



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 27, 2013. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on April 26, 2011 as a fixed term tenancy with an expiry date of October 31, 2011 and then continued on a month to month basis. Rent was \$1,541.43 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$742.50 and a pet deposit of \$742.50 in advance of the tenancy. A move in condition inspection report was completed on April 26, 2011 and a move out condition inspection report was completed on July 31, 2013.

The Landlord said that the Tenant left the rental unit in poor condition and did not pay the final utility bill of \$211.25. As a result of the poor condition of the rental unit the

Landlord said she is applying for compensation for cleaning the unit, repairs to the unit and lost rental income. The Landlord said her claim is as follows:

1. Unpaid Utilities	\$ 211.25
2. Floor repairs and replacement	\$ 982.51
3. Cleaning the unit	\$ 382.20
4. Carpet cleaning	\$ 157.50
5. Blind replacement	\$ 180.18
6. Lost rental income for August, 2013	\$ 1,541.43
7. Filing fee	\$ 50.00
Total	\$3,505.07

The Landlord continued to say that the Tenants damaged the laminate flooring in the kitchen and living room which was new at the start of the tenancy. The Landlord said the damage was from water damage and scratches as a result of the tenancy and due to pets at large in the unit. The Landlord said she included a professional floor layer's written statement indicating the floors were installed correctly and the water damage to the floors required the flooring to be replaced. The Landlord also provided paid receipts for the floor repairs in the amount of \$982.51.

Further the Landlord said the unit was not clean when the Tenants moved out so she hired a cleaning company to clean the unit. The Landlord submitted paid receipts for the cleaning in the amount \$382.20. As well the Landlord provided photographs to support her claim the unit was not cleaned specifically the stove and frig and behind the frig and stove.

The Landlord continued to say the tenancy agreement states the Tenants must professionally clean the carpets at the end of the tenancy and this was not done therefore the Landlord said she had the carpets professionally cleaned and she submitted a paid receipt for \$157.50 for the carpet cleaning.

In addition the Landlord said she had to replace the blinds on the windows as the blinds were bent and broken. The Landlord said she is claiming for blinds in the living room, one bedroom, kitchen and small bedroom. The Landlord submitted paid receipts for the blinds in the amount of \$180.18.

As a result of the cleaning and damage to the rental unit the Landlord said she was unable to rent the unit for August 1, 2013 and consequently she is claiming lost rental income for the month of August, 2013 in the amount of \$1,541.43. The Landlord said she advertised the unit after receiving the notice to end the tenancy from the Tenants on June 27, 2013 and she thought she showed the unit approximately 7 times to potential new tenants in the month of July, 2013.

The Landlord said she is also requesting to recover the filing fee for this proceeding and to retain the Tenant's security and pet deposits as partial payment for the damages and lost rental income. The Landlord said her total claim is \$3,505.07.

The Tenant said they agree they are responsible for the unpaid utilities in the amount of \$211.25 as the bill came in after the tenancy ended.

With regard to the floor damage the Tenants said they caused some damage to the living room floor from a pot in the corner and because rain came in the window both from leaving it open and because the window leaked. As for the kitchen floor the Tenant said they had an overflow from the dishwasher because they used the wrong soap in it and there was some water damage around the sink area but this was normal wear and tear. The Tenant continued to say that laminate flooring should not be used in a kitchen because it is not very moisture resistant. The Tenant said they did cause some damage, but they are not responsible for the full floor replacement in the living room and kitchen. In addition the Tenant said they thought the Landlord had not installed the floors correctly at the start of the tenancy. The Tenants provide no evidence for this claim.

The Tenants continued to say they cleaned the rental unit except for the stove, fridge and behind the stove and fridge. The Tenants provided photographs to support their position. The Tenants said they are responsible for cleaning the stove and fridge, but the Landlord told them not to move the stove and fridge as it may damage the flooring so they did not clean behind the appliances. The Landlord said she did not tell the Tenants not to move the appliances and the appliances are on wheels so the Tenants were responsible to clean behind the appliances.

Further the Tenants said the Landlord told them not to have the carpets professionally cleaned so they did not clean the carpets. The Landlord said she did not tell the Tenants not to clean the carpets and cleaning the carpets is in the tenancy agreement.

In regard to the blinds the Tenants said the windows were difficult to close so they had to move the blinds to close the window and as a result the blinds getting bent and broken. The Tenant said the blinds were of poor quality so this was normal wear and tear and they are not responsible for the blind replacement. The Landlord said the blinds were normal quality aluminum blinds and the windows are not difficult to close.

