Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Preliminary Issues

Upon review of the Landlords' application for dispute resolution the Landlords wrote the following, in part, in the details of the dispute:

> *… 140 carpet shampoo 1500 unpaid rent 33.75 light fixture 150 drywall repair 30.23 toilet seat 30 replacement security deposit minus 750 1146.02 owing…*
>
> [Reproduced, in part, as written]

Based on the aforementioned I find the Landlords had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for losses due to required repairs, cleaning, and loss of rent, as listed above. Therefore, I amend the Landlords' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement,* pursuant to section 64(3)(c) of the Act.

Introduction

The Landlords' application was originally scheduled to be heard on October 22, 2015, as a cross application to the Tenant's application. The Landlord's application was severed from that hearing and an Interim Decision was issued October 27, 2015 adjourning the Landlords' application to this hearing. Accordingly, this Decision must be read in conjunction with my October 27, 2015 Interim Decision.

The Landlords' applied for a Monetary Order for: unpaid rent or utilities; to keep the security deposit; *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement,* (as amended above) and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlords, the Landlords' two witnesses; and both Tenants. Each person gave affirmed testimony. 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.

A detailed review of the resubmitted evidence was conducted as follows:

On October 30, 2015 the Landlords submitted 42 pages of evidence to the Service BC (SBC) Office. That evidence was received at the RTB on November 2, 2015. The Landlords affirmed they served each Tenant with copies of the same documents and photographs that they had served the RTB. The Landlords evidence was served to each Tenant via registered mail and tracking information was submitted in their oral evidence.

The male Tenant, D.W. acknowledged receipt of the Landlords' evidence package. He confirmed he had taken the package apart and after a review of the documents he stated he had not received a copy of the 1 Month Notice to end tenancy in his evidence submission.

The female Tenant, L.G., testified she did not receive the registered mail package from the Landlords. The Landlords provided the Canada Post tracking receipt number; confirmed the address the package was sent to; and stated the package had been returned to them marked "unclaimed". The Landlords testified they were careful to make three separate identical packages of evidence as per the instructions in the Interim Decision. The Landlords opened the returned package during the hearing and stated all of the documents were included as sent to the RTB and to the male Tenant, including the 1 Month Notice.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the above, I favored the Landlords' submissions that each Tenant was served copies of the exact same documents from the Landlords and the female Tenant failed to retrieve her package from Canada Post. Accordingly, I find that each Tenant was sufficiently served with copies of the Landlords' resubmitted evidence package, pursuant to section 62 of the *Act.*

On November 23, 2015 the Tenants submitted 4 pages of evidence and 1 USB stick to the RTB. The Tenants affirmed that they served the Landlords with copies of the same documents and electronic evidence that they had served the RTB. The Landlords acknowledged receipt of these documents and the USB stick and argued they were served late because that evidence was posted to the Landlords' door on November 18, 2015.

The Landlords testified that despite the fact that they received the Tenants' evidence package on November 18, 2015 they were of the opinion it was served late because it would not been deemed received until November 21, 2015, three days after it was posted to their door. I explained to the Landlords that a method of service or deemed service is different from when a package is actually received. Therefore, because the Landlords provided affirmed testimony they received the Tenants' evidence package on November 18, 2015; I found the Tenants complied with my Orders in the Interim Decision and the evidence was received on time.

The Landlords argued the Tenants' digital evidence was a recording of the move out inspection which they did not agree to have recorded. They argued the Tenants told them they would be recording the move out inspection and when they requested that they not be recorded the Tenants told them they had the right to record the inspection. The Landlords confirmed they were able to view the recordings and then asserted the recordings were edited and dubbed to remove all of the important statements they made during the move out inspection. As a result they requested the audio recordings not be considered as evidence.

The male Tenant testified he was an audio engineer and music producer by trade. He submitted he conducted his business out of the rental unit. He argued the audio recordings of the move out inspection should be used because they show an accurate picture of the condition of the rental unit at the time the move out was conducted.

