



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF
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Introduction

This hearing concerns 2 applications: i) by the landlord 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 all or part of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to 2 separate written tenancy agreements, copies of which are not in evidence, the term of tenancy was from January 1 to May 31, 2012, and June 1, 2012 to June 8, 2013. Monthly rent of \$1,600.00 was due and payable in advance on the first day of each month, and a security deposit of \$800.00 was collected. A move-in condition inspection report was completed with the participation of both parties at the start of tenancy.

A move-out condition inspection was completed on June 8, 2013, with the landlord and tenant "CLW" in attendance. However, a move-out condition inspection report was not completed at that time. The landlord takes the position that more time was required for her to assess the condition of the unit before a move-out condition inspection report could be completed. The landlord made notations on the move-out condition inspection report at a later date in the absence of the tenants, however, the move-out condition

inspection aspect of the report is not either signed or dated by the landlord. On June 8, 2013, tenant "CLW" provided the landlord with a forwarding address in Saskatchewan.

The landlord testified that new renters moved into the unit on June 14, 2013.

Subsequently, the tenants' application for dispute resolution was filed on August 11, 2013. The tenants' application documents an address for tenant "CLW" in B.C. and a separate address in common for tenants "BA," "AWNC," and "MW," also in B.C.

The landlord's application for dispute resolution was filed on September 13, 2013.

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, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides 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...

The various aspects of the respective applications and my findings around each are set out below.

LANDLORD

While I note that the landlord has claimed miscellaneous labour at a rate of \$22.50 per hour, I find that a reasonable hourly rate in the circumstances of this dispute is \$15.00.

\$300.00: *estimate for cost of carpet cleaning*

The landlord testified that she did not have the carpets cleaned between the time when the subject tenancy ended on June 8, 2013, and June 14, 2013 when new renters moved into the unit. Accordingly, as the estimated cost was not incurred, this aspect of the application is hereby dismissed.

\$112.50 (5 hours x \$22.50 per hour): *cleaning blinds*

The tenants testified that they made efforts to clean the blinds at the end of tenancy. In the absence of any specific notation on the move-out condition inspection report related to the condition of the blinds at the end of tenancy, this aspect of the application is hereby dismissed.

\$45.00 (2 hours x \$22.50 per hour): *cleaning baseboards and baseboard heaters*

The tenants testified that they made efforts to clean the baseboards and the baseboard heaters at the end of tenancy. In the absence of any specific notation on the move-out condition inspection report related to the condition of the baseboards and baseboard heaters at the end of tenancy, this aspect of the application is hereby dismissed.

\$8.00: *replacement of 8 light bulbs*

With particular consideration to notations made on the move-out condition inspection report, and a receipt submitted into evidence by the landlord, I find on a balance of probabilities that the landlord has established entitlement to the full amount claimed.

\$61.87 (2.75 hours x \$22.50 per hour): *labour for installation of light bulbs*

I find that the landlord has established entitlement limited to **\$22.50**, which is calculated on the basis of 1½ hours at \$15.00 per hour.

\$6.03: *new keys*

I find that all keys made available to the tenants at the start of tenancy were not returned at the end of tenancy. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$22.50 (1 hour x \$22.50) *labour for obtaining new keys*

I find that the landlord has established entitlement limited to **\$15.00** calculated on the basis of \$15.00 per hour.

\$67.50 (3 hours x \$22.50): *vacuuming carpets*

The tenants testified that vacuuming was undertaken in the unit at the end of tenancy. Further, I find that there is no reference on the move-out condition inspection report concerning dirty carpets or carpets in need of vacuuming. In summary, I find that the landlord has failed to establish entitlement to the compensation claimed, and this aspect of the application is therefore hereby dismissed.

\$22.50 (1 hour x \$22.50): *labour for cleaning kitchen cupboards and drawer*

\$22.50 (1 hour x \$22.50): *labour for cleaning stove and oven*

\$33.75 (1.50 hours x \$22.50): *labour for cleaning showers*

\$20.00: *cleaning supplies*

The move-out condition inspection report does not reflect a need for cleaning of any of the above. Further, I find that the landlord has not met the burden of proving that the unit was not left “reasonably clean” at the end of tenancy. Accordingly, this aspect of the application for labour and supplies related to cleaning is hereby dismissed.

