



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: OPR, MNR, MND, MNDC, MNSD, FF
CNR, MNSD, RR, FF

Introduction

This hearing was scheduled in response to 2 applications: **i)** by the landlord for an order of possession for unpaid rent / 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; and **ii)** by the tenants for cancellation of a notice to end tenancy for unpaid rent / return of the security deposit / reduction in rent for repairs, services or facilities agreed upon but not provided / 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

As tenancy ended effective December 31, 2013, following filing of the landlord's application, I consider the landlord's application for an order of possession to be withdrawn. During the hearing the landlord's agent also withdrew the aspect of the application concerning unpaid rent / loss of rental income for January 2014.

As the tenants have vacated the unit, I consider the tenants' application for cancellation of a notice to end tenancy for unpaid rent to be withdrawn.

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 17, 2011 to June 30, 2012. Thereafter, tenancy continued on a month-to-month basis. Monthly rent was due and payable in advance on the first day of each

month. Some while before the tenancy ended, monthly rent was \$3,138.00. A security deposit of \$1,450.00 was collected at the start of tenancy. A move-in condition inspection report was not completed.

Arising from rent of \$1,400.00 which remained unpaid when due on November 1, 2013 (\$700.00 for October and \$700.00 for November), the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 26, 2013. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is January 31, 2014. Subsequently, the tenants made no further payment toward rent and by letter dated November 29, 2013, they gave notice to vacate the unit effective December 31, 2013.

A move-out condition inspection was scheduled for December 31, 2013, however, the tenants did not attend. There is no move-out condition inspection report in evidence.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings around each are set out below.

LANDLORD

\$700.00: *October rent*

\$700.00: *November rent*

\$3,138.00: *December rent*

The tenant does not dispute that the rent, as above, was withheld from payment. The tenants' decision to withhold full payment arises out of their various concerns with what they consider were certain deficiencies in the unit. These concerns included, but are not necessarily limited to, cracked / broken tiles with jagged edges, worn out carpeting, aging blinds and lights / electrical in need of either inspection or repair. The tenants objected to the delay in any remedial action or improvements being undertaken by the landlord until such time as the building has been re-plumbed. Presently, there does not appear to be any evidence that re-plumbing of the building has actually been scheduled to commence on or around any particular date.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) 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.

I find that the tenants withheld full payment of rent without the explicit agreement of the landlord, and before filing an application for dispute resolution. Accordingly, I find that the landlord has established entitlement to the total amount claimed of **\$4,538.00**.

\$232.64: *painting the unit*

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

\$157.50: *carpet cleaning*

Residential Tenancy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading **CARPETS**, provides in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant acknowledged that carpets were not steam cleaned or shampooed at the end of what was a tenancy spanning a period of 27 ½ months. Evidence submitted by the landlord includes a receipt for cleaning of carpets in 3 bedrooms and a hallway, and the landlord's agent testified that the owner's intention is to leave these particular carpets in place for the next renter(s). Following from all the foregoing, I find that the landlord has established entitlement to the full amount claimed.

\$34.04: *lights bulbs*

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

\$50.00: *filing fee*

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

Entitlement: \$5,012.18

TENANTS

Rent reduction

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

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.

Further, section 33 of the Act speaks to **Emergency repairs**.

While there was likely informal contact between the parties prior to October 2013 in relation to various of the tenants' concerns about the condition of the unit, there is an absence of documentary evidence of formal exchanges prior to that time. Further, there is no evidence of any concerns that "emergency repairs" were required in the unit. Having considered the documentary evidence which includes, but is not limited to, photographs taken within the unit, I find on a balance of probabilities that certain repairs / upgrades were due in the unit, and that the tenants have therefore established entitlement limited to **\$600.00**. This entitlement is calculated on the basis of approximately \$6.50 per day during the 92 day period from October 1 to December 31, 2013. In this particular matter, the attention of the parties is also drawn to Residential Tenancy Policy Guideline # 40 which speaks to the "Useful Life of Building Elements."

\$50.00: *filing fee*

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

Entitlement: \$650.00

Offsetting the respective entitlements, I find that the landlord has established a net claim of **\$4,362.18** (\$5,012.18 - \$650.00). I order that the landlord retain the security deposit of **\$1,450.00**, and I grant the landlord a **monetary order** for the balance owed of **\$2,912.18** (\$4,362.18 - \$1,450.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,912.18**. 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: January 23, 2014

Residential Tenancy Branch