After consideration of submissions from both parties, I accept the Landlords' submissions that the digital recordings could have been altered; especially considering

the male Tenant was an audio engineer. Therefore, I find the Tenants' digital evidence to be unreliable and I have given that digital evidence very minimal evidentiary weight.

Upon review of the Landlords' evidence submission it was noted the Landlords submitted page 1 of a 2 page Amendment to an Application for Dispute Resolution form with an attachment listing additional items being claimed to increase the monetary amount. This document was included in their 42 page evidence submission and was not filed separately as an amendment to their application, as required by the Rules of Procedure.

Furthermore, in my October 27, 2015 Interim Decision I Ordered that no changes could be made to the Landlords' application as follows:

> *Additional changes to the Landlord's application will not be permitted. No cross applications may be added or scheduled to be heard at the reconvened hearing.*
>
> [Reproduced as written p 3 par 6]

As per my aforementioned Orders, I declined to hear matters relating to an item or an amount not claimed on the original application for Dispute Resolution which was filed by the Landlords on October 2, 2015. If the Landlords' suffered additional losses relating to this tenancy, they are at liberty to file another application for Dispute Resolution.

Although both Tenants were present during the hearing the male Tenant provided the submissions on behalf of the Tenants. That being said, the female Tenant was given the opportunity to present additional evidence and or question the witnesses; however, she denied each time she was given the opportunity to provide submissions even when asked a direct question. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlords and Tenants entered into a written month to month tenancy agreement that began on December 1, 2011. Rent of $1,500.00 was due on or before the first of each month and on November 21, 2011 the Tenants paid $750.00 as the security deposit. No written move in condition inspection report form was completed.

On August 7, 2015 the Landlords served the Tenants a 1 Month Notice to end tenancy for cause with an effective date of September 30, 2015.

The Tenants filed an application for Dispute Resolution to dispute the 1 Month Notice. The Tenants vacated the rental property prior to the October 22, 2015 hearing which was scheduled to hear their application to dispute the 1 Month Notice.

The Tenants advised the Landlords they would attend a move out inspection at 7:00 p.m. on October 1, 2015. Both parties were present at the move out inspection and each person signed the condition inspection report form. The Tenants provided their forwarding address on the bottom of the condition inspection form.

The Landlords testified the Tenants started to refuse them access to the rental unit to conduct inspections or to do maintenance. The Tenants were playing their music and drums until the early hours of the morning causing noise disturbances. Then on August 6, 2015 they were involved in an argument with the Tenants about the noise after which the Tenants began to be increasingly difficult to deal with.

The Landlords submitted evidence that they saw the Tenants moving their possessions out of the rental unit on September 23, 2015. The Landlords said they approached the Tenants and asked questions to determine when they would be moved out so they could re-rent the rental unit. The Tenants denied they were moving out and refused the Landlords access to show the rental unit to prospective tenants. The Landlords submitted a photograph of a sign that the Tenants had posted to the rental unit door denying them access which stated:

> *You Do not have permission to enter. Security cameras are present. Breaking and entering will be the charge.*
>
> [Reproduced as written]

The Landlords argued the Tenants intentionally refused to return possession of the rental unit to them until the evening of October 1, 2015, after the 7:00 p.m. inspection. They said that refusal caused the Landlords to suffer a loss of rent for October 2015.

The Landlords stated they were told by the RTB staff that they could not re-rent the unit until they knew the Decision from the October 22, 2015 hearing or until after the Tenants returned possession of the unit to them. The Landlords now seek to recover the lost rent in the amount of $1,500.00.

The Landlords submitted there were numerous burnt out light bulbs in the rental unit causing several rooms to be dark. In addition, one dimmer switch was completely missing which left bare wires hanging out of the wall and prevented them from turning on the light in that room. The Landlords asserted the Tenants had planned the inspection to be conducted in the evening when it was dark and staged the burnt out or missing bulbs so that the damages could not be viewed during their move out walk through. The Landlords stated they did not see the full extent of the damages until the next day when they could see during the daylight hours.

