



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 damages and unpaid utilities; for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Tenant acknowledged receipt of the Landlord's Notice of Hearing documents and documentary evidence, by registered mail. The Landlord also acknowledged receipt of the Tenant's documentary evidence, by registered mail.

Preliminary Matter

A previous Hearing, held on April 2, 2013, was convened to consider the Tenants' application for return of the security deposit. A copy of that Decision was provided in evidence. The Arbitrator awarded the Tenants double the amount of the security deposit, less the outstanding utility bills that the Tenants agreed were owed to the Landlord, pursuant to the provisions of Section 38(6) of the Act. Therefore the Landlord's application against the security deposit and the Landlord's application for unpaid utilities are both dismissed as they have already been decided.

Issues to be Decided

- Are the Landlords entitled to compensation for loss of revenue, the cost of replacing 4 light bulbs, the cost of replacing locks and keys, and the cost of repairing and painting walls and a ceiling?

Background and Evidence

This tenancy began on October 1, 2011, and ended on October 31, 2012. A Condition Inspection Report was completed at the beginning of the tenancy, a copy of which was

provided in evidence. The Landlord did not complete a condition inspection that complies with the requirements of the Act and regulation at the end of the tenancy.

The Landlord seeks a monetary award, calculated as follows:

DESCRIPTION	AMOUNT
Loss of revenue because rental unit in poor condition at end of tenancy	\$440.00
Replace 4 burned out light bulbs	\$5.00
Cost of new locks because Tenants did not return both sets of keys	\$38.00
Cost of materials for painting walls that Tenants damaged	\$100.00
Estimated cost of painting the damaged ceiling	<u>\$400.00</u>
TOTAL AMOUNT CLAIMED	\$983.00

The Landlord testified that she received the Tenants' notice to end the tenancy on September 29, 2012, and that she first advertised the rental unit on November 8, 2012. The Landlord stated that she could not show the rental unit before November 8, 2012 because it was damaged. The Landlord re-rented the rental unit effective December 1, 2012.

The Landlord testified that the rental unit was freshly painted in August, 2011, and that the Tenants damaged the walls by hanging pictures and installing curtain brackets without the Landlord's permission. She stated that the Tenants also damaged one of the ceilings by placing stickers on the ceiling and then putting over some of the damage.

The Landlord stated that she didn't complete a Condition Inspection Report at the end of the tenancy because the female Tenant didn't bring her copy of the move-in Condition Inspection Report with her.

The Tenant stated that the rental unit was left clean at the end of the tenancy. She testified that the Landlord did not give the Tenants a copy of the move-in Condition Inspection Report at the beginning of the tenancy.

The Tenant stated that one set of keys was mistakenly taken out of province when the Tenants moved. She testified that the Landlord had told her that she was going to change the locks anyway.

The Tenant stated that she puttied the walls because the Landlord asked her to, and that she even covered some small nicks that were there when the Tenants moved in. The Tenant testified that the Landlord asked the Tenants to make the walls ready for painting, which the Landlord intended to do.

The Tenant submitted that tenants should be allowed to hang pictures on the walls and that there was no other damage other than that caused by hanging pictures, stickers and the curtain brackets. The Tenant stated that the marks on the ceiling were left by stickers that she had affixed. The Tenant submitted that this was normal wear and tear. She stated that the curtain brackets were attached to the wall so that curtains could be hung for privacy, and that there was no need to remove them.

The Tenant submitted that the Landlord has failed to provide sufficient evidence that the Tenants damaged anything in the rental unit, or any evidence of the cost of the items that the Landlord is claiming.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants 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 Tenants 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.

The Tenants provided notice that they were ending the tenancy on September 29, 2012; however, the Landlord did not advertise the rental unit until November 8, 2013. I do not accept the Landlord's submission that the rental unit was damaged so badly that it could not be shown to prospective tenants. The photographs provided by the Landlord in evidence indicate putty marks on walls and the ceiling, and two curtain brackets. There is no evidence that the rental unit was "in such poor condition" that it could not be shown. Therefore, I find that the Landlord is not entitled to loss of revenue. This portion of her application is dismissed without leave to reapply.

Section 21 of the regulation provides that a condition inspection report, completed in accordance with Part 3 of the regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 17 of the regulation requires landlords to give tenants two opportunities to schedule a condition inspection of the rental unit. The second opportunity must be proposed by providing the tenants with a notice in the approved form. In other words, the onus is on a landlord to arrange for a time for the condition inspection to take place. If the landlord complies with the Act and regulation, and the tenant does not attend at the inspection, then the landlord may complete the condition inspection report and provide a copy to the tenant within the time frames set out in the Act.

A tenant is required to replace burned out light bulbs at the end of the tenancy; however, in this case, without a completed Condition Inspection Report, I find insufficient evidence that there were 5 burned out light bulbs at the end of the tenancy. Furthermore, the Landlord did not provide evidence to support her claim in the amount of \$5.00 (for example, a copy of the receipt for the bulbs). Therefore, this portion of her claim is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 1 sets out who is responsible for maintaining, cleaning and repairing rental units. A tenant is not required to make repairs for reasonable wear and tear. A tenant cannot be required to paint the premises at the end of a tenancy, unless painting is necessary because of damages for which the tenant is responsible. Most tenants put up pictures in their home. The landlord may set rules as to how this can be done, but there was no evidence in this case that the Landlord required the Tenant to use adhesive hangers, or that the Tenant could not use nails. I find that hanging pictures is not considered damage. A tenant is required to pay for repairing walls where there are an excessive number of nail holes, or large holes, or screws or tape have been used and left wall damage.

Guideline #1 also provides that tenants are not responsible for filling holes left by hanging pictures. In this case, the Landlord did not dispute that she asked the Tenants to fill the nail holes with putty, which the Tenants did do. Therefore, I dismiss the Landlord's claim for painting the walls, without leave to reapply.

The Tenants put stickers on the ceiling of one of the rooms. I am satisfied that the act of removing the stickers damaged the ceiling. However, the Landlord provided no evidence of the cost of painting the ceiling (for example, a copy of the estimate). Having found that the Tenants are responsible for damaging the ceiling, I award the Landlord a nominal amount of **\$50.00** for this portion of her claim.

Likewise, I find that the Tenants installed curtain brackets to the wall without the Landlord's permission. The Landlord did not provide any evidence with respect to the

cost of removing the brackets and repairing the wall, and therefore I award the Landlord a nominal amount of **\$25.00** for this portion of her claim.

Section 37(20(b) of the Act requires tenants to return all keys to the rental unit at the end of the tenancy. The Tenants did not return both sets of keys. The Landlord provided no evidence to support her claim for the cost of keys and therefore I award the Landlord a nominal amount of **\$10.00** for this portion of her claim.

The Landlord's application had some merit and therefore I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$135.00** for service upon the Tenants. This Order 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: July 24, 2013

Residential Tenancy Branch

