



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application against the tenant, pursuant to the *Residential Tenancy Act* ("Act") 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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits ("deposits") in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 95 minutes. The landlord and her husband advocate, ES (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her advocate had authority to speak on her behalf at this hearing.

The landlord confirmed that the two tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package on July 18, 2015, by way of registered mail. The landlord provided a copy of a handwritten signed statement, dated July 3, 2015, from one of the tenants with a forwarding address. On the same statement, a police officer wrote that he saw the tenant write her address and sign the statement in front of him. The landlord stated that the landlord's application package was received and signed for by the tenants on July 21, 2015. The landlord noted that the package was opened, re-sealed and mailed back to her indicating that the tenants had moved but no further forwarding address was provided by them. Given the signed statement from the tenant and the police officer, I find that both tenants provided a written forwarding address to the landlord on July 3, 2015. I find that the landlord properly served her application upon the tenants by registered mail to a

forwarding address provided by them, as required by section 89(1)(d) of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on July 23, 2015, five days after their registered mailings.

The landlord testified that she did not serve the tenants with four pages of written evidence, including invoices and receipts for repairs done at the rental unit. The landlord stated that she only served to the Residential Tenancy Branch ("RTB") on December 18, 2015. During the hearing, I informed the landlord that as her evidence was not served upon the other party as required by Rule 3.1 of the RTB *Rules of Procedure*, I could not consider the evidence at this hearing or in my decision.

Issues to be Decided

Is the landlord entitled to a monetary award 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?

Is the landlord entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord confirmed that a previous ex-parte direct request proceeding was held after which a written decision, dated May 21, 2015, was made by an Adjudicator of the RTB. The decision granted the landlord an order of possession and a monetary order against the tenants. The tenants applied for a review of the decision on the basis of fraud. A different Arbitrator of the RTB issued a review consideration decision, dated June 2, 2015, which dismissed the tenants' review application. The landlord confirmed that the tenants successfully obtained a stay of the order of possession at the Supreme Court of British Columbia ("SCBC") on an ex-parte basis until July 31, 2015. The landlord applied for a review of the stay order and the matter was adjourned on June 19, 2015 by a Judge of the SCBC and a hearing was later held on June 23, 2015 before another SCBC Judge. The landlord testified that the second Judge dismissed the

tenants' application for a judicial review of the RTB decision, thereby confirming the RTB decision and orders of May 21, 2015 as well as the June 2, 2015 RTB review consideration decision. I requested that the landlord provide a copy of the SCBC decision dismissing the tenants' judicial review application, by way of facsimile to the RTB after this hearing. On December 30, 2105, I received from the landlord a copy of the SCBC clerk's notes regarding both hearings on June 19 and 23, 2015, confirming the above information.

The landlord testified that this month-to-month tenancy began on July 15, 2013 and ended on July 3, 2015. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$300.00 were paid by the tenants and the landlord continues to retain both deposits. A copy of the written tenancy agreement was provided for this hearing.

The landlord stated that the rental unit is a two-level house, of approximately 2500 square feet with five bedrooms and 2.5 bathrooms. The landlord stated that the house was built in 1981 but a full renovation of the entire house was completed in May 2013. The landlord confirmed that ten people occupied the house, including four adults and six children. The two tenants named in this application are adults that occupied the house and are also named on the tenancy agreement.

The landlord provided a copy of the move-in condition inspection report, which was completed on June 21, 2013. The landlord stated that a move-out condition inspection and report were completed without the tenants present on July 4, 2015. The landlord confirmed that she did not provide the tenants with two opportunities to complete a move-out condition inspection and she did not use the RTB form for a notice of final inspection. The landlord confirmed that she received the tenants' written forwarding address on July 3, 2015. The landlord filed her application on July 16, 2015.

Initially, the landlord sought a monetary order of \$13,991.00 but amended her monetary claim at the hearing to reduce it to \$13,212.00. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to reduce the monetary claim to \$13,212.00 plus the recovery of the \$100.00 filing fee. I find that there is no prejudice to the tenants in a reduction, rather than an increase, in the monetary amount sought. The landlord also seeks to offset the tenants' deposits, totaling \$1,500.00, against this monetary order.

