



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on October 14, 2014, to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, 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 Landlords and one Tenant, K.J. Each person provided affirmed testimony and confirmed receipt of the Landlords' evidence. No documentary evidence was submitted by the Tenants.

The Landlords provided documentary evidence that each Tenant was served notice of this application by registered mail on October 16, 2014. The Landlords stated that both packages were sent to K.J.'s forwarding address even though they knew that D.S. was not residing with K.J. They argued that at the time the tenancy agreement was signed the Tenants were a couple and sometime towards the end of the tenancy they split up and D.S. moved out of the rental unit without providing them with a forwarding address.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents and stipulates that if an application for Dispute Resolution is served by registered mail it **must** be sent to the address where the person resides.

In this case the package that was addressed to D.S. was not sent to the address where he resides so I cannot find that he was sufficiently served notice of this proceeding in accordance with the Act. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the female Tenant K.J. who had been properly served with Notice of this Proceeding. As the second Tenant D.S. had not been properly served the Application for Dispute Resolution as required, the monetary claim against D.S. is dismissed without leave to reapply.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlords submitted 131 pages of documentary evidence in support of their claim which included, among other things, copies of: the tenancy agreement; the move in and move out condition inspection report forms; photographs of the cost of items at a local hardware store; receipts for materials and work performed on the unit prior to the start of the tenancy; photos of the rental unit that were taken on September 30, 2014 and October 1, 2014; and a spreadsheet detailing the items claimed on the Monetary Order worksheet.

The undisputed evidence was the Tenants entered into a fixed term tenancy agreement that began on October 15, 2013 and was set to end on October 15, 2014. Rent of \$975.00 was due on or before the first of each month and on October 15, 2013 the Tenants paid \$487.50 as the security deposit. The Landlords conducted the move in inspection report with the Tenants on October 15, 2013 and the move out report was completed and signed by both parties on September 30, 2014. Both parties were represented during the move out inspection; however, the Tenant did not sign the move out condition report because she stated that she did not agree with the report.

The Landlords submitted a detailed list of their monetary claim of \$1,855.51 which included the following:

- 1) \$211.81 to replace and install three window blinds that were damaged during the tenancy;
- 2) \$37.55 to replace and install 2 ceiling tiles on the T-bar ceiling;
- 3) \$168.00 cleaning costs which the Landlords testified was comprised of 3 hours labor for two people at \$25.00 per hour per person;
- 4) \$581.70 to replace and install the broken window which was new in April 2012;
- 5) \$268.96 to replace and install damaged flooring;
- 6) \$100.00 for payment of the past due rent that was due in September 2014; and
- 7) \$487.50 for loss of rent for the period of October 1 – 14, 2014, as the unit was not re-rented until October 15, 2014. The Landlords argued that the Tenant did not provide an effective date on her notice to end tenancy and they did not

know for certain when she would be vacating. They stated they had a tenant lined up for October 1, 2014 but that tenant withdrew when the Landlords could not provide a definite date they could have the rental unit.

The Tenant testified that she accepted responsibility for items 4, 5, and 6, listed above totaling \$950.66. She stated that she also agreed to replace two of the window blinds and was not sure how much those two blinds would cost. She argued that the third blind was not broken and was simply warped in a way that was not caused by her. During the Tenant's testimony she agreed to pay for the T-bar ceiling tiles listed in item # 2 at a cost of \$37.55.

The Tenant acknowledged that she did not finish cleaning the rental unit. She admitted that she had not cleaned the oven or the windows; however, she did spend several hours cleaning other areas of the rental unit. She stated that there was no way it would take six hours to finish the cleaning

The Tenant disputed the claim for the lost rent on the basis that she had several in person discussions with the Landlords about her moving at the end of September. She asserted that the Landlords had known for certain that she would be moved out by October 1, 2014.

In closing, the Landlords submitted that the third blind had been bent and was not warped evenly across. They argued that it was evident that something had been leaned against it to cause only the end section to warp. They testified that all items had been repaired shortly after the Tenant moved out and that they did not submit actual receipts for the work that was completed.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The Tenant accepted responsibility to pay for the following: \$581.70 window replacement, \$268.96 flooring replacement; \$100.00 past due rent, \$37.55 T-bar ceiling repair/replacement. Accordingly, I grant the Landlords' claim for those items and award them **\$988.21**.

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 is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 52 provides that in order to be effective, a notice to end a tenancy issued by a tenant must be in writing, must be signed and dated, give the address of the rental unit, and state the effective date of the notice.

In this case the Tenant issued a notice to end tenancy that did not meet the requirements of section 52 of the Act because it was not signed and it did not list an effective date of the notice. The Tenant vacated the rental unit September 30, 2014, ending the tenancy one month prior to the end of her fixed term tenancy, which is a breach of section 45(2) of the Act. That breach caused the Landlords to suffer a loss of rent for the period of October 1 – 14, 2014. Accordingly, I grant the Landlords loss of rent in the amount of **\$487.50**.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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; and must return all keys to the Landlord.

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*.

Based on the evidence before me, I find the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage. Notwithstanding the Tenant's arguments about the third blind, I conclude that the blind was warped or damaged during the tenancy, and upon review of the condition the rental unit had been left in at the end of the tenancy, and on a balance of probabilities, I accept the Landlords' evidence that the blind was damaged or warped by something that was leaned up against the blind.

Based on the above findings, I conclude that the Landlords have met the burden of proof and I award them costs for 3 blinds at a depreciated amount. Policy Guideline 40 provides that the normal useful life of window blinds is 10 years. The window blinds were new in 2012 and cost \$211.81 to replace. Therefore, I award the Landlords 8/10 of the replacement cost in the amount of **\$169.45**.

Upon review of the photographic evidence I accept the Landlords' submission that it took two people three hours each to clean the rental unit. The cleaning was conducted by the Landlords; therefore, they are not entitled to claim for PST or GST. Accordingly, I grant the claim for cleaning costs in the amount of **\$150.00** (2 x 3 hrs x \$25.00 per hour).

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 deposit plus interest as follows:

Undisputed Items	\$ 988.21
Loss of October 2014 Rent	487.50
Replacement of 3 blinds	169.45
Cleaning	150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,845.16
LESS: Security Deposit \$487.50 + Interest 0.00	<u>-487.50</u>
Offset amount due to the Landlords	<u>\$1,357.66</u>

Conclusion

As noted above, I found that D.S. had not been served notice of this proceeding as required under section 89 of the Act. Therefore, the claim against D.S. was DISMISSED, without leave to reapply.

The Landlords have been awarded a Monetary Order for **\$1,357.66**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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: May 25, 2015

Residential Tenancy Branch

