



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application was amended to correct the spelling of the tenant's name.

The landlord confirmed he is not holding a security deposit; therefore there is no claim against a deposit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,000.00 for unpaid May 2014 rent and loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$2,082.00 for damage to the rental unit?

Background and Evidence

The landlord and tenant both agreed that monthly rent owed was \$1,100.00.

The parties confirmed that in December 2013 the tenant moved into the lower unit of the house where the landlord resides. There had been 3 previous tenants, who had signed a tenancy agreement.

When the respondent moved into the unit 2 of the 3 previous tenants remained in the unit until the end of January 2014. Many of the belongings that had been in the unit were left by the previous occupants; friends of the tenant. The respondent remained in the unit and paid \$365.00 for the month of February. At the end of February 2014 another tenant moved into the unit and he paid the landlord a sum toward rent owed. In April a 3rd tenant moved into the unit. The 3 tenants then all vacated the unit at the end of May 2014.

The tenant confirmed that he and his co-tenant pooled their money each month; they paid an equal share toward rent. The rent was paid as a lump sum.

A tenancy agreement was not signed with the tenant or his co-tenants. Condition inspection reports were not completed at any time, with the tenant or the previous occupants.

The tenancy ended as the result of a 10 day Notice ending tenancy for unpaid rent issued on May 17, 2014. The Notice had an effective date of May 27, 2014. The tenant had paid \$300.00 in May; the balance of the rent owed was not paid. The tenants vacated at the end of May.

The landlord has made the following claim:

		Invoice
Replace white cabinet	150.00	
Repair holes in drywall	300.00	
Paint bedrooms and living room	800.00	
Clean carpets	200.00	
Plumbing	125.00	June 4, 2014
Trash removal	120.00	June 14, 2014
Extra occupants	1,200.00	
Broken dryer	200.00	
Cleaning	125.00	\$200.00 - June 9, 2014
May 2014 rent	800.00	
Dump fee	75.00	94.50 - June 19, 2014
Kitchen table damage	100.00	
TOTAL	\$4,195.00	

The landlord provided copies of invoices referenced above. The balance of the claim is based on landlord estimates.

The landlord submitted fifty-one photographs taken of the unit after the tenants vacated in May 2014. The photographs show a significant amount of belongings left in the unit and the need for considerable cleaning. It appears that no area of the unit was cleaned. The wood stove was not cleaned out, belongings were strewn throughout the unit, the fridge had a lot of food left in it, dirty dishes were left on the counters and in the sink, the floors were covered with items and garbage was piled outside.

The landlord submitted a copy of a text message the tenant has sent him after the tenants vacated. The message included:

How's the mess (landlord name). All you have to do now is go through all the stuff down there and keep whatever's not garbage. There's nothing you can do us...With no lease or anything you can't do (expletive)...so have fun with all the mess..."

(reproduced as written)

The landlord said that a small white cabinet had been left in the home and that the tenants took it when they vacated. The landlord established the value by looking at a similar item in hardware store.

Five holes were left in the walls. The landlord does drywall work for a living and estimates the repairs will cost \$300.00. He has a minimum charge of \$200.00. Two of the 3 bedrooms had holes in the wall, with another in a hallway.

The unit was painted just before the previous occupants had moved in, during 2013. There is liquid on the walls, scratches and the holes all require repainting of the unit. The landlord cannot match the colours used, so all of the walls must be painted.

The carpets were not vacuumed and are stained. They were cleaned before the previous occupants moved into the unit. Two of the 3 bedrooms are carpeted. The landlord said he estimated the cost of a machine rental and hiring someone to clean the carpets. The carpets have not yet been cleaned.

After the tenants moved out the landlord hired a plumber to put a camera down the sewage line. Plastic bags and feminine hygiene products were found that could have caused possible problems with the septic system. The landlord said that the items would have been the result of the tenant or their guests flushing things down the toilet.

The tenants had 2 girlfriends living with them for 6 months. The landlord has claimed \$1,200.00 for these extra occupants.

The dryer was approximately 8 year's old and ceased working. The landlord believes the motor is the problem.

The landlord hired someone to clean the unit; an invoice was supplied.

The tenant's failed to pay the balance of May 2014 rent owed in the sum of \$800.00.

The dump fees were the result of hauling required for all the items left in the unit after the tenant and his co-tenants vacated.

The landlord has claimed the cost of a new table; one of the tenants scratched a vulgar message to the landlord in the top of the table.

The tenant thought the white vanity had been given to the tenants.

