



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed on May 15, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all of the security and pet deposits; and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to each Tenant, was done in accordance with section 89 of the *Act*, served personally on May 15, 2014. Based on the submissions of the Landlords I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the *Act*. Therefore, I proceeded with the hearing in the absence of the Tenants.

The Landlords appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlords submitted documentary evidence in support of their claim which included copies of: photographs of the unit, receipts for items purchased to clean and repair the rental unit; a detailed calculation of their claim totalling \$4,144.49; utilities bills; proof of service statements; tenancy agreement; 10 Day Notice; photos of service of the 10 Day Notice; and a notice of breach of the tenancy.

The evidence supported that the parties executed a written tenancy agreement for a 1 year fixed term tenancy that commenced on November 15, 2013. The Tenants were required to pay rent of \$1,500.00 on the first of each month plus all utilities. Shortly after November 15, 2013 the Tenants paid a total of \$750.00 as the security deposit plus

\$100.00 towards the pet deposit. The Landlords stated the rental property was a single detached home that was built in 2006 which they have owned since 2012. The Landlords had not painted or renovated the property prior to this tenancy.

The Landlords testified that when the Tenant began having trouble paying his rent on the first of each month they had agreed to let him pay half on the first and half on the 15th of each month. Then when the Tenant failed to pay the amount owed for April 15, 2014 they served him with a 10 Day Notice for \$750.00 unpaid rent on May 1, 2015.

The Landlords submitted that shortly after serving the 10 Day Notice they saw the Tenant moving his possessions out of the rental unit. Then on May 15, 2014 they checked the rental unit and found that it had been vacated and they regained possession on that date.

The Landlords argued that they found the rental unit dirty, damaged, scattered with debris, and the yard was unkempt with dog feces scattered about. Their documentary evidence provided a detailed accounting of the damage to the property and of the Landlord's monetary claim which can be grouped as follows (excluding the \$50.00 filing fee):

Unpaid rent up to April 30, 2014	\$ 750.00
Unpaid utilities	303.85
Cleaning supplies and landfill fees	41.91
Materials and supplies to repair damage	206.06
The Landlord's labour @ \$16.00 per hour	808.00
Landlord's meals and vehicle usage charges	223.86
The cost to replace the master bedroom carpet	785.35
An estimate to replace laminate flooring	<u>1,829.99</u>
	<u>\$4,949.02</u>

The Landlords stated that the rental unit smelled of dog and cat urine and the entire laminate flooring had suffered scratches from the animals and some type of water damage as the corners and sides of the laminate boards were "de-laminating" and curling up. The Landlords confirmed that all work had been completed except for the replacement of the laminate flooring as they were awaiting the outcome of this dispute.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this

proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their documentary evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

In this case the evidence supports that the Tenants breached section 26 of the Act when they failed to pay the full amount of rent owed for April 2014. Accordingly, I grant the Landlords monetary compensation for unpaid April 2014 rent in the amount of **\$750.00**.

The tenancy agreement provided that the Tenants were required to pay the utilities. At the end of this tenancy the Tenants owed \$303.85 to the municipality for water and sewer, as supported by the documentary evidence of the utility bill that went up to May 6, 2014. Accordingly, I award the Landlords unpaid utilities in the amount of **\$303.85**.

Section 32 (3) of the Act provides that a tenant of a rental unit 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the

depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

As per the foregoing, the normal useful life of carpet is 10 years. The carpet in this rental property was installed in 2006; therefore the carpet had two years remaining in its useful life.

As per the foregoing I find the Landlords have met the burden of proof to establish a loss for damages in the amount of **\$1,213.04** which is comprised of the following:

Cleaning supplies and landfill fees	\$41.91
Materials and supplies to repair damage	206.06
The Landlord's labour @ \$16.00 per hour	808.00
Depreciated award to replace the carpet (2/10 x \$785.35)	<u>157.07</u>
	<u>\$1,213.04</u>

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

The normal useful life of laminate or parquet flooring is 20 years. The flooring in this rental property was installed in 2006; therefore the laminate flooring had 12 years remaining in their usual life. The Landlords stated that the laminate flooring had not yet been replaced, but argued the damages were extensive throughout.

After consideration of the foregoing, I find that despite the floor being cosmetically less appealing as supported by the fact that it has not been replaced, I accept the Landlords' undisputed submission that it is so badly damaged that it cannot be used safely for very long as it is lifting and peeling apart. Therefore, in absence of a receipt to prove the exact value of the loss, I find the Landlords are entitled to nominal damages for the laminate flooring in the amount of **\$150.00**.

In regards to the Landlords' claim for meals and vehicle usage to travel to the rental property, I find that the Landlords have chosen to be in the business of being a landlord and that these costs are incurred as costs of doing that business, and cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as denominated by the *Residential Tenancy Act* which pertains to a breach of the Act. Therefore I find costs incurred due to the cost of doing business may not be claimed and those costs are hereby dismissed, without leave to reapply.

The Landlords have primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Unpaid April 2014 rent	\$ 750.00
Unpaid utilities	303.85
Damage Loss	1,213.04
Nominal damages	150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,466.89
LESS: Pet Deposit \$100.00 + Interest 0.00	-100.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$1,616.89</u>

Conclusion

The Landlords have been awarded a Monetary Order for **\$1,616.89**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia 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: September 19, 2014

Residential Tenancy Branch

