2013. The Landlord acknowledged receipt of the Tenant's documents and confirmed that he was able to open the USB memory stick that was enclosed in the Tenant's documents.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for the month of February, 2013; liquidated damages; the cost of replacing keys; cost of cleaning the rental unit at the end of the tenancy; and damages to the rental unit?
- May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

Background and Evidence

The rental property is an apartment building that was built in the 1980s. The Tenant moved into the rental unit in July of 2002. A copy of the current rental agreement was provided in evidence. It is a one year term lease, commencing July 1, 2012 and ending

June 30, 2013. Monthly rent at the end of the tenancy was \$722.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$361.00.

The Tenant gave the Landlord notice to end the tenancy on December 24, 2012, with an effective end of tenancy date of February 1, 2013. The Tenant testified that she moved out of the rental unit on January 31, 2013. The Landlord stated that she moved out on February 1, 2013. A copy of the Condition Inspection report was provided in evidence.

The Landlord gave the following testimony:

The Landlord testified that he notified the Tenant that he would be enforcing the "liquidated damages" clause of the tenancy agreement and that the Tenant would be expected to pay rent for February, 2013 and each month thereafter until the rental unit was re-rented or the term of the tenancy had expired. The Tenant signed an "Early Termination by Tenant" form on December 24, 2013, which was provided in evidence. Included on this form was the Tenant's forwarding address. The Landlord filed his application against the security deposit on February 15, 2013.

The Landlord stated that he advertised the rental unit on three on-line sites and on the ROM site every 4 to 5 days after receiving the Tenant's written notice to end the tenancy. He stated that he was not able to re-rent the rental unit until February 20, 2013, for March 1, 2013. The Landlord stated that it was difficult to find a Tenant for February 1, 2013, for the following reasons:

- February is traditionally a difficult time of year to find new tenants; and
- The rental unit was in very poor condition to show to prospective tenants: the living room was made into a bedroom; there was a heavy smoke/pet smell in the rental unit; and it was dirty and very untidy.

The Landlord testified that he gave the Tenant a "Vacating Cleaning Form" to assist her with the cleaning process and also gave her an extra day (February 1, 2013) to bring the rental unit up to a reasonable standard of cleanliness. He stated that the Tenant did not do any cleaning, left garbage at the rental unit, and that there were damages to the rental unit. The Landlord stated that the Tenant did not return all of the original keys to the rental unit and provided some keys that were cut without the Landlord's permission. He stated that he did not know if these keys worked because he did not try them.

The Landlord stated that the linoleum in the bathroom was damaged and had to be replaced; the walls were damaged and had to be patched, sanded, primed and repainted; and the Tenant damaged some doors which required patching, re-staining and varnishing. The Landlord stated that the rental unit was renovated in 2001

(including new carpet and linoleum) and had several upgrades since then, including: a new toilet in May, 2011; a new latch and handle on the patio door in February, 2012; and a new kitchen sink and taps in February, 2012. He stated that the rental unit had not been painted during the 10 year tenancy.

The Landlord provided copies of invoices for cleaning, repairs, key replacement and garbage removal.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent and late fee for February, 2013 (\$722.00 + \$25.00)	\$747.00
Liquidated damages	\$400.00
General cleaning (5.75 hours @ \$22.00 per hour)	\$125.00
Drapery cleaning	\$40.00
Garbage removal	\$45.00
Replace damaged lino in the bathroom (burns and stains)	\$150.00
Repair walls and doors	\$140.00
Locks/keys replacement	<u>\$224.38</u>
TOTAL	\$1,871.38

The Tenant gave the following testimony:

The Tenant questioned the validity of the tenancy agreement. She submitted that it was not a legal lease because the Landlord did not give her proper notice when he sought access to the rental unit. She stated, for example, that he gave her a notice on January 22, 2013, which was dated January 18, 2013.

The Tenant stated that she gave the Landlord 6 weeks' notice, which she felt was sufficient for finding another tenant. The Tenant stated that she had to move because she was allergic to mould and that the rental unit was full of mould because the Landlord did not take care of the rental property. She stated that the rental unit was also full of bugs (earwigs and silver fish). The Tenant provided a video in support of her allegation with respect to mould and pests.

The Tenant stated that she had a note from her doctor confirming her mould allergy, a copy of which was provided in evidence. The Tenant stated that she wrote on the backs of two notices that the rental unit was mouldy and that "this place needs attention" and that she was "becoming ill". The Tenant provided copies of two notices in support of her submission.

The Tenant stated that the Landlord did not do regular maintenance of the rental unit. She stated that it hadn't been painted in 10 years and that the carpets were disgusting.

The Tenant testified that the Landlord knew that the original keys were taken by another occupant in 2011. She stated that the Landlord changed the lock and keys to the rental unit at no charge to her. She provided a copy of a note from the Landlord dated September 26, 2011, in evidence.

The Landlord gave the following reply:

The Landlord denied that he received any written notice that the Tenant was ending the tenancy because of mould issues.

He stated that any repair issues were dealt with promptly throughout the tenancy.