When the tenant moved into the unit all of the items in the photographs were there. He knew the previous occupants and they left furniture and other items when they vacated. The tenant understood that a few items did belong to the landlord.

The tenant denied putting holes in the walls; one of his co-tenants did put holes in his bedroom wall.

The tenant said the state of the walls was no different at the start of the tenancy than the end. The tenant did not think that the carpets looked bad; he had used a vacuum at one point.

There was nothing wrong with the plumbing during the tenancy. The tenant denied causing damage.

The majority of items left in the rental unit at the end of the tenancy belonged to the co-tenants.

The tenant said that the dryer had stopped working during the tenancy and that they had told the landlord.

The tenant confirmed that all of May rent was not paid. It was his co-tenants who failed to provide their share of the rent.

The tenant said the dump fee was the result of his co-tenants failure to remove items from the unit.

The tenant said he did not damage the kitchen table; he did see his co-tenant carve the vulgar message in the table top.

During the hearing I discussed the definition of co-tenants, the need to properly start and end tenancies and the requirement for condition inspection reports. The landlord said that people came and went from the rental unit, at different times.

The landlord accepted cash rent payments and did not issue receipts.

Analysis

In relation to the status of this tenancy; the landlord has failed to ensure that the previous tenancy was properly ended. A move-in and move-out inspection report was not completed and the tenant present at this hearing appears to have taken possession simply as the result of having lived with the previous occupants. When there is no inspection report completed, as required by the legislation, the landlord must provide a preponderance of evidence in support of a claim for damage.

Residential Tenancy Branch policy provides the following definition of co-tenants:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

I find that by March 2014 a co-tenancy with 1 other individual had been established and that a 3rd co-tenant joined them in April, 2014. The tenants pooled their rent and paid the total sum owed to the landlord. The tenant indicated that he was paying his share; that he had removed his belongings and had cleaned his room. However, I there was no dispute the 3 individuals were pooling their money to pay the total rent owed by all of them.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

In the absence of an estimate for the vanity and evidence of the value of the vanity at the start of the tenancy, I find the landlord is entitled to nominal compensation in the sum of \$25.00. The tenant said he thought the vanity had been given to them; there was no evidence this was the case.

The tenant did not dispute the presence of holes in the walls; only that he did not cause the holes. Therefore, as the landlord is a professional drywall repair person, I find he is entitled to the cost, as estimated for drywall repair.

In the absence of a move-in condition inspection report I find that it is just as likely the walls were in need of paint at the start of this tenancy. No assessment of the unit was made when the previous occupants vacated; in fact many belongings remained in the unit. Therefore, I find that the claim for painting is dismissed.

The landlord has given an estimate of the cost of carpet cleaning but provided no document to support this, such as the cost of a rental. Therefore, I find that the landlord is entitled to compensation in the nominal sum of \$50.00.

The plumbing to the unit was operational when the tenancy ended. While items were located in the sewage lines, there was no evidence before me that it was not the previous occupants who may have flushed those items. Therefore, I find that the claim for plumbing is dismissed.

From the photographic evidence and the tenant's testimony I find that the claims for trash removal, cleaning, unpaid rent, dump fees and table replacement are valid and that the landlord is entitled to compensation in the sum claimed and supported by invoices.

In the absence of a written tenancy agreement setting out how many occupants could reside in the 3 bedroom unit and, given the tenants resided in the unit for a period of 4 months, not the 6 claimed by the landlord, I find the claim for extra occupants is dismissed.

There was no evidence before me that any negligence on the part of the tenants caused the dryer motor to fail. Therefore, I dismiss the claim for dryer replacement.

There was no dispute that the tenants paid only \$300.00 of May 2014 rent owed. Therefore I find the landlord is entitled to compensation in the sum of \$800.00 for the balance owed.

Therefore, the landlord is entitled to following compensation:

	Claimed	Accepted
Replace white cabinet	150.00	25.00
Repair holes in drywall	300.00	300.00
Paint bedrooms and living room	800.00	50.00
Clean carpets	200.00	50.00
Plumbing	125.00	0
Trash removal	120.00	120.00
Extra occupants	1,200.00	0
Broken dryer	200.00	0
Cleaning	125.00	200.00
May 2014 rent	800.00	800.00
Dump fee	75.00	94.50
Kitchen table damage	100.00	100.00
TOTAL	\$4,195.00	1739.50

The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,789.50. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation as set out above. The balance of the claim is dismissed.

This decision is final and binding and 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 26, 2014

Residential Tenancy Branch

