



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlords for a Monetary Order for compensation for loss of rent, cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the tenant's security deposit in partial payment of those amounts. Both the landlords and tenant attended.

Issues(s) to be Decided

Are the landlords entitled to compensation for loss of rent, cleaning and repairs and if so, how much?

Background and Evidence

The tenant admitted service of the application. Based upon the evidence of the parties I find that this 12 month fixed term tenancy started on January 1, 2013 and ended on November 29, 2013 when the tenant moved out. Rent was \$ 1,500.00 per month payable in advance on the 1st day of each month. The tenant paid a security deposit of \$ 1,500.00 at the beginning of the tenancy.

The landlords admitted that they had not completed a written move in or move out condition inspection as required by the Act. The landlords testified that the tenant moved out without prior notice, only sending them an email on November 30, 2013 notifying them that he had moved out. The landlords attended the unit and found damage and that the unit required cleaning. The landlords testified that some of the repairs in particular the stucco repair, was seasonal and had to date not completed same. Because of this delay, they have advertised the unit for re-renting commencing in March 2014 and now claim the loss of revenue for December and January amounting to \$ 3,000.00.

The landlords claim the unit required cleaning which cost them \$ 367.50 based upon 14 hours cleaning at \$ 25.00 per hour.

The landlords claimed \$ 236.25 as the cost to repair the spring loaded garage door which they claim must have been damaged by the tenant according to what they were told by the repair people. They admitted that they do not know how it actually was broken.

The landlords claimed \$ 2,593.00 as the cost estimated to repair an eight inch hole in the exterior of the house stucco which the landlords allege must have been caused by the tenant. They admitted not knowing how it was actually caused.

The landlords claimed the sum of \$ 3,890.25 as the estimated cost to repair the seven year old hardwood floor that was badly scratched by the tenants use during the tenancy.

The landlords claimed that the tenant left dog faeces, an old clothes washer and an iron fire place in the yard costing them \$ 350.00 to clean up.

The landlords claimed that the one year old carpet was destroyed by the tenant through ripping, staining and burning. The cost of replacement was \$ 973.40. The landlords produced a written estimate from a carpet company stating the carpet was not repairable.

The landlords claimed that the tenants broke the central vacuum system costing them \$ 618.73 to repair.

Finally the landlords claim that the tenant contrary to their instructions failed to turn on the heating tape for the well pipe whereupon the damage as a result of freezing cost them \$ 2,423.19.

The tenant admitted not giving the landlords prior notice to end the tenancy but moved out because he believed the landlords were holding him responsible for unnecessary repairs and that he didn't feel safe because a repair person arrived without notice. The tenant testified that he lacked privacy as the landlords had listed their house for sale and many people came by to walk around the property and look at the exterior of the house.

The tenant testified that the garage door did not work from the first day of the tenancy.

The tenant denied any responsibility for the stucco and claimed it must have been done when one of the many vehicles that came to view the property struck the house. He too was guessing what might have happened.

The tenant testified that he had completely cleaned the house and therefore denied responsibility for any cleaning costs.

The tenant admitted that three quarters of the scratches or marks on the floor were caused during his tenancy by his furniture etc. but he claimed that this was all wear and tear.

The tenant admitted to leaving the items and dog faeces in the yard but claimed there was other debris present at the commencement of the tenancy.

The tenant admitted to causing all the damage to the carpet but testified that another repair person from the same carpet company that the landlords obtained an estimate from, advised him the rug was repairable for about \$ 250.00.

The tenant testified that that he had only attempted to use the vacuum once and because it malfunctioned at that occasion he never used it again.

The tenant admitted that the landlord had likely informed him of the necessity to turn on the well pump pipe heater during the cold months. He testified that although he left the interior heat on when he vacated the unit at the end of November, he forgot to consider the well pump heater.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

To claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant should satisfy each component below:

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

The landlords did not complete a condition inspection move in or move out report in accordance with the Act.

Accordingly the landlords do not have the benefit of the evidentiary presumption found in section 21 of the Regulations made pursuant to the Act.

Evidentiary weight of a condition inspection report

- 21** 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.

I find that the landlords who have the burden of proof failed to satisfy me that it was most likely the tenant or a person he permitted on the property that caused the damage to the stucco. Their testimony amounted to a mere suspicion. Accordingly that claim is dismissed.

I find that the tenant was in breach of his fixed term tenancy and the Act by giving inadequate notice to end the tenancy and further that he moved out prior to the end of the fixed term. I find that therefore he is responsible for \$ 1,500.00 for the loss of rent for December 2013. However I find that the landlords had a duty to mitigate by repairing and re-renting the unit as soon as possible. As I had found that the stucco repair was likely not caused by the tenant and the landlords had testified that this repair delayed their ability to complete the repairs until now, I find that it is reasonable that they would have completed all repairs by the end of December. Accordingly I have dismissed their claim for loss of revenue for any month(s) beyond that time period.

I find that the landlords' theory of how the garage door and central vacuum cleaner could have been broken are just that; theories or conjecture in the absence of a condition inspection report. Accordingly I have dismissed those claims.

Policy Guideline 40 Section 12:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Hardwood Floor: 20 years

Carpet

10 years

I reject the tenant's explanation that although three quarters of the damage to the flooring occurred during his tenancy, it was wear and tear. I find that it's common sense that scratches and gouges do not "occur" but rather are caused by not taking enough care. Because the floors were new in 2007 and must be depreciated in accordance with Policy Guideline 12 of Section 40, I have awarded the landlords the sum of \$ 2,528.00 or about 65% of the cost they are claiming.

I reject the tenant's evidence that the carpet was repairable as illogical considering the extent of the damage that he admits. Although the carpet only has useful life expectancy of 10 years I find the landlords acted reasonably by finding the least expensive option. I allow their claim of \$ 973.40.

There was conflicting evidence on the necessity of cleaning and without a move out report and because the landlords have the burden I find that the landlords have not proven that this expense was necessary. I have dismissed that claim.

By the tenant's own admission coupled with the landlords' testimony I find that the yard clean up was necessary and caused by the tenant's neglect. I allow the sum of \$ 350.00 claimed.

I find that by the tenant's own admission he was cautioned to turn on the well pipe heaters and neglected to do so when he vacated the unit. Accordingly I allow the landlords' claim for \$ 2,423.19 for the well repair.

I find that the landlords have proven a claim totalling **\$ 7,774.59**. As the landlords have been mostly successful in this matter, I find pursuant to s. 72 of the Act that they are also entitled to recover the \$ 100.00 filing fee for this proceeding. I order the landlords pursuant to s. 38(4) of the Act to retain the tenant's security deposit inclusive of interest amounting to \$ 1,500.00 in partial payment of the rent arrears. The landlords will receive a Monetary Order for the balance owing.

Calculation of Monetary Award

Rental for December 2013	\$ 1,500.00
Hardwood floor repair	\$ 2,528.00
Carpet replacement	\$ 973.40
Yard cleanup	\$ 350.00
Well repair	\$ 2,423.19
Filing Fees for the cost of this application	\$ 100.00
Less Security Deposit and interest	-\$ 1,500.00
Total Monetary Award	\$6,374.59

Conclusion

In summary I ordered that the respondent pay to the applicant the sum of \$ 7,774.59. in respect of this claim plus the sum of \$ 100.00 in respect of the filing fee for a total of \$ 7,874.59.. I order that the landlord retain the security deposit amounting to \$ 1,500.00 inclusive of interest. I grant the landlord a Monetary Order in the amount of **\$6,374.59** and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims.

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: February 04, 2014

Residential Tenancy Branch