The landlord provided a number of coloured photographs with her application. She provided photographs of the condition of the rental unit on June 21, 2013, prior to the tenants moving in, and noted that the photographs were taken with the tenants present

during the move-in condition inspection. The landlord provided photographs of the condition of the rental unit on July 4, 2015, after the tenants moved out, when she performed the move-out condition inspection without the tenants present.

The landlord seeks \$2,400.00 in unpaid rent for June 2015. The landlord testified that the tenants vacated the rental unit on July 3, 2015, and did not pay rent for the entire month of June. The landlord confirmed that she was not seeking any rental loss for July 2015.

The landlord seeks \$3,162.50 for wall repairs and painting, due to excessive graffiti on the walls, splashing of food and drinks on the walls and ceilings, and numerous holes in the walls and doors of the rental unit. The landlord provided photographs of the damaged areas. The landlord provided an invoice, dated July 14, 2015, indicating an estimate of \$6,325.00 to repair and repaint all the ceilings, walls, and doors with 2 coats of paint for 2300 square feet at \$2.75 per square foot. The landlord testified that she actually paid \$5,500.00 for the work done. The landlord stated that the entire rental unit was freshly painted in May 2013 before the tenants moved in and that they were only claiming for half the estimated amount in order to account for 50% wear and tear.

The landlord seeks \$1,200.00 to hire a contractor to remove and dispose of garbage and the carpet at the rental unit. The landlord provided photographs of significant garbage and large items left by the tenants, both inside and outside of the rental unit. The landlord provided an estimate, dated July 14, 2015, for this work in the amount of \$1,200.00. The landlord confirmed that she paid this amount for the work done.

The landlord seeks \$3,332.00 to replace the carpet with laminate flooring on the upper level of the house, as well as the stairs area. The landlord explained that the carpet had to be replaced due to excessive spills and animal and human urine and feces which soaked into the floor boards. The landlord provided photographs of the stains and damage to the carpets in the rental unit. The landlord stated that new carpet was installed during the renovation in May 2013. The landlord provided an estimate, dated July 14, 2015, for the installation of new laminate flooring of approximately 1100 square feet at \$3.50 per square foot totalling \$3,850.00 for the upper floor and a 14 by 65 area for the stairs totalling \$910.00, for a cumulative total of \$4,760.00. The landlord discounted the estimated flooring cost by 30% at \$1,428.00, to account for wear and tear. The landlord explained that she actually paid \$5,200.00 for this replacement. The landlord seeks \$160.00 for four broken floor tiles in the kitchen and one broken floor tile in the main bathroom. The landlord provided an estimate, dated July 14, 2015, for the repair work at \$200.00 and discounted this amount by 20% at \$40.00, to account

for wear and tear. The landlord confirmed that she actually paid \$2,200.00 for new commercial grade vinyl floor tile in the kitchen and bathroom.

The landlord seeks \$800.00 for three broken interior bedroom doors. The landlord provided coloured photographs of these broken doors. The landlord provided an estimate, dated July 14, 2015, for the replacement of the three doors for \$1,000.00 and discounted this amount by 20% at \$200.00, to account for wear and tear. The landlord confirmed that she actually paid \$950.00 to replace the doors.

The landlord seeks \$150.00 to repair a heat vent on the upper floor living room and \$250.00 to repair the ceiling below the damaged heating vent on the lower floor. The landlord said that the tenant kicked the heating vent through to the lower floor and damaged the entire area. The landlord provided coloured photographs of both areas. The landlord provided estimates, dated July 14, 2015, for the repair of the heating vent at \$200.00 and the repair of the ceiling at \$300.00. The landlord confirmed that she only paid \$150.00 and \$250.00 for the above repairs, so she was only claiming those amounts from the tenants.

The landlord seeks \$720.00 to replace twelve window screens and frames that were damaged by the tenants and \$337.50 to replace nine damaged window blind coverings. The landlord provided coloured photographs of the above damages. The landlord provided her own estimate in the monetary order worksheet of \$800.00 for the window screens and frames and \$450.00 for the window coverings. The landlord discounted the estimated window screens and frames by 10% at \$80.00 and the window coverings by 25% at \$112.50, all to account for wear and tear. The landlord confirmed that she actually paid \$1,564.50 total to replace the above items.

