



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 407489 BC Ltd. dba H & M Holdings, Decade Resources Ltd. & Mountain
Boy Minerals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, MND, MNSD, FF, MNR

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has also filed an application seeking to dispute a rent increase, a monetary order and the return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. I am satisfied that each party submitted and exchanged their evidence in accordance with the Act. Both parties gave affirmed evidence.

Preliminary Matter

At the outset of the hearing the landlords felt that EK should not be granted any standing at this hearing as he was an occupant; however RK was present at the hearing and represented the tenants as he was listed on the agreements. EK stated that he had standing to be at this hearing as his name was on the cheques and that he is a director of the company. As noted above I find that RK is a tenant and has standing to be in this hearing as well that EK is entitled to be a witness on behalf of the tenants. The landlords request to have EK classified as an occupant only is hereby dismissed. The landlords have failed to demonstrate that he was solely an occupant.

Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

Both parties provided extensive documentary evidence. All parties’ testimonies and evidence have been considered in making a decision. As this matter was conducted over three separate days and almost 3 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each party’s application.

The tenancy began on June 1, 2008 and ended on June 30, 2014. The tenants were obligated to pay \$550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit.

As both parties have filed an application I will first address the tenants’ claims and my findings as follows.

Tenants First Claim – The tenant is seeking \$200.00 for cleaning the unit. The tenant stated that he felt that since the landlord issued him a One Month Notice to End Tenancy for Cause the landlord should pay for the cleaning. The landlord disputed this claim and stated that further cleaning and costs were incurred which will be addressed later in this decision. Residential Tenancy Guidelines outline the responsibility for the tenant to leave a unit in a reasonably clean state at the end of the tenancy. The tenant

has not provided any evidence that would suggest he did anything more than what was his responsibility. I dismiss this portion of the tenants' application.

Tenants Second Claim – The tenant is seeking \$400.00 for moving expenses. The tenant stated that he moved out due to the notice issued by the landlord and should not have to pay for those costs. The landlord stated that the tenant moved without disputing the notice and that the tenant is responsible for that cost. In the tenants own testimony he stated that “the place was empty half the time so we decided to just move on”. The tenant did not provide any receipt to support his claim. Based on the insufficient evidence before me I must dismiss this portion of the tenant's application.

Tenants Third Claim - The tenant is seeking \$2400.00 compensation for not receiving two months' notice to vacate the unit. The landlord stated that a One Month Notice for Cause was issued by the landlord and not disputed by the tenants. The tenant was at liberty to dispute the notice if they so choose, but they did not. The tenant has not provided any basis for this claim and I must dismiss this portion of the tenants' application.

Tenants Fourth Claim – The tenant is seeking \$5024.00 for loss of income. The tenant stated that when the landlord issued the one month notice to end tenancy he had to sub contract a company to continue on with a contract he was in the midst of. The landlord disputed this claim stating there was no nexus or foundation to this claim. In the tenants own testimony he stated that he chose not to dispute the notice. The tenant was unable to explain the necessity to subcontract this particular job. In addition, the invoice submitted by the tenant is less than compelling and cannot be relied upon. Based on all of the above I dismiss this portion of the tenants' application.

Tenants Fifth Claim – The tenants also applied seeking to dispute a rent increase however the tenants abandoned that claim and did not provide any evidence for consideration. Based on the absence of any evidence in that regard; I dismiss that portion of the tenants application.

Tenants Sixth Claim - The tenant is seeking the return of the security deposit. The landlord disputed this claim. The landlord stated that the tenants did not participate in either the move in or move out condition inspection. Section 24 of the Act addresses the issue before me as follows

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

Based on the tenants own admission that they chose not to participate in either the move in or move out condition inspection report they have extinguished their right to make a claim against the security deposit and I therefore dismiss this portion of their application.

The tenant has not been successful in their application.

I address the landlords' claims and my findings as follows.

Landlords First Claim – The landlord is seeking \$720.00 for cleaning. The landlord stated that the unit was left dirty and required 24 hours of cleaning at \$30.00 per hour. The landlord conducted the work herself. The landlord submitted a condition inspection report and photos to support her claim. The tenants disputed this claim. The tenants stated that they had a cleaner come in and clean the unit and it was left in better condition than when they got it.

I accept the unit wasn't left in a reasonably clean manner but do not find the amount claimed by the landlord to be appropriate or reasonable. The hourly amount sought by the landlord is not reasonable nor the amount of hours to clean the unit. Based on the landlords own evidence, I find that 12 hours X \$20.00 per hour to be the appropriate amount. I find that the landlord is entitled to \$240.00.

Landlords Second Claim – The landlord is seeking \$300.00 for having to drive to Terrace to pick up cleaning supplies and arrange to have tradesman come in to do the work on the unit. The tenants disputed this claim. The tenants stated that many of the receipts submitted by the landlord show that they were in town doing their own shopping and happen to pick up a few items for the unit.

