



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0719537 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The parties did not provided documentary evidence to the Residential Tenancy Branch or to the other party in advance of this hearing. I have reviewed all oral evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

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

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on April 15, 2013. There is no written tenancy agreement between the parties and the agreement was reached orally between the parties. Rent for this unit was \$740.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$370.00 a week prior to the start of the tenancy. The landlord did not conduct a move in or a move out condition inspection report with the tenant but agreed he received the tenant's forwarding address in writing on December 01, 2014.

The landlord testified that the tenant failed to provide proper notice to end the tenancy and moved out on November 15, 2014. The tenant paid \$370.00 in rent for November but failed to pay the balance of \$370.00 prior to moving out. The landlord seeks to recover the unpaid rent of \$370.00.

The landlord testified that the tenant had put a large amount of pictures on the walls and hung a curtain rod without the landlord's permission. The picture nails and curtain rod caused damage to the walls which were not repaired at the end of the tenancy. The landlord testified that it took 11.5 hours to repair the walls and the landlord seeks to recover \$35.00 an hour to do the repair work to the amount of \$402.50.

The landlord testified that the tenant caused some damage to the walls and stair treads in the common area when he was moving his belongings out of the unit. The landlord sought the opinion of an appraiser who said it looked like the tenant had used a two wheeled dolly to move heavy furniture down the stairs which has caused damage to each stair tread. The stair treads and the unit were only six months old. The landlord seeks to recover the cost to repair damage to the walls and stair treads of \$1,048.03.

The landlord seeks an Order permitting the landlord to apply the security deposit to the unpaid rent and damages.

The landlord testified that there is no further monetary claim for money owed or compensation for damage or loss. The landlord does however seek to recover the filing fee of \$50.00.

The tenant disputed the landlord's claim for unpaid rent. The tenant testified that when he moved into the unit it was the middle of the month so the tenant asked the landlord when the tenant should move out and was told November 15, 2014. The tenant testified that he verbally gave notice to the landlord on October 13, 2014. Therefore the tenant only paid for half a month's rent for November as he moved out on November 15, 2014.

The landlord argued that he did not have a conversation with the tenant about the tenant moving out on November 15, 2014 and the tenant is required to provide written notice to end a tenancy.

The tenant disputed the landlord's claims concerning damage. The tenant testified that when he moved into the unit he was not told that he could not hang pictures on the walls or what to use to hang pictures up with. The landlord never told the tenant that he could not put up a curtain pole. The tenant testified that he hung sheer curtains in the bedroom and he did put up pictures in the unit.

The tenant testified that when he vacated the unit he asked the movers to be careful not to make any marks on the walls as the walls in the hallways had been freshly painted. The tenant agreed he did use a dolly to move some of his heavy belongings but this was carried down the stairs by two men. When the tenant went back up to his unit he did not see any damage to the stair treads or the walls in the common areas. The tenant testified that he did not have a conversation with the landlord about any damage to the stairs.

The landlord argued that he had three conversations with the tenant about the damage in the common area.

The tenant disputed the landlord's claim to keep the security deposit. The tenant seeks to recover the security deposit in full.

Landlords questions	Tenants response
Does the tenant agree that when he moved in there was no damage to the walls	There was some damage near a light fixture and in a closet
Was the rest of the unit in good order	yes
Did you hang pictures	Yes three or four pictures in two rooms
Did you hang curtains	Yes sheer curtains
What did you use to put up the curtain rod and pictures	Small nails and pin nails
Were 20 to 30 pictures hung	No
Are you saying then that when the curtain rods were removed only a small hole would be left	Yes only small nail holes which would take three hours at the most to fill
Did you use a two wheeled dolly to remove furniture and what did you put on it	Yes and I put a couch and small freezer on it
How heavy was it	I don't know
Did you pick up and lift the dolly with the couch on it down the stairs	Two of us picked it up on each stair
How heavy was the freezer	I don't know we strapped it to the dolly and carried it one step at a time down the stairs. I used the steps at the other end of the hallway

Did the dolly touch the stairs	I made it clear that we went down one step at a time
Would you agree that there was damage caused by the dolly on each step	I did not see any damage to the stairs or wall

The landlord testified that he did not put anything in writing to the tenant about what he could put on the walls but the tenant did ask the landlord and was told to use picture nails and not to put anything else up. The tenant did ask if he could put drapes up and was told not to.

The tenant argued that he did ask the landlord if he could hang drapes as it was light in the bedroom and the landlord did not say the tenant couldn't do so.

Analysis

I have carefully considered all the evidence before me in the form of sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; I refer the parties to s. 45 of the *Act* which states:

45 (1) *A tenant may end a periodic 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, and

(b) 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.

The parties agreed that rent was due on the first of each month, therefore the tenant should have given written notice to end the tenancy by October 31, 2014 in order to end

the tenancy at the end of November, 2014. If the tenant wanted to end the tenancy on November 15, 2014 he would have had to have given the landlord written notice by September 30, 2014. As the tenant did not provide written notice and ended the tenancy on November 15, 2014, I find the landlord is entitled to recover rent for the last half of November to an amount of **\$370.00**.

With regard to the landlord's claim for repairs to walls caused by picture hooks. I refer the parties to the Residential Tenancy Policy guidelines #1. This guideline provides information about the responsibilities for landlords and tenants and mentions picture hanging. This guideline states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Consequently, as the landlord did not give the tenant any set rules as to the hanging of pictures, the tenant cannot be held responsible if the landlord had to fill holes at the end of the tenancy. The landlord has insufficient corroborating evidence to show the tenant left an excessive number of picture nail holes in the wall.

However, with regard to the damage left by the curtain rod, the Policy Guidelines also states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

As the tenant did not obtain the landlords explicate consent to put up a curtain rod, and did not make the repairs to the wall at the end of the tenancy where the curtain rod had been placed, I find the landlord is entitled to some compensation to repair these holes. The landlord has claimed all the wall repairs took 11.5 hours at \$35.00 per hour. I have insufficient evidence from the landlord to show how long the repairs took for the holes made by the curtain rod so I will award the landlord a nominal amount for this repair of **\$60.00**.

With regard to the landlord's claim for damage to the common area walls and stair treads. The landlord claims the tenant damaged these areas when he moved out of the unit. The tenant contradicted the landlord's claim and testified that there was no damage to these areas. When one person's testimony contradicts that of the other, the person making the claim has the burden of proof and should provide corroborating evidence to support their claim. In the absence of any corroborating evidence I find the landlord has not met the burden of proof in this matter and the landlord's claim for \$1,048.03 is dismissed.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the security deposit of **\$370.00** pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for November, 2014	\$370.00
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Damage to walls from curtain rod	\$60.00
Filing fee	\$50.00
Subtotal	\$480.00
Less security deposit	(-\$370.00)
Total amount due to the landlord	\$110.00

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$110.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: July 16, 2015

Residential Tenancy Branch

