



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenants' notice of hearing package and the tenants' submitted documentary evidence. The tenants confirmed receipt of the landlord's notice of hearing package. The tenants stated that they did not receive part of the landlord's electronic evidence on a compact disc as part of the landlord's documentary evidence package. The tenants were given detailed descriptions of the landlord's photographic evidence and the hearing proceeded without any objections from the tenants. Based on the affirmed testimony of the parties, I find that both parties have been duly served with one another's notice of hearing packages and submitted documentary evidence in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the landlord clarified that her monetary claim was for \$330.00 and that the tenants were allowed to apply the \$500.00 security deposit as ½ of the monthly rent owed for July 2015.

Both parties agreed that the tenants vacated the rental unit on July 31, 2015. The tenants withdrew their application. As such no further action is required with respect to the tenants' application as the tenancy has ended and the tenants' request to cancel a notice to end tenancy became moot.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss and recovery of her filing fee?

Background and Evidence

This tenancy began on April 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 6, 2015. The monthly rent was \$1,000.00 payable on the 1st day of each month and a security deposit of \$500.00 was paid.

The landlord seeks a monetary claim of \$330.00 which consists of:

- \$30.00 for General Cleaning
- \$200.00 for Repairs of 26 wall holes and 5 chips in the bathtub enamel.
- \$50.00 for the materials used in the repairs.
- \$50.00 in unpaid rent for June 2015.

The landlord seeks \$30.00 for her labour in cleaning the outdoor walkway of rust debris and dirt left by the tenants. The landlord stated that this required 2 hours of her time at \$15.00 per hour. The landlord has submitted photographic evidence which shows rust debris and dirt in limited quantities on the walkway. The tenant disputes this claim stating that the premises were left clean and that this was a rural area.

The landlord stated that at the end of the tenancy the tenants left the rental premises with 26 wall holes and 5 chips in the bathtub enamel which required repairs totalling approximately 8 hours of her time. The landlord estimated the cost of the repairs (labour) at \$25.00 per hour. The landlord stated that there were 26 wall holes varying from holes, picture holes and leftover nails and screws in the walls. The landlord stated that the tenants left chips in the bathtub enamel which she temporarily sealed with silicone. The landlord has submitted photographs of the wall holes and the chipped enamel. The tenants agreed that there were chips on the bathtub and the wall holes were left at the end of the tenancy. The tenants stated that the holes left were typical of picture hooks and hangers that do not require any special repairs. The tenants have also submitted photographic evidence showing that no damage was caused and that the rental unit was left clean.

The landlord also seeks \$50.00 for the cost of materials used to make the repairs. The tenants made no comments on this portion of the claim. The landlord stated that the materials used were left over from a previous renovation and that no new materials were bought.

The landlord seeks recovery of \$50.00 for unpaid rent for June 2015. The tenants stated that they withheld \$50.00 from the June 2015 rent to cover utility costs which were in dispute. The tenants stated that they signed an amendment to the tenancy agreement on April 6, 2015 under duress. The tenants stated that this duress was in the form of the landlord constantly harassing them to come to an agreement over disputed utility charges. Section 10 of the amendment read:

10. Utilities. Hot water, two to three loads laundry a week, basic cable TV, unlimited internet browsing and data usage on the Premises are included in the rent for Lessee only. No additional resident please.

The tenants stated that the landlord had consented to a \$50.00 deduction from June 2015 rent in lieu of the utilities charged to the tenants. The tenants referred to page 20 of the tenants' documentary evidence, which is a handwritten receipt dated June 2, 2015. It states that \$950.00 was paid and "Rent of the month to June 2015 rent agreed to be \$1,000.00 a month." The landlord disputed the tenants' claim that the landlord gave consent to deduct \$50.00 from the June 2015 rent.

Analysis

While I have turned my mind to all the documentary evidence, including photographs and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. While the landlord has failed to complete a condition inspection report for the move-in and the move-out, both parties have relied on photographic evidence to support their claims, I find that the tenants' direct testimony contradicted their assertions that the rental unit was left undamaged and clean. The tenant, A.S. confirmed in his direct testimony that the picture holes and screws were left and that the bathtub had chips at the end of the tenancy. On this basis, I find that the landlord has established that damage was caused by the tenants. However, the landlord has failed to provide sufficient evidence to satisfy me of the monetary claim filed. The landlord stated that cleaning and repairs were conducted by the landlord, but the landlord has not provided sufficient details of what work was performed and for how long. The landlord did not provide any invoices or receipts, but has admitted that she used the leftover materials from a previous renovation to clean and repair the rental. In this case, I grant the landlord a nominal award in the amount of \$80.00 for cleaning, repairs and the materials used.

I find that the landlord has established a claim for \$50.00 in unpaid rent for June 2015. The tenants' have failed to provide sufficient evidence to satisfy me that an agreement was made with the landlord for a \$50.00 deduction for June 2015 rent. The landlord strongly disputed the tenant's claim and in reading the landlord's receipt, I find that there is no indication that a deduction was agreed upon by both parties.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I make an order in the landlord's favor for ~~\$130.00~~**\$180.00 consisting of a \$80.00 nominal award, \$50.00 for unpaid rent for June 2015 and \$50.00 for recovery of the landlord's filing fee.**

The landlord is provided with the formal Order in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Court in the Province of British Columbia.

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: ~~September 23~~**October 14**, 2015

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **October 14, 2015**
AT THE PLACES INDICATED IN **BOLD**.

Residential Tenancy Branch

