



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.K. SMITH CONSTRUCTION COMPANY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 2, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony that each Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, July 10, 2014, in person by a process server. Each Tenant was served the Landlord's evidence in person by the process server. R.M.C. was served the evidence on September 16, 2014 and D.M.C. was served on September 17, 2014. Copies of the process server's sworn affidavits were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act; and I proceeded in the Tenants' absence.

Issue(s) to be Decided

Has the Landlord met the burden of proof to obtain a Monetary Order?

Background and Evidence

The Landlord provided documentary evidence and testimony that the parties executed written tenancy agreements for consecutive fixed term tenancies. The first tenancy agreement commenced on May 15, 2009 for the monthly rent of \$1,200.00 which was payable on the first of each month. On or before May 15, 2009 the Tenants paid \$600.00 as the security deposit which was held and transferred to each subsequent tenancy agreement. The most recent tenancy agreement commenced on October 1, 2013 and ended April 30, 2014 for the monthly rent of \$1,000.00 payable on the first of each month. Sometime during the course of the tenancy the Tenants began paying their rent on the 15th of each month.

The Landlord testified that they have owned the rental property for over 28 years and the house was built in 1948. He noted that the house had been completely restored in 1986 and the carpets were replaced in 2006.

The Landlord testified that in mid April 2014 a neighbor to the rental property called him and advised that the Tenants appeared to be moving out. The Landlord attended the rental unit around May 1, 2014 and found that the Tenants had moved out without providing notice and without returning the keys. He stated that the Tenants had left the rental house and property dirty, with damages, and the Tenants had left some of their possessions behind.

The Landlord submitted that the Tenants contacted him shortly after moving out and requested the return of their security deposit. The Landlord said he refused to return the deposit because the Tenants refused to provide him with a forwarding address and they refused to attend a move out inspection. The Landlord now claims \$4,233.90 which is comprised of the following:

\$2,000.00	2 Months (2 x \$1,000.00) lost rental income because the Tenants did not provided two months written notice as required in their tenancy agreement
\$322.40	Driveway and yard clean up that was to be maintained by the Tenants
\$23.57	Repairs to cabinet due to the Tenants' damage
\$210.00	Cleaning of the house and windows
\$87.50	Changing the locks / keys of the rental house as keys were not returned
\$566.48	Cost to clean the carpets due to animal urine and feces
\$203.40	Repairs to the front stair railings damaged by Tenants
\$7.00	Bank charges incurred after the Tenant's cheque dated May 15, 2014 was returned which had a stop payment on it and which the Landlord attempted to cash after the Tenants moved out
\$1,411.55	Depreciated amount for the cost to replace carpets – the Landlord confirmed that the carpets had not yet been replaced and argued that the value of the carpets had been depreciated because of the damage caused by the pet urine and feces.

In closing the Landlord confirmed that they did not advertise the unit for re-rent as they took the time to complete repairs and conduct some renovations. The unit was re-rented effective September 1, 2014 to a contractor who had been conducting renovations to the house.

The Landlord requested information about abandoned property and noted that he was currently storing some of the Tenants' possessions that were left behind. Part 5 of the Regulations speaks to abandoned property and has been pasted to the end of this decision.

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 accepted the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect

In this case, the Tenants were required to provide 1 month written notice to the Landlord no later than March 31, 2014, if they wished to end their tenancy April 30, 2014, which was the end of the fixed term, in accordance with section 45 of the Act. The Tenants did not provide written notice to end their tenancy and they simply vacated the unit on or shortly before April 30, 2014.

Based on the foregoing, I find the Tenants did not provide proper notice to end this tenancy as required by section 45(2) of the Act. In absence of the proper notice and when considering the condition the property was left in, I accept that the Landlord suffered a loss of rent for one month. Section 7 of the Act stipulates that a party must do whatever is reasonable to mitigate their loss and therefore the Landlord was required to attempt to re-rent the unit as soon as possible.

I find the Landlord's request for 2 months compensation due to lack of notice as required by the tenancy agreement to be unenforceable as the Act only requires a tenant to provide 1 month written notice, as noted above. Therefore, I award the Landlord lost rent in the amount of **\$1,000.00.**

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.

As per the foregoing I find the Landlord has met the burden of proof to claim damages in the amount of **\$1,413.35** which consists of the following:

\$322.40	Driveway and yard clean up
\$23.57	Repairs to cabinet
\$210.00	Cleaning of the house and windows
\$87.50	Changing the locks / keys of the rental house
\$566.48	Cost to clean the carpets

\$203.40 Repairs to the front stair railings

Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit.

Upon review of the evidence before me I find the postdated rent cheques which were being held in trust by the Landlord were issued for the sole purpose of rent payments during a tenancy. In this case I find the Landlord was not entitled to cash the postdated cheque dated May 15, 2014, as the tenancy had ended on April 30, 2014. Therefore, the Landlord is not entitled to compensation for the \$7.00 cost incurred when that cheque was returned by the bank and the claim is dismissed, without leave to reapply.

