



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALLIE LAU REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on March 13, 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; and to recover the cost of the filing fee from the Respondents for this application.

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.

The hearing was conducted via teleconference and was attended by the Landlord, her Assistant, the Occupant and his Mother who was the named Tenant on the tenancy agreement. The Landlord's Assistant was an observer to this hearing and did not submit evidence. There were two named respondents to this dispute the Occupant and his mother, the named Tenant. The Occupant provided all oral submissions for both named Respondents.

The Landlord and the Occupant each gave affirmed testimony. The Occupant affirmed that he would be translating for his mother, the named Tenant, as she did not speak English. All submissions listed below will be recorded as being from the Tenant(s). Therefore, for the remainder of this decision, terms or references to the Tenant importing the singular shall include the plural and vice versa, except where the context indicates otherwise as there were two named Respondents.

The Landlord testified that she served the Tenants copies of her application, hearing documents, and her documentary evidence via registered mail on March 13, 2015. She confirmed that she did not serve the Tenants with copies of her photographs, as provided to the Residential Tenancy Branch (RTB) and argued that the Tenants knew the condition they left the rental unit in when they moved out.

Residential Tenancy Branch Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent **and** the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

In this case the Landlord did not serve the Tenant with copies of their digital photographs which is in breach of Rule of Procedure 3.14. Considering evidence that is not served upon the respondents would be a breach of the principals of natural justice. Therefore, I refused to consider the photographic evidence which was not served upon the Tenants, pursuant to Rule of Procedure 3.17.

The Tenant initially stated that he did not receive any of the Landlord's evidence which was included in the registered mail with the hearing documents. Upon further clarification the Tenant was insistent that neither he nor his mother signed for registered mail. Given the Tenant's concern he looked up the tracking number on the Canada Post Website during the hearing, as did I and I pointed him to where his signature and name were recorded on the website.

After review of the Canada Post website the Tenant looked through the papers he had with him and he found all of the documents which the Landlord has served to him and to the RTB as evidence. He confirmed that the Tenants had not served documentary evidence in response to the Landlords claim.

Based on the above, I informed the parties that I would be considering all of the Landlords documentary evidence, excluding the CD of electronic photographs, and each party's oral submissions.

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

Issue(s) to be Decided

- 1) When did this tenancy end?
- 2) Has the Landlord proven their claim for unpaid rent?
- 3) Has the Landlord proven entitlement to monetary compensation for damages to the rental unit, site, or property?

Background and Evidence

The undisputed evidence was the Tenant, the occupant's mother, entered into a written fixed term tenancy agreement for her minor son to occupy the rental unit. The occupant has since turned 19 years of age. The tenancy began on October 1, 2013 and switched

to a month to month tenancy after September 30, 2014. Rent of \$1,650.00 was payable on the first of each month and on September 26, 2013 the Tenant paid \$825.00 as the security deposit. The Tenant signed the move in condition inspection report form on October 1, 2013 in the presence of the Occupant. The Occupant acted as agent for the Tenant and signed the move out condition report on March 5, 2015.

Prior to February 1, 2015 the Tenants gave notice to end the tenancy effective March 1, 2015. When the Landlord attended the rental unit on March 1, 2015 the Tenants had not finished moving out, cleaning, or repairing the unit. The parties agreed that the Tenant would have a few more days to complete their move out, cleaning and repairs and scheduled another inspection for March 5, 2015.

The Landlord testified that the Tenants did not complete the cleaning or the repairs and they left the unit damaged and unclean at the end of the tenancy; as per the move out "Addendum" document they submitted into evidence. As a result the Landlord now seeks the following compensation:

- 1) \$315.00 for cleaning charges as per the invoice submitted in their evidence;
- 2) \$294.60 for the unpaid rent for March 1 to 5, 2015;
- 3) \$1,785.00 for what the Landlord referred to as a "maintenance fee" and was comprised of the repairs to 3 sets of closet doors which were all knocked off; framing a mirror in the master bedroom; and patching and painting walls and trims for entire suite.

The Tenants disputed the items claimed by the Landlord and argued that their security deposit of \$825.00 should be enough to cover the damages and cleaning. The Tenants acknowledged that there were a few holes in the walls, about 2 holes. The mirrored doors were not broken they had just fallen off.

