



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on January 19, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony and confirmed receipt of evidence served by the Landlord.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written month to month tenancy agreement that began on March 1, 2012. Rent of \$1,100.00 was due on or

before the first of each month and on February 22, 2012 the Tenant paid \$550.00 as the security deposit and \$250.00 as the pet deposit. The move in condition inspection report was completed in the presence of the Tenant on March 1, 2012, and the move out report was completed in absence of the Tenant on March 2, 2013.

The Landlord testified that when he attended the rental unit on March 1st or 2nd, 2013 to collect the rent owed for February and March 2013, he found out the Tenant had vacated the rental unit without prior notice and she had left the rental unit dirty and damaged. He said he went to her place of employment on March 4, 2013 and she signed a paper assigning her deposits to the Landlord to cover off some of the damage.

The Landlord submitted that he had owned this rental unit since 2000, it was built in 2000, and he had completed a total renovation just prior to the Tenant moving in. He argued that the Tenant was the first person to occupy the rental unit with the new floors, doors, drywall repairs, paint and other upgrades.

The Landlord submitted into evidence a detailed list of the items he was claiming totalling \$4,626.67 which included: \$200.00 for February 2013 rent; \$1,100.00 for loss of March 2013 rental revenue; \$3276.67 for repairs, cleaning, and photographs provided for his evidence; plus the \$50.00 filing fee.

The Landlord submitted documentary evidence to support the items claimed which included among other things, copies of: the tenancy agreement; the condition inspection report form; photographs that were taken on March 1 and 2nd, 2013; receipts for materials purchased for repairs; a statement from the contractor who had conducted some of the renovations just prior to the start of this tenancy; contractor's invoices for repair work; plus a copy of a cashed cheque as proof of payment to the contractor.

The Tenant testified and confirmed that she had vacated the rental property without prior notice to the Landlord. She argued that she had to move because she could no longer afford to rent this property so she had to leave in an emergency before her debt for unpaid rent increased.

The Tenant submitted that she had vacated the unit by February 15, 2013 leaving the keys inside the rental unit. She said she returned on February 18th, 2013 and when she went inside she could tell the Landlord had already finished cleaning and repairing everything.

When asked how she entered the unit on February 18th, 2013 if she had left the keys inside, the Tenant changed her testimony to say she must have left the keys inside the

mailbox. The Tenant changed her testimony a third time to say she did not go inside the rental unit; rather, she could see that the unit was already cleaned and repaired when she looked through the windows.

In response to the specific items claimed by the Landlord the Tenant stated that the smoke detector was left in a kitchen drawer; the lock was not broken; and she did not break or remove screens.

The Tenant asserted that the Landlord was at the neighbour's house on February 15, 2013, the day she moved out, and that he watched her move her possessions out. She said the Landlord approached her and asked her why she was moving out.

The Landlord pointed to his photographs and noted that there was one picture which displayed the front door damage which resulted from the door being kicked in. He argued that that picture clearly showed the lock was bent. The Landlord stated that after he had attended the rental unit on March 2, 2013 to collect the rent a neighbour had told him she had seen the Tenant moving out. He argued that he had no knowledge the Tenant had moved until March 2, 2013.

The Landlord pointed to the dates listed on the receipts provided in his evidence and argued that the first receipt to the dump was dated for March 3, 2013 which proves they had not finished cleaning or repairing the unit by February 17, 2013 as submitted by the Tenant. The Landlord testified that he was not able to re-rent the unit until April 1, 2013.

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.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenant did not pay her February 2013 rent in full leaving a balance owed to the Landlord of \$200.00, in breach of Section 26 of the Act. Accordingly, I find the Landlord submitted sufficient evidence to prove this claim and I award him compensation for unpaid February 2013 rent in the amount of **\$200.00**.

Section 45 (1) of the Act stipulates that a tenant may end a periodic 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 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.

In this case the Tenant was required to provide written notice to the Landlord no later than January 31, 2013, if she wished to end his tenancy February 28, 2013. The Tenant provided no notice to end her tenancy and simply vacated the rental unit sometime prior to March 2, 2013, in breach of section 45(1) of the Act. The Landlord was not able to re-rent the unit until April 1, 2013 causing him to suffer a loss of rent for March 2013. Accordingly, I find there to be sufficient evidence to grant the Landlord's application for loss of March 2013 rent in the amount of **\$1,100.00**.

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.

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*.

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.

In this case the undisputed evidence was the rental unit had been completely renovated immediately before this tenancy and the Tenant was the first one to occupy the rental unit after the renovations. The Landlord provided a preponderance of irrefutable evidence detailing the condition the rental unit was left in and the actual costs involved in restoring the rental unit to the same condition it was in at the start of the tenancy. Notwithstanding the Tenant's contradictory testimony about when she vacated the rental unit, I do not accept her submission that she returned the rental unit on February 17, 2013 and found the unit had already been cleaned and repaired, as the Landlord's evidence clearly displayed dates of when materials were purchased and when debris was taken to the dump.

As per the above, I conclude the Landlord provided sufficient evidence to support his claim for repairs, cleaning, and photographs and I award the Landlord **\$3276.67**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord had received written permission from the Tenant, within 15 days of the tenancy ending, to apply the deposits against the claim for damages. Accordingly, I find that this monetary claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security and pet deposits plus interest as follows:

Unpaid February 2013 Rent	\$ 200.00
Loss of rent for March 2013	1,100.00
Repairs, cleaning, photographs	3,276.67
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,626.67
LESS: Pet Deposit \$250.00 + Interest 0.00	- 250.00
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$3,826.67</u>

Conclusion

The Landlord has been successful with his application and was awarded \$4,626.67 compensation which was offset against the Tenant's \$250.00 pet deposit plus the \$550.00 security deposit.

The Landlord has been issued a Monetary Order in the amount of **\$3,826.67** (\$4,626.67 - \$250.00 - \$550.00). 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: July 22, 2015

Residential Tenancy Branch