The Landlords asserted the Tenants left the rental unit and property requiring some cleaning and repairs. As a result the Landlords are seeking $383.98 monetary compensation comprised of the following:

1) $33.75 for the broken exterior light fixture which was replaced October 2, 2015 as per the invoice submitted into evidence;
2) $150.00 for drywall repairs which included supplies of $30.74 and the balance was labour to putty and patch the walls;
3) $30.23 to cover the cost of a toilet seat which was replaced in July 2014;
4) $30.00 to replace the closet shelf (the board that sits overtop of the hanger bar) which the Tenants removed or took when they moved out;
5) $140.00 for carpet cleaning costs. The Landlords claimed an amount $50.00 less than an estimate they had obtained from a carpet cleaning company. The Landlords submitted they had cleaned the carpets themselves as they own an industrial steam cleaner. They provided photographic evidence of the stain in one room on the carpet and the damage to a bedroom carpet.

The Landlords' Witness 1 (Witness 1) testified she was present during a previous inspection and the move out inspection. She confirmed her written statement represented what she had witnessed during those two inspections. She wrote, in part, as follows:

> *During both inspections, everything that was looked at produced instant & loudly abusive comments from [male Tenant's first name] directed at [Landlords' first names] about the quality of the house & fixtures as well as [male Landlords' first name] workmanship. He appeared to me to be trying to intimidate [female*

> *Landlord's first name] by constantly reminding her that she was taking up 'his' time. He attempted to engage [male Landlord's first name] in an argument but neither [Landlords' first names] responded or even raised their voice to [Tenants' first names].*
>
> [Reproduced as written excluding actual names]

Both parties were given the opportunity to question Witness 1 during which she stated she heard the male Tenant say he cleaned the rental unit for one hour.

The Landlords' Witness 2 testified she was the tenant who occupied the rental unit for 2 ½ years just prior to these Tenants moving in. She said the Landlords were awesome landlords. She stated that when she moved out she left the unit clean and undamaged, as per her written statement.

Neither party questioned Witness 2, despite being given the opportunity to do so.

The Tenants testified and confirmed they told the Landlords they could not do the move out inspection until October 1, 2015 at 7:00 p.m. The Tenants argued they moved out based on the 1 Month Notice which stated they could stay in the unit until October 1, 2015. The Tenants confirmed they did not submit evidence to support their argument that the Notice list October 1, 2015 as the move out date. The Tenants confirmed they posted the sign on the rental unit door denying the Landlords access to the rental unit, as shown in the Landlords' photograph.

The Landlords submitted documentary evidence that the 1 Month Notice listed an effective date of September 30, 2015. The Landlords asserted they did not issue a Notice listing an October 1, 2015 effective date.

The Tenants confirmed there had been some burnt out light bulbs in the kitchen and there was a missing dimmer light switch. They argued those issues were evidence that the Landlords failed to maintain the rental unit properly. The Tenants submitted the Landlords had brought in a spot light with them when they were conducting the move out inspection so they ought to have been able to see if there were damages to the unit.

The Landlords disputed they did not maintain the property. Rather, it was the Tenants who prevented them access to conduct maintenance.

The Tenants disputed the Landlord's claim for loss of rent for October 2015. The Tenants argued it was the male Landlord who was hostile towards them and not the other way around. They asserted the Landlords freaked out at them when they asked

for the toilet seat to be repaired so they simply stopped asking for repairs to be completed.

The Tenants stated the Landlords were very nervous about money for October as they kept asking them if they were going to pay rent for October 2015. The Tenants then denied that they refused the Landlords access to the rental unit to conduct inspections as the Landlords had done inspections prior to serving them with the Notice to end tenancy.

The Tenants stated people just showed up at their home one day asking to see the rental unit without giving them proper 24 hour notice. The Tenants said they replied by asking the Landlords to leave them alone and not enter the unit.

