



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 is the Landlords' application for a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties and the Landlords' witness gave affirmed testimony at the Hearing.

The Landlords testified that they mailed the Notice of Hearing documents to the Tenant, by registered mail, on January 22, 2014. The Landlords stated that they sent copies of their documentary evidence, by registered mail, on April 15, 2014. The Tenant acknowledged service of the documents.

Issues to be Decided

- Are the Landlords entitled to unpaid rent for January, 2014, the cost of cleaning and repairs at the rental property?
- May the Landlords deduct their monetary award from the security deposit?

Background and Evidence

This tenancy began on November 1, 2012, and ended on January 12, 2014. Monthly rent was \$1,100.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00.

The Landlords gave the following testimony:

The Landlords testified that the Tenant paid only \$550.00 for January, 2014 rent. They stated that the Tenant did not give them due notice to end the tenancy. The Landlords did not re-rent the rental unit and sold it on April 30, 2014. The Landlords seek a monetary award of **\$550.00** for the remainder of January's rent.

The Landlords' witness stated that she cleaned the rental unit before the Tenant took possession and also at the end of the tenancy. She described each of the 80 photographs that the Landlords provided in evidence. The witness stated that the yard was a mess; the leaves had not been raked; Christmas lights were still up; toys and a trampoline were abandoned in the yard; garbage, and old rugs, and a Christmas tree were left in the yard. The witness testified that there were cigarette burns on the outdoor window sills and that the Tenant's child had drawn in chalk on the side of the house, which left a stain on the house.

The witness testified that there was mascara, eyeliner and nail polish on the mirrors; abandoned tooth brushes in the bathroom; damaged walls; green nail polish on the floor; stickers and screws left in the walls; candle wax on the bay window; and a dent the size of a quarter on the laminate floor in the living room. The Landlords' witness testified that the stove was filthy and it took three attempts to clean it. She stated that generally speaking, the rental unit had not been cleaned and that there were spider webs on the ceilings.

The Landlords provided a breakdown of hours spent cleaning and repairing the rental unit and doing the clean-up in the yard. The Landlords submitted that it took 17 hours to clean and repair the inside of the house and an additional 36.5 hours to complete the work in the yard. The Landlords also estimated that it cost \$40.00 for cleaning materials and paint and \$65.00 for dump runs. The Landlords seek a total monetary award of **\$1,175.00** for labour and materials.

The Tenant gave the following testimony:

The Tenant stated that she sent the Landlords a text on December 15, 2013, which gave the Landlords six weeks' notice that she was ending the tenancy.

The Tenant acknowledged that she left a computer desk, kids' play set and trampoline at the rental property. She also acknowledged that she did not clean the stove and the fridge before she left. The Tenant acknowledged that her child had drawn in chalk on the house, but stated that it is non-toxic chalk which rinses off easily and does not stain.

The Tenant denied damaging the laminate floor and stated that the "dent" in the picture was actually adhesive left from a sticker. The Tenant stated that some of the damage the Landlords allege she caused was there when she moved into the rental unit. The Tenant stated that there was nowhere in the tenancy agreement that said she was responsible for yard work. The Tenant testified that there were buckets of oil and an old door on the property when she moved in and that the old abandoned rugs the Landlord's witness referred to were also there when she moved in. The Tenant stated

that the bathtub was painted before she moved in and that it was a poor job. She testified that adhesive or calking was oozing from the joins in the bathtub surround.

The Landlords gave the following reply:

The Landlords referred to the documentary evidence provided and submitted that the last page of the Condition Inspection Report included a requirement that “weeding, raking, snow removal, lawn mowing are tenant’s responsibility”. They stated that the Tenant knew that she was responsible for taking care of the yard and that she had sent a text acknowledging that she “slacked off” on leaf raking.

Analysis

Section 45 of the Act requires a tenant to provide notice to end the tenancy effective on a date that is **not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement**. Section 52 of the Act provides that in order to be effective a notice to end tenancy **must be in writing and be signed by the person giving the notice**. In this case, I find that the Tenant’s notice to end the tenancy did not comply with Sections 52 or 45 of the Act and that the Landlords are entitled to unpaid for the month of January, 2014, in the amount of **\$550.00**.

I do not find that the attachment to the Condition Inspection Report is part of the tenancy agreement. It is not signed by both parties. However, Residential Tenancy Branch Policy Guideline 1 provides the following with respect to property maintenance:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

The rental unit is a single family dwelling and therefore I find that the Tenant was responsible for cutting the grass, raking the leaves and clearing snow. I find that the tenancy agreement did not stipulate that the Tenant had to maintain the flower beds and therefore I do not find that she was responsible for tidying the flower beds or power washing the moss off the driveway.

Based on both parties' testimony, I find that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, contrary to Section 37 of the Act.

The Landlords seek compensation at the rate of \$20.00 an hour for their labour. Pursuant to the provisions of Section 67 of the Act, I find that the Landlords have established a monetary award in the amount of **\$340.00** for cleaning the rental unit (17 hours x \$20.00). The Landlords included some items with respect to the outside work that I find are not the Tenant's responsibility. Therefore, I allow this portion of their claim in the amount of **\$240.00** (12 hours x \$20.00). The Landlords' claim for the cost of materials was not supported by documentary evidence (for example, receipts) and this portion of their claim is dismissed without leave to reapply.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award. No interest has accrued on the security deposit.

The Landlords have been successful partially successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Un paid rent	\$550.00
Labour for cleaning rental unit	\$340.00
Labour for outside yard work	\$240.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,180.00
Less security deposit	<u>- \$550.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$630.00

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$630.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 09, 2014

Residential Tenancy Branch