\$250.00: *estimate for repairs to kitchen cabinets*

There is some suggestion in email exchanges between the parties that there may have been some damage to the kitchen cabinets prior to the start of this tenancy. In any event, the landlord testified that no repairs were made between the time when this tenancy ended and the time when new renters subsequently moved into the unit. In the result, this aspect of the application is hereby dismissed.

\$70.00: *estimate for labour to re-affix dishwasher cover foot plate*

I note reference on the move-out condition inspection report to the effect of “front cover removed.” Despite her efforts, the landlord claimed she was unable to re-affix the foot plate, but neither has she paid for the services of a handyman to complete the job. As previously noted, new renters moved into the unit within several days after the subject tenancy ended. I find that the landlord has established entitlement to **\$7.50**, which is calculated on the basis of ½ hour of her labour at a rate of \$15.00 per hour.

\$60.00: minor damage and labour for re-installation of 2 bedroom window screens

The tenants acknowledged that 2 bedroom window screens had been removed, and they did not dispute that the screens had not been re-installed at the end of tenancy. I find that the landlord has established entitlement limited to **\$30.00**, which is calculated on the basis of 2 hours of labour at \$15.00 per hour.

\$319.44: cost for assessment of water damage

\$115.50: cost of plumber's inspection of fittings

\$3,975.44: original estimate of cost for ceiling repairs from water damage

\$400.00: compensation originally sought in relation to subsequent renters whose access to unit space may be limited while ceiling repairs are made.

During the hearing the landlord testified that her insurance provider has advised her that a portion of the repair costs will be covered by her insurance policy. At present the repairs have not been done and the full extent of the repair costs is unknown. In the meantime, new renters have taken possession of the unit and there is currently no plan for them to relocate in the event that repair work is undertaken during their tenancy.

Further to all of the foregoing, I find there is insufficient conclusive evidence that there was no water damage to the ceiling prior to the start of the subject tenancy. There is some suggestion, for example, that a "small mark" on the ceiling had been painted over before this tenancy began.

In any event, I also find there is insufficient evidence that the tenants were responsible for the water damaged ceiling that was discovered at the end of this particular tenancy. In an email to the landlord and tenant "BA" dated September 24, 2013, for example, the property restoration agent stated in part:

I cannot confirm what happened before I was on site, but I can confirm that the source of the water was from behind the faucet. I cannot comment on how that came to be, but rather point to the fact that water was coming from there when I was on site.

Further, a plumbing invoice dated June 13, 2013 makes reference to repair work completed, in part, as follows:

Loose faceplate on both shower trims. Water behind faceplate caused damage to ceiling on lower level. Improper installation.

In the result, all aspects of the application related to water damage to the ceiling in the unit are hereby dismissed.

\$100.00: *filing fee*

As the landlord has achieved some measure of success with her application, I find that she has established entitlement limited to **\$50.00**, or half the filing fee.

Total entitlement: \$139.03

TENANTS

\$1,600.00 (2 x \$800.00): *double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the landlord neither repaid the security deposit nor filed an application to retain it, within 15 days after June 8, 2013 when tenant "CLW" provided her with a forwarding address in writing.

Further, as previously noted, the landlord's application to retain the security deposit by way of her application for dispute resolution was not filed until September 13, 2013, which was also more than 15 days after she became aware of additional forwarding addresses included in the tenants' application for dispute resolution filed on August 11, 2013.

In summary, I find that as the landlord has not complied with the statutory provisions set out in section 38 of the Act, the tenants have established entitlement to compensation of \$1,600.00 (2 x \$800.00), which reflects the double return of the original security deposit.

\$50.00: *filing fee*

As the tenants have succeeded with their application, I find that they have established entitlement to recovery of the full filing fee.

Total entitlement: \$1,650.00

Offsetting the above entitlements, I find that the tenants have established a net entitlement to compensation of **\$1,510.97** (\$1,650.00 - \$139.03), and I hereby issue a **monetary order** in favour of the tenants to that effect.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,510.97**. Should it be necessary, this order may be served on the landlord, 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: November 13, 2013

Residential Tenancy Branch