Analysis

It is important to note that the Tenant became increasingly agitated and defensive towards the end of the Hearing. While I was attempting to explain to the Tenant that the Landlord bore the burden of proof, and that proof is established on the balance of probabilities, the Tenant uttered an expletive and hung up.

Regarding the Landlord's claim for unpaid rent, late fees and liquidated damages:

I find that the tenancy agreement is a valid tenancy agreement, which complies with the requirements of Sections 12 and 13 of the Act, Part 2 of the regulation, and the schedule. Whether the Tenant received the notices of entry on the day that they were dated or not is irrelevant to the validity of the tenancy agreement. In any event, the Tenant's documentary evidence indicates that a notice dated October 21, 2011, and received October 24, 2011, was for access on October 25, 2011. Another notice dated June 20, 2011, and received June 22, 2011, was for access on June 23, 2011. I find that both of these notices complied with the requirements of Section 29 of the Act.

Section 45(2) and (3) of the Act provides the ways a tenant can end a fixed term tenancy. Section 45(2) provides that a tenant cannot end the tenancy effective on a date that is before the end of the term of the lease. Section 45(3) states:

45 (3) If a landlord has **failed to comply with a material term** of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and **has not corrected the situation within a reasonable period after the tenant gives written notice of the failure**, the tenant may end the tenancy

effective on a date that is after the date the landlord receives the notice.

(emphasis added)

The documentary evidence provided by the Tenant indicates that on June 23, 2011 and on October 25, 2011, the Tenant wrote on the backs of two notices of entry. I find that the Tenant did not provide sufficient notice under Section 45 (3) of the Act for the following reasons:

- Both of these documents were created approximately 1 ½ years before the end of the tenancy and do not indicate that the Tenant would be ending the tenancy as a result of the Landlord's alleged breach of the Act. The Tenant continued to live in the rental unit and did not provide the Landlord with further written notice of a failure to comply with a material term of the tenancy agreement before ending the tenancy on February 1, 2013.
- The note from the Tenant's doctor is dated April 22, 2013, which postdates the end of the tenancy.
- The Landlord denied receiving any of these documents until he received the Tenant's documentary evidence. I find that the Tenant did not provide sufficient evidence that the Landlord was served with the notices.

I find that the Tenant did not end the tenancy in accordance with the provisions of the Act and that the Landlord suffered a loss of revenue as a result of the Tenant's breach. I am satisfied that the Landlord took reasonable steps to re-rent the rental unit for February 1, 2013. Based on the testimony and documentary evidence provided, I am satisfied that the Tenant did not make efforts to ensure that the rental unit was reasonably clean for viewing by prospective Tenants.

I find that the Landlord has proven his claim for loss of revenue and late fees for the month of February, 2013, and this portion of his claim is allowed in the amount of **\$747.00**.

There is a clause in the tenancy agreement that provides for liquidated damages if the Tenant ends the tenancy before the end of the term. Liquidated damages are a genuine pre-estimate of the administrative costs of re-renting the rental unit before the end of the term of the lease (for example, showing the rental unit to perspective new tenants, running background checks, negotiating new tenancy agreements, advertising the rental unit, etc.). I find that this is a valid clause in the rental agreement and that the Landlord is entitled to this portion of his claim in the amount of **\$400.00**.

Regarding the Landlord's claim for cleaning, key/lock replacement and damages:

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord

has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the documentary evidence provided, I am satisfied that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, contrary to Section 37 of the Act. This was a 10 year tenancy and the Tenant is required to launder the curtains. I find that the Landlord is entitled to his claim in the amount of **\$210.00** for the cost of cleaning the rental unit, cleaning the curtains, and garbage removal.

The letter dated September 26, 2011, indicates that the Landlord changed the lock and key for the Tenant's suite after another occupant took the original keys. It also states that the Tenant made 2 extra copies without the Landlord's knowledge or consent, which is contrary to clause 29 of the tenancy agreement. I find that it was reasonable for the Landlord to change the locks because all of the keys had not been accounted for. This portion of the Landlord's application is granted in the amount of **\$224.38**.

I dismiss the remainder of the Landlord's application for the following reasons:

- Replacement of linoleum: The Landlord testified that the linoleum was 10 years old, which is the useful life of linoleum pursuant to the provisions of Residential Tenancy Policy Guideline 40. Therefore, I find that the linoleum was due to be replaced.
- Repair walls and doors: The Tenant provided evidence that the walls surrounding the windows were in need of repair due to leaks around the windows. Residential Tenancy Policy Guideline 40 provides a useful life of 4 years for indoor paint, and therefore the rental unit was overdue for new paint. I find that the walls would have required patching and repair in any event before the overdue painting was done. The Landlord's invoice does not break down the cost for repairing/painting the walls and repairing/re-varnishing doors. Therefore, this portion of the Landlord's claim is dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and towards partial satisfaction of the Landlord's monetary claim.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

February rent, late fees and liquidated damages	\$1,147.00
Cleaning and garbage removal	\$210.00
Keys/locks	\$224.38
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,631.38
Less security deposit	<u>- \$361.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$1,270.38

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,270.38** for service upon the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 15, 2013

Residential Tenancy Branch

