



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing concerns an application by the landlords for 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. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement which was signed by the parties on December 16, 2011, the tenancy began on December 29, 2011. Monthly rent of \$2,250.00 was due and payable in advance on the first day of each month, and the tenancy agreement reflects that a security deposit of \$1,125.00 was collected. There is no record of a pet damage deposit having been collected. A move-in condition inspection report was completed with the participation of both parties.

A previous hearing was held in a dispute between these parties on September 19, 2013, with a decision issued by that same date (file # 803109). Pursuant to the decision an order of possession was issued in favour of the landlords to be effective "on or before 1:00 p.m. on November 15, 2013." Further, the decision reflects agreement between the parties that should the tenants vacate the unit before November 15, 2013, they "will not be required to give one month's notice but will pay a prorated amount of rent for the time they reside in the unit." Ultimately, the tenants vacated the unit on November 06, 2013. While the tenants claim that there were certain irregularities surrounding the move-out condition inspection process, a move-out condition inspection report was completed which bears the signatures of both parties. The tenants provided

their forwarding address on the move-out condition inspection report and the landlords filed their application for dispute resolution on November 15, 2013.

Landlord "AD" testified that after the end of this tenancy, her brother-in-law moved into the unit.

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

At the outset, the attention of the parties is drawn to section 37 of the Act which speaks to **Leaving the rental unit at the end of a tenancy**:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the testimony of the parties and documentary evidence which includes, but is not limited to, photographs, estimates and receipts, the various aspects of the landlords' claim and my findings around each are set out below.

\$217.74: unpaid rent for December 29, 30 & 31, 2011 (3 x \$72.58)

There is conflicting testimony around whether or not an agreement was reached concerning payment of rent for these 3 days. It is understood that the tenants stored some of their possessions in the unit during this time but that they actually began residing in the unit effective January 01, 2012. While the written tenancy agreement reflects a start date for tenancy of December 29, 2011, there is no documentary evidence reflecting the nature of any agreement concerning payment of rent before January 01, 2012, and I note that the landlords delayed pursuing this particular matter until nearly 2 years later.

Pertinent to this delay, Black's Law Dictionary ("Black's") provides that the "Doctrine of laches,"

is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Black's also defines "estoppel by laches" as a "failure to do something which should be done or to claim or enforce a right at a proper time."

Further, Black's defines "estoppel" to mean "that a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly."

In summary, I find that the absence of conclusive documentary evidence concerning any agreement related to paying rent for December 29, 30 & 31, in combination with the landlords' delay in undertaking to enforce a right to collect rent for the subject period in a timely manner, leads me to find that the landlords have failed to establish entitlement to the compensation sought. This aspect of the application is therefore dismissed.

\$90.76: *replace burner cups on stove / replace porch light / paper towels / air fresheners*

While I find that the landlords have established entitlement to recovery of the cost of replacing the porch light, in consideration of the age of the stove which is understood to be more than 10 years, and the generic nature / use of paper towels and air fresheners, I find that the landlords have established overall entitlement limited to **\$68.07**, or 75% of the total amount claimed.

\$224.00: *estimate for repairing / replacing broken glass in French door*

I note that this damage is recorded on the move-out condition inspection report, however, the landlord testified that the glass has not been either repaired or replaced. In the result I find that the landlords have established entitlement to "nominal damages" limited to **\$25.00**.

\$250.00: *professional cleaners (2 ½ hours)*

The tenancy agreement provides that smoking is not permitted within the unit. While the tenants dispute that smoking ever occurred within the unit, documentary evidence

submitted by the landlords suggests otherwise, particularly in the master bedroom and ensuite bathroom. I find on a balance of probabilities that smoking occurred within the unit and that considerable additional cleaning was required as a result. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$93.50: *service call to clean vacuum system*

The landlords resided in the unit prior to the start of this tenancy, and there is no evidence around when the vacuum system was last serviced prior to the start of tenancy. Following from all of this, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim and it is hereby dismissed.

\$139.99: *estimate to replace vacuum hose*

As the landlord testified that the vacuum hose was not new at the start of tenancy, and that this cost was not later incurred, this aspect of the application is hereby dismissed.