The Tenants accepted responsibility to pay $33.75 for the broken exterior light. They confirmed there was one wall damaged with a gouge when they were moving furniture out. The Tenants disputed the $150.00 claimed by the Landlords and said they would agree to pay $50.00 for drywall repairs.

The Tenants denied having put staples in the walls to hold of the fabric material shown in the Landlords' photographic evidence. The Tenants asserted the fabric material was secured to the wall with tacks and not staples and they did not know where the staples came from as shown in the photographs.

The Tenants disputed the claim for the toilet seat and argued it was normal wear and tear. They noted the toilet seat was replaced over a year prior to the end of the tenancy and was replaced with a seat that did not fit the toilet properly so they should not have to pay that claim.

The Tenants initially stated they would pay the $30.00 for the piece of wood for the closet. They then changed their submission and said they had no idea what piece of wood the Landlords were talking about. The Tenants argued if the piece of wood was missing the Landlords should have pointed it out during the move out inspection.

When responding to the claim for carpet cleaning the Tenants initially stated "carpets were not included in their rent". Upon further clarification the Tenants asserted they were not required to clean the carpets because carpets were not listed on the tenancy agreement as being included in rent and because the Landlords told them at the beginning of the tenancy the carpets would be replaced and they were never replaced.

As the Tenants continued their submission they changed direction of their submission and stated they had steam cleaned the carpets themselves. The Tenants stated they borrowed a steam cleaner so they did not incur an expense so did not have a receipt to submit as evidence.

The Tenants asserted they thought they were in agreement with the Landlords that they would pay for the one hole in the wall and the broken exterior light. They said they were told the Landlords were sending them a cheque for the return of their deposit and when they received the envelope it had an unsigned cheque written in the amount of $1.00.

The Landlords submitted they did not list the rental unit for rent on the internet until September 20, 2015; therefore, people could not have shown up at the rental unit in mid-September. Also, they would never just send someone over to see the unit without proper notice or without the Landlords being present.

The Landlords denied telling the Tenants there would be new carpets installed and questioned why they would install carpets when there was nothing wrong with the existing ones. They pointed to Witness 2's statement which proves the carpets were in good condition at the start of these Tenants' tenancy.

The Landlords submitted they were concerned what may happen during the move out inspection given the male Tenant's confrontational behaviour. They stated they decided to stay quiet in order to get through the inspection, get their keys back, and get these Tenants gone from their property.

The Landlords confirmed they sent the unsigned $1.00 cheque and stated they were worried the Tenants would not accept service of the envelope with their application if there was not a cheque inside.

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(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 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.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

I favored the Landlords' submissions regarding the Tenants refusing the Landlords' access or entry into the rental unit, once the landlord/tenant relationship became confrontational on or after the argument on August 6, 2015. I favored the Landlords' submissions regarding access to the unit because they were forthright, credible and supported by photographic evidence displaying the Tenants' sign refusing access.

Notwithstanding the Landlords sending an unsigned cheque for $1.00, I accepted the Landlords other submissions to be reasonable regarding the Tenants refusal to inform the Landlords that they would be moved out by the end of September 2015, given the circumstances presented to me during the hearing.

The Tenants submitted testimony confirming the Landlords had expressed their concerns to the Tenants regarding payment for October rent which I find supports the Landlords' submissions that the Tenants deliberately put off the move out inspection until 7:00 p.m. on October 1, 2015. I further accept the Tenants denied the Landlords access to the unit which ensured the Landlords were prevented from securing a new tenant for October 1st and which caused the Landlords to suffer a loss of rent.

Based on the Tenants' action of filing an application to dispute the 1 Month Notice and accepting the scheduled hearing for October 22, 2015, I find the Tenants bore the responsibility to pay the October 2015 rent as they were proceeding with disputing the Notice. That being said, the Tenants made arrangements to move out of the unit prior to the October 22, 2015 hearing without giving the Landlords notice they would be vacating the unit, as would be required by section 45 of the *Act.* In addition, the Tenants refused to tell the Landlords they were moving out despite the Landlords questions when they saw the Tenants moving their possessions.