The Tenants disputed the claim for painting every wall and trim in the entire suite. They submitted that they agree they should have to pay something for the repairs but do not agree that they should have to pay for all of the work claimed as the amount were too high.

The Landlord submitted that every single wall and trim had scratches or damage. She argued that there were not small holes in the walls; rather, they were large holes as if someone had punched the walls in 2 or 3 places.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding End of Tenancy Date

Section 44(1)(a) of the *Act* stipulates that a tenancy ends when a tenant gives notice to end the tenancy in accordance with section 45 of the *Act*.

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.

Regarding Payment for March 1-5, 2015

Policy Guideline 3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

Regarding Damages

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.

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.

Policy Guideline 40 provides that the normal useful life of interior painting is 4 years.

Regarding the Monetary Award

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.

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 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

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.

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

Payment for March 1 – 5, 2015

The Tenants' rent was payable on the first of each month. Therefore, their written notice to end tenancy which was served prior to the first of February 2015 ended this tenancy effective February 28, 2015, pursuant to section 45(1) of the *Act*.

The Tenants remained in possession of the rental unit until March 5, 2015 at which time the final inspection was completed and possession was returned to the Landlord. Accordingly, I grant the Landlord's claim for over holding charges on a daily per diem rate of \$54.25 ($\$1,650.00 \times 12 \text{ months} \div 365 \text{ days}$) for a total amount of **\$271.25** ($5 \times \54.25), pursuant to Policy Guideline 3.

Damages

I accept the undisputed evidence that the Tenant left the rental unit requiring additional cleaning and with some damage at the end of the tenancy, which is in breach of sections 32 and 37 of the *Act*.

Upon review of the "Addendum" condition document, I give this document very little evidentiary weight with respect to the amounts listed for the work that had not yet been performed. While I accept that this document outlined some of the damages which were seen during the final inspection, the amounts were estimates at the time this document was signed.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

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*.

There was no evidence before me as to when this rental unit was previously painted. I considered that this tenancy was for a one year period and the walls did suffer some damage as acknowledged by the Tenant. Furthermore, there was disputed testimony regarding the Landlord's submission that every wall and trim required repair and painting.

Therefore, in absence of photographic evidence that could be considered in this matter I find the Landlord submitted insufficient evidence to prove that every wall and trim in the entire rental unit needed to be repainted due to damage caused during this tenancy. Accordingly, I considered an award for three wall repairs, mudding, sanding, and minor touch up painting for \$100.00 for supplies plus \$350.00 of labour for a total amount of **\$450.00**, pursuant to section 67 of the *Act*.

In the presence of disputed oral testimony there was insufficient evidence to prove the closet doors were broken. It was undisputed that they were not attached and had to be re-installed. Accordingly, I grant the costs for the re-installation of the 3 sets of closet doors for labour in the amount **\$120.00**, pursuant to section 67 of the *Act*.

The claim for reframing the master bedroom mirror was undisputed. Therefore, I grant the claim for labour and materials to repair the mirror in the amount of **\$150.00**, pursuant to section 67 of the *Act*.

The Tenant did not dispute the submissions that the rental unit required additional cleaning or carpet cleaning. Upon review of the evidence I find the amount claimed to be reasonable. Accordingly, I grant the Landlord's claim for cleaning in the amount of **\$315.00**, pursuant to section 67 of the *Act*.

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*.

Monetary Award

I conclude that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Over Holding March 1 – 5, 2015	\$ 271.25
Damages (\$450 + \$120 + \$150)	720.00
Cleaning Costs	315.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,356.25
LESS: Security Deposit \$825.00 + Interest 0.00	<u>-825.00</u>
Offset amount due to the Landlord	<u>\$ 531.25</u>

Conclusion

The Landlord has primarily succeeded with their application and was awarded monetary compensation of \$1,356.25 which was offset against the Tenant's \$825.00 security deposit leaving a balance due to the Landlord of \$531.25.

The Landlord has been issued a Monetary Order in the amount of **\$531.25**. This Order is legally binding and must be served upon the Respondents. In the event that the Respondents do 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: August 18, 2015

Residential Tenancy Branch