The landlord seeks \$400.00 to replace four windows that were broken by the tenants. The landlord provided coloured photographs of the broken windows. The landlord confirmed that she paid over \$500.00 for the deductible, to claim the window damages through her home insurance company.

The landlord seeks \$200.00 to replace quartz countertops in the kitchen, which she said were gouged and by a sharp tool, causing sharp edges. She provided photographs of the damage. The landlord testified that the entire quartz countertop has to be replaced but it has not been done yet and she does not know the cost. The landlord sought the estimated amount as per her monetary order worksheet.

The landlord seeks \$100.00 to re-stain the cabinets, due to chips and marks caused by the tenants. She provided coloured photographs of the damage. The landlord

confirmed that the cabinets were new in May 2013 when the unit was renovated. The landlord sought the estimated amount as per her monetary order worksheet.

Analysis

Unpaid Rent

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I award the landlord \$2,400.00 in unpaid rent for June 2015. I accept the landlord's undisputed testimony that the tenants failed to pay rent while living in the rental unit for the entire month of June 2015. The landlord mitigated her losses by not claiming additional rent for July 2015, despite the fact that the tenants did not vacate until July 3, 2015.

Damages

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$3,162.50 for wall repairs and painting, \$1,200.00 for garbage disposal, \$3,332.00 for laminate flooring installation, \$160.00 for broken floor tiles replacement, \$800.00 for broken doors replacement, \$150.00 for heat vent repair, and \$250.00 for ceiling repair due to the heat vent. The landlord provided photographs of the above damages. The landlord provided undisputed affirmed testimony regarding the damages and amounts paid to repair or replace the items. The landlord provided estimates for the above costs and testified that she paid higher costs for the actual work

done. I find that the landlord reasonably accounted for wear and tear during this two year tenancy, in accordance with Residential Tenancy Policy Guideline 40.

Nominal Damages

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I award the landlord nominal damages of \$720.00 for damaged window screens and frames, \$337.50 for damaged window coverings, \$400.00 for broken windows, \$200.00 for damaged quartz counters and \$100.00 to re-stain the cabinets. I accept the landlord's undisputed testimony that the tenants caused the above damage and that losses were suffered. Although the landlord did not provide receipts, invoices or estimates for all of the above damage, I accept the landlord's undisputed testimony that she reasonably estimated the above amounts based on the damages and she actually paid higher costs as compared to the above amounts.

Deposits

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenants are not entitled to the return of double the amount of their deposits. The landlord's right to claim against the deposits for damages was extinguished for failure to provide the tenants with two opportunities, one by way of a notice of final opportunity to complete a move-out condition inspection, as required by section 36 of the *Act*. However, the landlord also applied to offset the deposits against unpaid rent totalling \$2,400.00, which is more than the amount of the total deposits held of \$1,500.00. Therefore, the tenants are not entitled to double the value of their deposits from the landlord, as the landlord is permitted to apply to offset the deposits against the unpaid rent, not damages. The tenants are only entitled to the return of their original deposits in the amount of \$1,500.00.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' deposits, totalling \$1,500.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' deposits totalling \$1,500.00, in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$11,812.00 against the tenants as follows:

Item	Amount
Unpaid Rent for June 2015	\$2,400.00
Wall Repair and Painting	3,162.50
Garbage Removal and Disposal	1,200.00
Laminate Flooring Installation	3,332.00
Floor Tiles Replacement	160.00

Doors Replacement	800.00
Heat Vent Repair	150.00
Ceiling Repair from Heat Vent Damage	250.00
Window Screens and Frames Replacement	720.00
Window Coverings Replacement	337.50
Windows Replacement	400.00
Quartz Countertop Repair	200.00
Re-Stain Cabinets	100.00
Offset Tenants' Deposits	-1,500.00
Recovery of Filing Fee	100.00
Total Monetary Award	\$11,812.00

The landlord is provided with a monetary order in the amount of \$11,812.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 31, 2015

Residential Tenancy Branch