Based on the totality of the evidence before me I find there was sufficient evidence to prove the Landlords suffered a loss of rent for October 1, 2015 due to the Tenants' deliberate actions and breach of the *Act.* Accordingly, I award the Landlords loss of rent for October 2015 in the amount of **$1,500.00.**

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.

Regarding the condition of the rental unit at the start of the tenancy, I accept the submissions from Witness 2 that the rental unit was clean, undamaged and in good condition when she vacated the rental unit just prior to the Tenants occupying the rental unit. Therefore, I find the Landlords submitted sufficient evidence to prove the condition of the rental unit at the start of the tenancy.

Regarding the condition of the rental unit at the end of the tenancy, as stated above I found the Tenants' video recording to be unreliable and gave it minimal evidentiary weight. I favored the Landlords' photographic evidence and the Landlords' submissions regarding the adversarial nature of the male Tenant during the move out process and inspection. I accept the submissions of the Landlords that the Tenants purposely requested an evening move out inspection knowing that several rooms would be too dark to see the actual condition of the rental unit. After consideration of the totality of evidence presented by each party, I found the Landlords' submissions to be reasonable given the circumstances presented to me during the hearing.

Regarding the Landlords' claim of $30.23 for the toilet seat which was replaced in July 2014, I find that if the Landlords expected the Tenants to pay for the toilet seat they ought to have issued the Tenants a demand letter requesting payment back in 2014. Waiting until the tenancy ends over a year later to claim for such an item does not meet the test to minimize the loss, as required by section 7(2) of the *Act.* Furthermore, I find

there was insufficient evidence to prove it was the Tenants' actions which caused the toilet seat to peal. Accordingly, the claim of $30.23 for a toilet seat is dismissed, without leave to reapply.

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.

Notwithstanding the Tenants' disputed verbal testimony, I accept the Landlords' evidence that the Tenants left the rental unit requiring some repairs and carpet cleaning, in breach of section 37(2) of the *Act.* I find the following amounts claimed by the Landlords to be reasonable, as supported by receipts and oral submissions, pursuant to section 62 of the *Act.* Accordingly, I grant the Landlords' claims of: $33.75 exterior light fixture; $150.00 drywall repair; $30.00 replacement shelf; and $140.00 carpet cleaning; for a total award of **$353.75,** pursuant to section 67 of the *Act.*

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 Landlords have primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

I find the monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

The undisputed evidence was that the Landlords did not complete a condition inspection report form at move in and as such their right to claim for damages against the security deposit has been extinguished, pursuant to sections 24 and 36 of the *Act* if their application for Dispute Resolution was filed only to seek compensation for damages to the rental property. In addition to a claim for compensation for damages the Landlords' application was filed to recover loss of October rent due to the Tenants' breach. Therefore, I find the extinguishment provision does not apply here, pursuant to section 62 of the *Act.*

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $750.00 security deposit since November 21, 2011.

Monetary Award	
Loss of rent for October 2015	$1,500.00
Damages (repairs & cleaning)	353.75
Filing Fee	50.00
SUBTOTAL	$1,903.75
LESS: Security Deposit $750.00 + Interest 0.00	-750.00
Offset amount due to the Landlords	**$1,153.75**

The Tenants are hereby ordered to pay the Landlords the offset amount of $1,153.75 forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **$1,153.75** which may be enforced through Small Claims Court after service upon the Tenants.

Conclusion

The Landlords succeeded with their application and were awarded monetary compensation of $1,903.75 which was offset against the Tenants' security deposit leaving a balance owed to the Landlords of **$1,153.75**.

This decision is final, legally binding, and 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: April 14, 2016

Residential Tenancy Branch