\$135.41: *replacement of light bulbs*

Arising principally from the comparative results of the move-in and move-out condition inspection reports, as well as receipts, I find on a balance of probabilities that the landlords have established entitlement to the full amount claimed.

\$239.80: *replace toilet seat / replace 1 garage door opener / replace 4 garbage cans / replace bedroom screen / replace bathroom blind & bedroom blind*

Mainly in consideration of the conflicting testimony around the number of garage door openers provided and later returned, the comparative results of move-in and move-out condition inspection reports, and “reasonable wear and tear,” I find that the landlords have established entitlement limited to **\$143.88**, or 60% of the amount claimed.

\$232.21: *rekey locks on entire house*

As all keys provided at the start of tenancy were returned at the end of tenancy, this aspect of the application is hereby dismissed.

\$499.00: *replacement hot tub lid*

In consideration of the comparative results of the move-in and move-out condition inspection reports, the uncertain age of the hot tub lid, the conflicting testimony of the

parties, and the landlord's testimony that the hot tub lid has not been replaced, I find that the landlords have established entitlement to "nominal damages" limited to **\$75.00**.

\$862.06: *replacement of dining room carpet*

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the "useful life" of carpets is 10 years. The landlord testified that the carpet was approximately 8 years old at the start of tenancy, which itself lasted nearly 2 years. In the result, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim and it is hereby dismissed.

\$100.00: *cleaning oven*

I find on a balance of probabilities that the landlords have established entitlement limited to **\$22.50**, which is calculated on the basis of 1 ½ hours @ \$15.00 per hour.

\$50.00: *cleaning dish washer*

As the dish washer was ultimately removed and replaced (see below), I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim and it is hereby dismissed.

\$50.00: *cleaning hot tub and surrounding area & fridge*

I find on a balance of probabilities that the landlords have established entitlement limited to **\$30.00**, which is calculated on the basis of 2 hours @ \$15.00 per hour.

\$200.00: *cleaning of floors, walls, baseboards*

I find on a balance of probabilities that the landlords have established entitlement limited to **\$60.00**, which is calculated on the basis of 4 hours @ \$15.00 per hour.

\$8.80: *cleaning supplies (vinegar & baking soda)*

In view of the generic nature / use of these supplies, I find that the landlords have established entitlement limited to **\$4.40**, or half the amount claimed.

\$28.00: *additional cleaning supplies*

For reasons identical to those set out immediately above, I find that the landlords have established entitlement limited to **\$14.00**, or half the amount claimed.

\$450.00: *unpaid rent for November 2013 (6 days)*

The tenants do not dispute this aspect of the claim, and the claim is consistent with findings set out in the Record of Settlement in the decision dated September 19, 2013. Accordingly, I find that the landlords have established entitlement to the full amount claimed, which is calculated as follows:

$$\begin{aligned} \$2,250.00 \text{ (monthly rent)} \div 30 \text{ (number of days in November)} &= \$75.00 \text{ (daily rent)} \\ \$75.00 \text{ (daily rent)} \times 6 \text{ (number of days of tenancy)} &= \$450.00 \end{aligned}$$

\$200.00: *repainting bathroom cupboards due to smoke*

The landlord testified that her husband repainted the bathroom cupboards. I find that the landlords have established entitlement limited to **\$60.00**, calculated on the basis of 4 hours @ \$15.00 per hour.

\$200.00: *estimate for repairing dishwasher*

The landlord testified that the dishwasher was removed and replaced. Accordingly, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim and it is hereby dismissed.

\$500.00: *insurance deductible arising from claim to repair deck*

The landlord testified that no claim has been made on the insurance policy. On a balance of probabilities I find that the landlords have established entitlement to “nominal damages” limited to **\$75.00**.

\$404.25: *cost of repainting bathroom(s)(required in part due to smoke)*

The landlord testified that a painter was hired to complete this job as per the quotation provided. I find on a balance of probabilities that smoking occurred in the bathroom(s) during the tenancy, and that the landlords have therefore established entitlement to the full amount claimed.

\$100.00: *filing fee*

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

Total: \$1,917.51

I order that the landlords retain the security deposit of **\$1,125.00**, and I grant the landlords a **monetary order** for the balance owed of **\$792.51** (\$1,917.51 - \$1,125.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$792.51**. 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: March 05, 2014

Residential Tenancy Branch

