



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 9, 2013, by the Landlords to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the pet and or security deposit; for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order?

Background and Evidence

The undisputed testimony included that the parties entered into a written month to month tenancy that began on September 1, 2008. Rent began at \$1,100.00 and was increased during the tenancy to \$1,150.00 payable on the first of each month. On September 1, 2008 the Tenants paid \$550.00 as the security deposit. No move-in or move-out condition inspection report forms were completed. The Tenants did not provide the Landlords with written notice to end their tenancy and did not provide the Landlords with their forwarding address in writing.

The Landlords testified that during the second week of July 2013 the Tenants came over and told them they had put an offer in to purchase a house and that they would find out on July 15, 2013 if they would be getting it with a possession date of August 1, 2013. The Tenants went on vacation for a week and left July 14, 2013, and did not tell the Landlords until they returned that their house purchase was successful and they would be moving out. The Landlords stated that they came to a verbal agreement with the Tenants that they would pay one half of a month's rent for August and the Landlord would retain the security deposit as the balance of the month's rent because they could not get new tenants in so soon. The Tenants vacated by August 3, 2013, without paying the half of month's rent as previously agreed. The Landlords were not able to re-rent the unit until November 15, 2013 so they are seeking rent for the full month of August 2013.

The Landlords said that they had requested the Tenants let them know when they were ready for the move out inspection. However, the Tenants never contacted them and simply left, leaving the keys inside the kitchen. The Landlords said they found the back door unlocked and the unit was left unclean with some damage.

The Landlords purchased this property in 1990 and resided in the home until 2007. They had only one renter prior to these Tenants and they provided her statement as to the condition of the unit when she moved out in 2008. They testified that the unit was in good condition at the start of the tenancy and the small bedroom carpet had been replaced in 2006 and the remaining carpet was new in 2004.

Upon inspection of the unit after the Tenants left, the Landlords said they found the unit to be unclean; the carpets had mold and urine on them; and there was an unpaid water bill. They indicated that the small bedroom was the worst for urine smell and there was one large wet spot in the living room which went right down to the underlay. As a result they are seeking \$887.50 for cleaning (35 ½ hours x \$25.00 per hour), \$27.06 for the unpaid water bill; and \$1,026.01 for the new flooring.

The Landlords testified that the amount claimed for cleaning included about six hours each (2 x 6 = 12 hours) removing the carpet and underlay. The remaining twenty three and a half hours was spent by the two of them washing walls, the kitchen grease, bathroom fixtures, and all the other mess displayed in their photographic evidence.

The Landlords submitted that they did not think they could get mold out of carpet so they decided to remove it and the underlay instead of trying to clean it. They wanted to go the cheapest route so they installed laminate flooring instead of carpet. They did not provide estimates for cost comparisons but they do know that carpet and underlay is

more expensive. They installed the laminate in a 10 x 10 bedroom, a 10 x 12 bedroom, the living room and the hallway for a total cost of \$1,026.01.

The last item they are seeking is the \$27.06 that was outstanding on the water bill from July 20, 2013 to August 3, 2013. As per their evidence they had a meter reading done on August 3, 2013 to determine the exact usage.

The Tenants dispute all of the items being claimed by the Landlord. They confirmed they did not provide written notice to end their tenancy but argued they were not given an opportunity to provide such notice. They indicated that the Landlords lived next door and confirmed they provided verbal notice once they found out their house purchase was successful.

The Tenants testified that they did not clean the carpets because the Landlord told them not to because they would be replacing them. There were no wet stains on the carpet and they take exception to the suggestion that their children urinated on the carpets. They vacuumed all the carpets, and while they were stained they were not in such bad condition that they needed to be replaced.

The Tenants argued that they spent three days cleaning the rental unit. They admitted that they were not quite finished but felt there was only about three hours of cleaning left, at the most. They believe the Landlords were simply nit picking and that their photos are of little tiny cubby holes and areas that were not visible to them when they were cleaning, like behind the stove. They do not believe any of this claim and argued that these were close up pictures intended to make it look worse than it was.

The Tenant denies owing money for the water bill and attempted to argue that he had the bill from the rental housed added to his new home bill. They did not provide evidence that they had paid the final bill and could not provide testimony as to how the alleged payment was made.

In closing, the Tenants argued they should not have to pay for the Landlords choice to renovate the entire house.

The Landlords confirmed they offered to clean the carpets on the Tenants' behalf because their business is house cleaning and they own a carpet cleaner. A short discussion took place where the Landlords admitted that they had completed renovations on this property once the Tenants vacated. The renovations included new tiles, floor, bathtub, toilet seal, kitchen counter, new kitchen sink, new stove and hood fan, and the new flooring.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 45 of the Act stipulates that a tenant may end a periodic tenancy by provided one month's written notice.

In this case the Tenants did not provide written notice and did not provide a full month's notice. Accordingly, I find the Tenants breached section 45 of the Act which resulted in the Landlords losing a full month's rent. Furthermore, the Tenants occupied the unit for three days without paying rent. Accordingly, I award the Landlords use and occupancy and loss of revenue for August 2013 in the amount of **\$1,150.00**.

The tenancy agreement required the Tenants to pay for water utilities. The evidence supports the last bill ending August 3, 2013 was not paid by the Tenants and fell to the Landlords' responsibility. Accordingly, I find the evidence supports the Landlords' claim and I award them unpaid utilities in the amount of **\$27.06**.

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 21 of the *Residential Tenancy Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is

evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless** either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of a move in and move out condition inspection report form I accept the Landlords' documentary evidence as sufficient proof that the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

I accept the Tenants' argument that they are not required to pay for a landlord's choice to renovate or update an older house. Upon review of the age and condition of the carpets as displayed in the photos, I find the Tenants left the carpets unclean and with some stains and urine damage at the end of the tenancy. In the absence of documentary evidence to prove the actual age or the replacement cost of underlay and carpet, I find there to be insufficient evidence to meet all four requirements of the test for damage, as listed above.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I find the Tenants failed to clean the carpets regularly which caused damage to occur which was above normal wear and tear. Accordingly, I award the Landlords nominal damages in the amount of **\$150.00**.

Upon review of the claim for 35.5 hours of cleaning (12 hours plus 23.5 hours) I note that this claim includes the removal of the carpet and underlay. Furthermore, there is evidence that the Landlords renovated the full bathroom; however, they claimed they

attempted to clean the bathroom first. That being said, I find the claim of 35.50 hours of cleaning to be excessive given the photographic evidence and considering that renovations were included to remove the carpet and underlay. Accordingly, I award the Landlords 10 hours of cleaning at \$25.00 per hour for a total amount of **\$250.00**.

The Landlords have primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Use and Occupancy and loss of August 2013 rent	\$1,150.00
Unpaid utilities	27.06
Nominal damages to the carpet	150.00
Cleaning costs	250.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,627.06
LESS: Security Deposit \$550.00 + Interest 2.75	<u>-552.75</u>
Offset amount due to the Landlord	<u>\$1,074.31</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$1,074.31**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia 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 08, 2013

Residential Tenancy Branch

