



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vinewood Developement Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; an Order of Possession because the tenants breached an agreement with the landlord; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on January 08, 2014. Tracking numbers were provided by the landlord's agent in evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord was permitted to provide additional evidence after the hearing had concluded. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord's agent advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws both sections of their application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent JL testifies that this tenancy started on June 18, 2013 for a fixed term lease which was not to expire until June 31, 2014. Rent for this unit was \$1,350.00 per month and was due on the 1st day of each month in advance. The tenants paid a security deposit of \$675.00 on June 18, 2013. The tenancy ended on October 31, 2013.

The landlord's agent JL testifies that the tenants had been served with a One Month Notice to End Tenancy for cause due to noise complaints from other tenants. The police had been called out many times and warning letters were issued to the tenants.

Eventually the landlord served the tenants with the One Month Notice to End Tenancy on October 16, 2013. This Notice stated the reasons to end the tenancy and had an effective date of November 30, 2013.

The landlord's agent testifies that the tenants paid rent for October but vacated the rental unit sometime in October and only notified the landlord that they had vacated the unit on October 30, 2013. The tenants were given three opportunities to attend a move out inspection but failed to respond to this so the move out condition inspection was completed in the tenants' absence.

At the move out inspection the landlord's agent found the tenants had left the unit in a deplorable condition. The tenants had smoked in and around the unit; there was damage to the walls, the baseboards and the laminate flooring. The kitchen was left dirty including the cabinets, floors, fridge, filter hood, the oven and stove. The blinds and windows throughout the unit were dirty, as were the floors in the kitchen, bathroom and living room. The vanity cabinet in the bathroom was damaged and there had been a water leak which the tenants did not inform the landlord of for many weeks after. The landlords repaired the leak but the water had damaged the cabinet. The shower bar was broken off the tiles. The bathroom was left dirty. The modem and router were left dirty and with what appeared to be a sticky substance spilled on them. The landlord had to have a call out by Shaw to rectify the problem with the modem and router. The medicine cabinet was left with rust in the interior, and the tenants had also left three coffee tables, two chairs and a bed frame behind in the alley.

The landlord seeks to recover the following costs for cleaning and damage:

Materials to clean and repair unit - \$160.00

Cleaning for 10 hours at \$20.00 per hour - \$200.00

Cosmetic repairs to laminate - \$50.00

Labour and costs for materials for bathroom repairs - \$120.00

Costs incurred to remove and dump the tenant's belongings - \$200.00.

The landlord seeks an Order to keep the tenants' security deposit of \$675.00 in partial satisfaction of their claim for damages.

The landlord's agent testifies that as the tenants breached the tenancy agreement and the tenancy ended before the lease expired in June, 2014; the landlords were unable to re-rent the unit until November 15, 2013. However, as this had to be done quickly to mitigate the loss of rent, the landlords had to re-rent the unit for a monthly rent of \$1,100.00 which is \$250.00 a month less than the tenants' agreement. The landlord's agent has provided a copy of the incoming tenants tenancy agreement which shows the unit was rented for \$1,100.00 until February 28, 2014. The landlord's agent testifies that

this meant a loss of rental income for the landlord of \$800.00 for November, 2013 and the difference in rent for December, January and February of \$250.00 a month X three months of \$750.00.

The landlords agent testifies that as the new tenant may not continue with the tenancy after February, 2014 when her lease expires the landlord does not know if or when they will be able to re-rent the unit for the remainder of the tenants' term of the tenancy until June 31, 2014. The landlord therefore seeks to recover this loss of rent for March, April, May and June, 2014 of \$5,400.00.

The landlord's agent testifies that due to the numerous complaints received from other tenants and the escalation of incidents involving the police being called out to the tenants; the landlords decided to seek Legal Council on the matter and incurred fees of \$672.00. The landlord seeks to recover this amount from the tenants.

The landlord also seeks to recover the filing fee paid for this proceeding of \$100.00.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regard to the landlords claim for damage to the unit, site and property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- 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 S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied with the evidence before me that the tenants failed to meet s. 32(2) of the *Act* with regard to leaving the rental unit in a reasonably clean condition. I am also satisfied that the tenants failed to make repairs to the unit in accordance with s. 32(3) of the *Act*. However the landlord has not fully met the burden of proof in the matter for repairs and cleaning to the unit. The landlord has only provided receipts for some items purchased at a cost of \$72.53; some of the work completed does not require receipts or invoices as it was completed by the landlord. I must therefore limit the landlords claim accordingly. It is my decision that the landlord may recover the following amounts:

Materials – (Limited receipts) - \$72.53

Paint – 33.76

Cleaning - \$200.00

Cosmetic repairs to laminate - \$50.00

Removal and dumping of tenants belongings – (no dump receipts) - \$125.00

Bathroom repairs - \$120.00.

The landlord has therefore established a claim for **\$601.29**

With regard to the landlords claim to keep the security deposit; as the landlords claim has been successful for damages; I Order the landlord to retain the security deposit of

\$675.00 pursuant to s. 38(4)(b) of the *Act*. This Amount will be offset against the landlord's monetary claim.

With regard to the landlords claim for a loss of rental; income for November, December, January and February; I refer the parties to # 3 of the Residential Tenancy Policy Guidelines which states, in part,

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

I am satisfied from the evidence before me that the landlord did manage to re-rent the unit for November 15, 2013 at a lower rent of \$1,100.00. The landlord is therefore entitled to recover a loss of rent for the first two weeks in November plus the difference between the rents for November, December, January and February to a total amount of **\$1,150.00**.

The landlord has shown that the new tenants lease only ran until the end of February, 2014. The landlord therefore seek to recover the loss of rent for the remaining four months of the tenants lease. However, as the landlord may still be able to re-rent this unit and must show how they will mitigate this loss of rent I am not prepared to award any further loss of rent for these four months as the landlords may still be able to re-rent the unit. Consequently, this section of the landlords claim is dismissed with leave to reapply.

With regard to the landlords claim to recover costs incurred for Legal Council; the landlord are able to contact the Residential Tenancy Branch for any concerns relating to a tenancy. This is a service provided without costs to the landlord. There is no provision

under the *Act* for costs to be awarded to the landlord for legal fees incurred by the landlord when they seek advice or consultation from a Legal Council. Consequently this section of the landlords claim is dismissed without leave to reapply.

As the landlord has been partially successful with this claim the landlord is entitled to recover the **\$100.00** filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Damage and cleaning	\$601.29
Loss of rent for November, December, January, February	1,150.00
Filing fee	\$100.00
Less security deposit	(-\$675.00)
Total amount due to the landlord	\$1,176.29

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,176.29**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court 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: February 24, 2014

Residential Tenancy Branch