I accept that services are limited in the area of the unit but the landlord should reasonably expect to incur travel time and costs when necessary and that those costs cannot be offloaded to the tenants. The landlord has not satisfied me of this claim and accordingly I dismiss this portion of their application.

Landlords Third Claim – The landlord is seeking \$382.45 for the cost of laminate flooring and \$630.00 to have the carpet removed, floor cleaned, the new laminate flooring installed and to have a storage compartment repaired. The landlord stated that the carpet was damaged by the tenants with stains that could not be removed. The landlord stated that carpets were only a year old when the tenants took possession of the unit. The landlord stated that she couldn't afford to replace the carpet and chose the cheapest laminate flooring she could possibly find. The landlord stated that the tenants damaged a storage compartment on the side of the home by ramming something large into it. The landlord submitted photos, the condition inspection report and receipts to support her claim.

The tenants disputed this claim. They stated that the damage to the carpet was just wear and tear and that the damage to the storage compartment was minimal. The tenant further stated that he did accidentally damage the storage compartment but it was only one sheet of plywood that needed replacing.

Based on all of the evidence before me I am satisfied that the landlord has provided sufficient evidence to show that the damage was due to the tenants negligence and recklessness that far exceeds normal wear and tear and I find that the landlord is entitled to \$1012.45.

Landlords Fourth Claim – The landlord is seeking \$700.00 for the replacement of the kitchen linoleum floor. The landlord stated that the floor needs to be replaced and that she has received quotes for \$700.00 to replace the floor. The tenants dispute this claim. The tenants stated that there was minimal wear and tear and that the floor is in very good shape.

Although the landlord submitted photos of the floor, they do not depict the condition to which the landlord alleges. The photos did show one black streak on the floor but not the justification to replace the entire floor. The landlord stated that the floor was between 8-9 years old. The landlord has not satisfied me that the floor has a reduced value or that it should be replaced. In addition, the landlord has not suffered any out of pocket costs at this time and has continued to rent the unit out. Based on all of the above I dismiss this portion of the landlords' application.

Landlords Fifth Claim – The landlord is seeking \$270.08 for new blinds, cleaning supplies and a shower curtain. The landlord stated that the tenants had damaged some blinds and the shower curtain. The landlord stated that as she did the cleaning she needed to purchase cleaning supplies for the unit. The landlord provided receipts and the condition inspection report to support her claim. The tenants disputed this claim. The tenants re-stated their position that there was no damage to the unit only normal

wear and tear. Based on all of the above I find that the landlord has provided sufficient evidence to support her claim that the damage was beyond normal wear and tear and that it was through the tenants' negligence and recklessness, accordingly I find that the landlord is entitled to \$270.08.

Landlords Sixth Claim – The landlord is seeking \$375.00 for loss of revenue for July 1-14, 2014. The landlord stated that the unit was not in a condition that she could show the unit on July 1, 2014 and that it took time to clean, repair and prepare the unit for showings. The landlord stated that she tried to rent the unit as soon as possible and was able to rent it for July 15, 2014. The tenants stated that she could have rented it sooner as the unit was left in good shape. Based on the photos, the condition inspection report and receipts before me, I find that the landlord has provided sufficient evidence to support this claim and I find that the landlord is entitled to \$375.00.

Landlords Seventh Claim – The landlord is seeking \$100.00 x 24 months = \$2400.00 for loss of revenue as the tenants had extra occupants. The landlord stated that the unit was to be for one person only and that at times as many as four people lived in the unit. The tenant disputed this claim stating that it was a two bedroom unit that he and his wife and 2 children lived in. The tenant stated that the landlords were always aware that they lived there and that nothing was ever mentioned.

The landlord stated that this was a breach of the tenancy agreement however; the tenancy agreement does not specify that a fee for extra occupants would be charged. If the landlord felt this was a breach they could have issued a notice and sought dispute resolution. The landlord has not been able to provide sufficient evidence or basis to support this claim and I therefore dismiss this portion of their application.

As the landlord has been partially successful in their application I find that they are entitled to the recovery of the \$50.00 filing fee.

In summary, the landlord has been successful in the following claims:

Cleaning	\$240.00
Flooring and Carpenter	\$ 1012.45
Blinds, shower curtain, misc. supplies	\$270.08
Loss of revenue	\$375.00
Filing fee	\$ 50.00
	\$
Total:	\$1947.53

As for the monetary order, I find that the landlord has established a claim for \$1947.53. I order that the landlord retain the \$500.00 deposit and the \$3.77 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1443.76. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order of \$1443.76.

The tenants' application is dismissed in its entirety.

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: April 24, 2015

Residential Tenancy Branch