The Tenants continued to say that the Landlord was doing renovations to the unit after they moved out so the loss of rental income is not their responsibility, but is a result of the Landlord's renovation. The Tenant said they are not responsible for the rent for August, 2013.

The Landlord said she tried to rent the unit for August 1, 2013, but the floor repairs could not be done until August 8, 2013 and the cleaning was not completed until August 6, 2013. The Landlord continued to say when she was unable to rent the unit for August, 2013 she decided to do some renovation which started on August 16, 2013.

The Landlord said she is amending her application for lost rental income for the rental period of August 1, 2013 to August 16, 2013 instead of for the full month of August, 2013. The Tenants said they are not responsible for any rent in August as they cleaned the unit and only did some damage to the floors which would not stop the Landlord from renting the unit to new tenants.

The Tenant said in closing that the Landlord has lied about her claims which included the Landlord coming into the house with dirty boots and boxes which stained the carpets.

The Landlord said in closing that the Tenants found the rental unit satisfactory during the tenancy, the Landlord has given the Tenants monetary compensation for noise while renovations were made for the Tenants during the tenancy and the Tenants have not provided any proof that the Landlord's claim are not true.

Analysis

Section 46 6 (a) says if a tenancy agreement requires the tenant to pay utility charges to the landlord, and if (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As both parties agree the Tenants are responsible for the utilities in the amount of \$211.25, I award the Landlord the utility costs in the amount of \$211.25.

Section 32 (3) of the Act says 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.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I accept that the Landlord has proved losses exist and that she has verified the losses by providing receipts for the claims that the Landlord has made. I also accept the Landlord testimony and evidence that these damages and losses were caused by the Tenants and the costs were reasonable amounts to make repairs to the unit.

With regard to the floor repairs I accept the parties' testimony that the laminate floors were new at the start of the tenancy and the move in condition inspection shows no damage to the laminate floor at the start of the tenancy. As well, I accept the professional floor layers letter in which he says the floors with moisture damaged and required replacement. In addition the Tenants did say they caused some moisture damage to the floors from the pot, the window and the overflow of the dish washer therefore: I award the Landlord the cost to repair and replace the laminate flooring in the amount of \$982.51.

As well it is the Tenants responsibility to clean the unit and professionally clean the carpets if the tenancy is for more than one year and the carpet cleaning cause is in the tenancy agreement. Consequently I find the unit was not adequately cleaned by the Tenants and as a result it required the Landlord to hire a cleaning company to clean the unit and to have the carpets professionally cleaned. I award the Landlord the costs of clean the unit in the amount of \$382.20 and the carpet cleaning costs of \$157.50.

In addition the Landlord's photographs show the blinds the Landlord is claiming for are bent and broke and the move in condition inspection report shows the blinds the Landlord is claiming for were in good condition at the start of the tenancy. The Tenants claim that the blinds got in the way of closing the window could have been mitigated by drawing the blinds to the up position when closing the windows. Consequently, I find this is beyond normal wear and tear of a tenancy and therefore I award the Landlord the costs to replace the blinds in the amount of \$180.18.

With respect to the Landlord claim for lost rental income I accept the Landlord's testimony that she advertised the unit from June 27, 2013 and showed the unit a number of times in an effort to rent the unit for August 1, 2013. As well I accept that the unit was unclean and damaged and the Landlord could not make the repairs before August 8, 2013 therefore I find the Landlord was unable to rent the unit as of August 1, 2013, because of the condition the Tenants left the rental unit. In addition I accept the Landlords amendment to the application reducing this claim from the full month of August, 2013 to the 1st to the 16th of August, 2013 as the Landlord started renovations on August 16, 2013. Consequently I award the Landlord \$49.72 per day of rent for 16 days in August, 2013 in the amount of $\$49.72 \times 16 \text{ days} = 795.58$ for lost rental income for August, 2013.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security and pet deposits in partial payment of the lost rental income and damages. The Landlord will receive a monetary order for the balance owing as following:

Unpaid Utilities	\$ 211.25	
Floor repairs and replacement	\$ 982.51	
Cleaning the unit	\$ 382.20	
Carpet cleaning	\$ 157.50	
Blind replacement	\$ 180.18	
Lost rental income for August, 2013	\$ 795.58	
Filing fee	\$ 50.00	
Subtotal		\$2,759.22
Less:		
Security Deposit	\$ 742.50	
Pet Deposit	\$ 742.00	
Subtotal:		\$ 1,485.00
Balance Owing		\$ 1,274.22

Conclusion

A Monetary Order in the amount of \$1,274.22 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 03, 2013

Residential Tenancy Branch