



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 556768 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on July 11, 2014. The landlords testified that the Canada Post Tracking information shows the tenant signed for the hearing documents on July 16, 2014. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. The landlords were permitted to provide additional evidence after the hearing concluded to the Residential Tenancy Office and the tenants. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlord JV testified that this month to month tenancy started on March 01, 2012 and ended on June 26, 2014. Rent for this unit was \$1,200.00 a month and was increased to \$1,275.00 a month on May 01, 2014. Rent was due on the 31st of each month in advance. The tenants paid a security deposit of \$600.00 on February 20, 2012. The landlords have provided a copy of the tenancy agreement and the rent increase notice in documentary evidence.

The landlords have claimed \$2,761.07 comprised of the following:

Item 1. Unpaid rent for June	\$1,275.00
Item 2. Painter	\$420.00
Item 3. Cleaner	\$97.50
Item 4. Land fill garbage removal	\$30.55
Item 5. Home depot repairs	\$321.50
Item 6. Heat registers	\$11.16
Item 7. Landlords time and labour	\$560.00
Item 8. Gas	\$45.36
TOTAL	\$2,761.07

The landlord JV testified that the tenants' rent was increased in May, 2014 from \$1,200.00 to \$1,275.00. JV testified that this was the correct amount of 3.8 percent plus 2 percent. JV testified that the tenants failed to pay rent for June, 2014 and the landlords seek to recover the rent of \$1,275.00.

JV testified that the tenants moved out of the unit and failed to attend the move out condition inspection of the unit. Many areas of the unit required repairs and painting. For example mouldings, doors and coat hooks had been pulled from the walls. The painting bill was for \$1,050.00 in total; however, as some of this painting was for damage caused through normal wear and tear the landlords have adjusted the amount to 40 percent for the damage that required painting through the tenants' actions or neglect. The landlords therefore seek to recover \$420.00.

JV testified that the tenants failed to clean the unit before they vacated. The landlords sent in their cleaners to do this work before new tenants were able to move in. The landlords paid \$97.50 for this work and seek to recover this amount from the tenants.

JV testified that the tenants left a large amount of garbage and belongings at the unit. BV testified that nothing was worth more than \$500.00 and all the garbage and belongings were removed to the dump as the tenant no longer wanted it. There was 1,200 lbs of garbage removed. The landlords refer to their photographic evidence showing the tenants' garbage and abandoned belongings. The landlords seek to recover the dump fees of \$30.55.

JV testified that the tenants left three damaged blinds, a deadbolt with the key broken off inside, a damaged slider guide rail for the closet door, and damaged door clips, seal and sweep. JV testified that the tenants had an unauthorised dog in the unit which damaged the door seals, the closet door was also left cracked which the landlord was able to repair. The landlords seek a total amount for these replacement costs of \$321.50.

JV testified that the tenants damaged two heat registers which had to be replaced at a cost of \$11.16.

BV testified that he spent 28 hours making these repairs plus other repairs to the dishwasher, the sink plumbing, the dryer, to hang and repair doors, to realign the garage door, to replace light bulbs and to remove the garbage. BV testified that he seeks to recover \$20.00 an hour for his labour to an amount of \$560.00.

The landlords seek to recover the cost of the gas used for the trips to the dump and to stores to collect parts for the repairs. The landlords have calculated the amount of 80 kilometres at .54 cents a kilometre to a total amount of \$45.36.

The landlords seek an Order to keep the security deposit in partial satisfaction of their claim. The landlords also seek to recover the \$50.00 filing fee.

The landlords have provided a copy of the move in and move out condition inspection reports, the receipts and invoices for repair work, and photographic evidence of the items left in the unit and the damage to the unit in documentary evidence.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords' documentary evidence and sworn testimony before me.

With regard to the landlords' claim for unpaid rent for June, 2014 of \$1,275.00; I refer the parties' to s. 26 of the *Act* that states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the evidence before me that the tenants failed to pay rent for June on the day it was due; however, I have also considered the landlords' rent increase imposed on May 01, 2014. This rent increase was \$75.00 whereas the legal amount the rent could be increased in 2014 is 2.2 percent. This means the amount the landlords were legally allowed to increase the rent should have been \$26.40 not \$75.00. I find therefore the tenants paid the increased amount in May, 2014 and have therefore overpaid by \$48.60. Tenants are entitled to recover any amount of rent paid that is over the legal amount the rent can be increased in accordance with s.43(5) of the Act. I therefore find the tenants' rent for June is \$1,226.40 and as the tenants overpaid in May I have deducted that amount from the June's rent. The landlords are therefore entitled to recover **\$1,171.80** for June's rent.

With regard to the landlords' claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established,

the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I am satisfied that the landlords incurred costs to paint the unit due to the tenants' actions or neglect and am satisfied that the tenants are responsible for 40 percent of the painting invoice. Consequently, the landlords are entitled to recover **\$420.00**.

I am satisfied that the tenants failed to leave the rental unit in a reasonably clean condition and the landlords are entitled to recover the costs incurred to clean the unit of **\$97.50**.

Having considered the evidence provided concerning the garbage and abandoned belongings, I am satisfied that the tenants left a considerable amount of items in and around the unit and in accordance with the Residential Tenancy Regulations the landlords are entitled to consider these items to be abandoned and the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that the property has a total market value of less than \$500. Consequently, it is my decision that the landlords are entitled to recover the costs incurred to dispose of these items at the dump and may recover these costs of **\$30.55**.

With regard to the landlords' claim to recover the costs spent for replacing damaged items; I am satisfied from the evidence presented that the tenants caused damage to the blinds, a deadbolt, the closet slider guide rail, the door clips, seals and sweep and heat registers. Consequently, I find the landlords are entitled to recover the amounts of **\$321.50** and **\$11.16**.

With regard to the landlords' claim for the labour performed by BV to rectify some of the damage and to perform other remedial work to ensure the unit is in a suitable condition

for re-rental. Having considered the amount of work completed by BV I am satisfied that BV worked for 28 hours in and around the unit. I further find the amount of \$20.00 an hour to be a reasonable rate for repair work. I therefore uphold the landlords' claim to recover the amount of **\$560.00** from the tenants.

With regard to the landlords claim to recover the cost of gas for trips to the dump and stores to purchase goods to complete repairs; I am satisfied with the landlords' claim for 54 cents a kilometre; however, for 80 kilometres the actual cost would be **\$43.20** not \$45.36 claimed.

It is my decision that the landlords are entitled to keep the security deposit of **\$600.00** in partial satisfaction of their claim, pursuant to s. 38(4)(b) of the *Act*. I further find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND largely favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,105.71** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order is enforceable through the Provincial Court 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: December 04, 2014

Residential Tenancy Branch

