



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was scheduled in response to 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.

Both parties attended and / or were represented and gave affirmed testimony.

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

Two previous hearings have been held in disputes between these parties:

Date of hearing: March 9, 2012
Date of decision: March 12, 2012

Date of hearing: May 28, 2012
Date of decision: May 28, 2012

Following is an excerpt from the decision dated March 12, 2012:

Pursuant to a written tenancy agreement, the original 6 month fixed term of tenancy was from February 1 to July 31, 2011. Thereafter, tenancy continued on a month-to-month basis. A move-in condition inspection report was completed on February 1, 2011.

Monthly rent began at \$1,100.00 but, subject to a notice of rent increase effective February 1, 2012, rent is presently \$1,147.00. Rent is payable in advance on the first day of each month, and a security deposit of \$550.00 was collected. No pet damage deposit was collected and the tenancy agreement provides that no pets are permitted.

During this hearing tenant "BB" testified that tenant "MC" vacated the unit and tenant "JW" moved into the unit approximately midway through 2012. There is no evidence of a new tenancy agreement having been created which names "JW" as a tenant.

Tenancy ended in March 2013, and tenant "BB" provided the landlord with his forwarding address. The landlord's application for dispute resolution was filed on April 15, 2013.

While the landlord testified that the parties agreed to meet together in order to complete a move-out condition inspection, the move-out condition inspection report in evidence bears only the landlord's signature, and it is noted on the report that it was completed on April 1, 2013.

The general nature of the interaction between the parties during the hearing was argumentative, and each claimed the other was not testifying truthfully. The only matters agreed to were that \$500.00 was paid towards rent for March 2013, that a balance of unpaid rent in the amount of \$647.00 therefore remained overdue (\$1,147.00 - \$500.00), and that a \$25.00 fee was properly assessed for late payment of rent [total owed: \$672.00].

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

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, the attention of the parties is drawn to Part 3 of the Regulation which speaks to **Condition Inspections** (sections 14 to 21).

Additionally, section 32 of the Act addresses **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.

Further, section 37 of the Act addresses **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.

Based on the documentary evidence which includes purchase orders and photographs amongst other things, and the testimony of the parties, the various aspects of the landlord's claim and my findings around each are set out below.

\$672.00: *unpaid rent of \$647.00 for March 2013, and a \$25.00 late fee:*

As the tenant does not dispute this aspect of the landlord's claim, I find that the landlord has established entitlement to the full amount claimed.

\$576.00: *cleaning and related supplies.*

The tenant acknowledged that the unit had not been thoroughly cleaned when he vacated. In the absence of any conclusive evidence that the parties had agreed on a particular time to complete the move-out condition inspection, and in the apparent absence of a "notice of final opportunity to schedule a condition inspection" having been issued by the landlord to the tenant, I find that the landlord has established entitlement limited to **\$288.00**, or half the amount claimed.

\$450.40: *garbage removal.*

For reasons similar but not identical to those set out immediately above, I find that the landlord has established entitlement limited to **\$300.00**.

\$718.00: *painting and related supplies.*

For reasons similar to those set out above under "cleaning and related supplies," and in view of reasonable wear and tear, and in the absence of any conclusive evidence around when the unit had last been painted, I find that the landlord has established entitlement limited to **\$200.00**.

\$565.60: *replacement of stove.*

The tenant testified that he did not have time to clean the stove before he vacated the unit. The landlord and her witness testified that the stove could not be adequately cleaned and it was replaced. However, both parties appeared to agree that the stove was fully functioning at the end of tenancy. Further, the landlord and her witness appeared to agree that the stove was at least 15 years old.

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of a stove is 15 years.

Following from all of the above, this aspect of the landlord's application is hereby dismissed.

\$200.00: *miscellaneous repairs.*

For reasons similar to those set out above under “cleaning and related supplies,” I find that the landlord has established entitlement limited to **\$100.00**, or half the amount claimed.

\$2,333.04: *carpet replacement.*

For reasons similar to those set out above under “cleaning and related supplies,” and in view of the unknown original installation date of the carpet, and in consideration of reasonable wear and tear, I find that the landlord has established entitlement limited to **\$750.00**.

\$313.60: *blind replacement.*

For reasons similar to those set out above under “cleaning and related supplies,” and in view of the unknown original installation date of the blinds, and in consideration of reasonable wear and tear, I find that the landlord has established entitlement limited to **\$156.80**, or half the amount claimed.

\$100.00: *replacement of keys.*

In view of the conflicting testimony of the parties, and based mainly on the comparative results of the move-in and move-out condition inspection reports, I find that not all keys issued at the start of tenancy were returned at the end of tenancy. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$100.00: *filing fee.*

As the landlord has achieved a significant measure of success with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total entitlement: \$2,666.80

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 **\$2,116.80** (\$2,666.80 - \$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 **\$2,116.80**. 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: July 17, 2013

Residential Tenancy Branch