The Landlord has made a determination that the value of the carpets were depreciated by \$1,411.55 during the five years the Tenants occupied the property. While I accept that the evidence supports that the carpets had been stained and had been found with some dog or cat urine and or feces on them, I note that the Landlord has not had the carpets replaced. Rather, the Landlord paid to have the carpets professionally cleaned to restore them to a condition where the unit could be re-rented and occupied by another tenant. The Landlord has been compensated for his loss for the carpet cleaning above. The value of carpets normally depreciate over time as they have a limited useful life span; therefore, in absence of proof that the carpets had been replaced I find there to be insufficient evidence to support the claim for depreciation of \$1,411.55, and the claim is dismissed, without leave to reapply.

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

Monetary Order – I find that the Landlord is 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 deposit plus interest as follows:

Lost rent May 2014	\$1,000.00
Damages & repairs	1,413.35
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,463.35
LESS: Security Deposit \$600.00 + Interest 0.00	<u>-600.00</u>
Offset amount due to the Landlord	<u>\$1,863.35</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,863.35**. 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: November 19, 2014

Residential Tenancy Branch

Residential Tenancy Regulations
Part 5 ♦ Abandonment of Personal Property

Abandonment of personal property

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

- 25** (1) The landlord must
- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
 - (b) keep a written inventory of the property,
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
 - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
 - (a) the property has a total market value of less than \$500,
 - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
 - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Tenant's claim for abandoned property

- 26** (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to
 - (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing and storing the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Notice of disposition

- 27** (1) For the purposes of this section:

"financing statement" has the same meaning as in the *Personal Property Security Act*;

"security interest" has the same meaning as in the *Personal Property Security Act*;

"serial number" has the same meaning as in section 10 of the *Personal Property Security Regulation [collateral described by serial number]* made under the *Personal Property Security Act*.

- (2) Not less than 30 days before disposing of an item of personal property referred to in section 24, the landlord must
 - (a) give notice of disposition to any person who
 - (i) has registered a financing statement in the Personal Property Registry using the name of the tenant or the serial number of the property, and
 - (ii) to the knowledge of the landlord, claims an interest in the property, and

- (b) publish the notice in a newspaper published in the area in which the residential property is situated.
- (3) The notice referred to in subsection (2) must contain
 - (a) the name of the tenant,
 - (b) a description of the property to be sold,
 - (c) the address of the residential property,
 - (d) the name and address of the landlord, and
 - (e) a statement that the landlord will dispose of the property unless the person being notified takes possession of the property, establishes a right to possession of it or makes an application to the court to establish such a right within 30 days from the date the notice is served on that person.
- (4) The notice referred to in subsection (2) must be given in accordance with section 72 of the *Personal Property Security Act*[*service of statements, notices and demands*].

Holder of a security interest

- 28** (1) When a notice referred to in section 27 (2) has been served on a person who holds a security interest, the tenant is deemed to be in default of the obligation secured.
- (2) Before taking possession of the property, the person who holds a security interest must pay to the landlord moving and storage charges incurred by the landlord under this Part.

Disposal of personal property

- 29** (1) For the purposes of this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.
- (2) If a landlord has complied with section 25 [*landlord's obligations*], the landlord may dispose of the property in a commercially reasonable manner unless, during the 60 days referred to in that section,
- (a) a person referred to in section 27 (2) [*person entitled to notice of disposition*] who has been given a notice as provided in that section has taken or demanded possession of the property,
 - (b) a person who holds a security interest in the property has taken or demanded possession of the property, or
 - (c) a person claiming an interest in the property has made an application under subsection (7) or has brought an action to establish his or her interest in or right to possession of the property and the landlord has been notified of the application or action.
- (3) If a landlord disposes of personal property under subsection (2), he or she may retain proceeds of the sale sufficient to

- (a) reimburse the landlord for his or her reasonable costs of
 - (i) removing, storing, advertising and disposing of the property, and
 - (ii) a search required to comply with section 27 [*notice of disposition*], and
 - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (4) If any amount remains after payments are made under subsection (3), the landlord must pay the balance to the administrator, who must follow the procedure for an unclaimed money deposit set out in the *Unclaimed Property Act*.
- (5) If a landlord pays money to the administrator under this section, the landlord must give the administrator a copy of the inventory of the personal property disposed of and written particulars of the disposition.
- (6) The purchaser of personal property disposed of in accordance with this Part acquires a marketable title free of all encumbrances on payment of the taxes owing in relation to the personal property or the sale.
- (7) On the application of an interested person, a court may make an order
 - (a) prohibiting or postponing disposition of the property under this section on any conditions the court considers appropriate,
 - (b) determining the right of a person claiming an interest in or right to possession of the property or the right of the landlord to dispose of it, or
 - (c) that an action be brought or an issue be tried.

[am. B.C. Reg. 234/2006, s. 19.]

Landlord's duty of care

30 When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.

