



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant NO and two agents for the landlord KT and AM attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2014 for a fixed term tenancy that ended on August 31, 2015, with the option of continuing as a month to month tenancy. The tenancy was ended by the tenants on September 30, 2015. Rent for this unit was \$1,400.00 per month due on the 1st of each month. The tenants paid a security deposit of \$700.00 on August 11, 2014.

Unpaid rent - KT testified that they received a written notice from the tenants on September 10, 2015 informing the landlord that the tenancy was ending on September 30, 2015. The landlord emailed the tenants to advise them that this was not considered to be proper notice and if the unit could not be re-rented for October 01, 2015 the tenants could be held responsible for October's rent. KT testified that the landlord advertised the unit on internet sites, on U rent, on the landlord's website and with handouts; however, the unit was not re-rented until November 15, 2015 for the same monthly rent. The landlord therefore seeks to recover a loss of rent for October of \$1,400.00.

Damage to the unit – KT testified that the tenants did not leave the rental unit reasonable clean. AM who is the onsite resident caretaker cleaned the unit for four hours. This involved cleaning windows, the walls from greasy finger prints from the tenants' two year old child, the stove hood fan, the patio, the laundry room and the floors. The landlord had originally estimated that this would be charged at \$100.00; however, the actual cost for this cleaning was \$80.00. The landlord has provided AM's time sheet showing her hours and work completed.

The tenants had failed to clean the carpets; this work was carried out by a professional carpet cleaner, the landlord had originally estimated the work to be \$170.00; however, the actual cost came in at \$152.75.

The tenants failed to leave the window coverings clean. The landlord charged the tenants a standard rate to clean window coverings of \$50.00. AM completed this work as shown on her time sheet and the landlord seeks to recover \$50.00 from the tenants.

AM testified that the female tenant had just learnt to drive and she first backed into the garage door when she was reversing her car out of the garage. This damage was paid for by the tenants. This tenant also caused damage to the garage door frame when she drove into the garage; she also backed into another tenant's garage. Prior to the tenants moving in there was a small dent on the garage door frame; however, this tenant had caused many more dents. AM testified that she did not actually see the female tenant causing this damage but the dents are at bumper height and could only have been caused by a vehicle. The landlord seeks to recover \$259.00 for the repair of the garage door frame.

The landlord testified that the tenants caused a number of scrapes on the walls from furniture. This damage had to be repaired and minimal painting done. The landlord seeks to recover AM's labour costs of \$60.00 to do this work over three hours and referred to AM's time sheet detailing her hours and work completed. The landlord also seeks to recover the cost of the paint of \$44.04.

The landlord testified that the tenants damaged the kitchen counter. There is a large burn ring which appears to be from a hot pan being placed on the counter. AM testified that the female tenant admitted she had caused this burn and asked AM how much it was going to cost her. The counter top had to be replaced at a cost of \$829.50; however, as the counter top was 17 years old the landlord has calculated the depreciation of the counter top and seeks to recover \$232.26 of the amount paid.

The landlord testified that the tenants left some damage to the siding by the patio at the back door. This siding was not cracked at the start of the tenancy. The landlord seeks to recover the costs to replace this siding to an amount of \$105.00.

The landlord referred to their invoices and photographs provided in documentary evidence in support of their claim for damages.

The landlord seeks an Order to keep the security deposit in partial satisfaction of their claim and a Monetary Order for the balance. The landlord also seeks to recover their filing fee of \$50.00.

NO testified that in regard to the loss of rent; the tenants sent the notice to end their tenancy on September 10, 2015. NO explained that he was being relocated with his work and the landlord asked him to get a letter from his HR department to confirm this. NO testified that he did as requested and sent the letter to the landlord. NO understood that if he provided this letter the landlord would consider waiving the rent for October.

KT testified that an agent for the landlord did have this conversation with the tenant about obtaining a letter from his HR department; however; this is only considered if the fixed term tenancy is still in place. The tenancy agreement clarifies this point and states that if a tenant's employment takes him away then the fixed term would be waived; however, one clear months' notice is still required. This information was confirmed to the tenant through the landlord's email.

NO testified that they did clean the unit and have provided photographic evidence showing it was clean. NO testified that he was shocked that the landlord had to clean the unit again.

NO does not dispute the landlord's claim for carpet cleaning of \$152.75 or to clean the blinds of \$50.00.

NO testified that they were shocked that the landlord was making a claim against them for dents in the garage door frame. NO testified that when they moved into the unit there were dents already in the door frame and the landlord was notified of these. NO referred to their documentary evidence as a supplement to the move in condition inspection

report because the landlord had not included these dents on that report. NO testified that AM informed the tenants that children in the area also played around on their skate boards and went into garage doors. NO testified that when his wife reversed into the garage door this occurred because there were problems with the garage door opening and closing. NO disputed that his wife drove into another tenant's garage door or this garage door frame.

NO disputed the landlord's claim for painting. NO agreed that one wall did suffer from some scrapes when they were moving their bed into the unit. This occurred because AM did not inform the tenants that you had to move the bed in through the kitchen due to the configuration of the unit. This caused a minor scratch on the wall.

KT testified that the move out report indicated many scrapes on the walls and the move in report only indicates on scape on the ceiling for which the tenants were not charged.

NO testified that they did not cause the burn mark on the kitchen counter top. NO disputed that his wife agreed to pay for any damage to the counter top.

NO testified that he has no idea how the siding became cracked. The landlord had not applied for this in her original application and it was added afterwards which prevented the tenants including it in their submissions.

NO agreed the landlord may deduct the costs for carpet cleaning of \$152.75 and for window covering cleaning of \$50.00 from their security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for loss of rent for October, 2015; I refer the parties to s.45 of the Act which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

I am satisfied from the evidence before me that the tenants did not provide proper notice to end the tenancy. The landlord took reasonable steps to attempt to re-rent the unit for October 01, 2015 to mitigate any loss but was unable to do so until November 15, 2015. I appreciate that there may have been some confusion concerning the purpose of the landlord's request for the tenant to provide a letter from his HR department; however, as this fixed term tenancy ended on August 31, 2015 the tenancy agreement clause J clearly outlines the duties of the tenant concerning employment transfer to a place more than 50 miles from the city when there is a fixed term tenancy in place and notifies the tenant that in this case the tenant is still required to give the landlord one clear month's notice. Consequently, I find the landlord has established a claim to recover a loss of rent for October, 2015 of **\$1,400.00**.

With regard to the landlord's claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind and after consideration of the landlord's evidence before me I am satisfied that the tenants did some cleaning in the rental unit as shown by their photographic evidence; however, the landlord's photographic evidence and move out inspection report show that there were many areas of cleaning missed in the unit. I therefore find in favour of the landlord's claim to clean areas of the unit and allow the landlord's claim for **\$80.00**.

With regard to the landlord's claim for carpet cleaning and window covering cleaning; the tenant does not dispute these sections of the landlord's claim. I therefore find in favor of the landlord's claim to recover **\$152.75** for carpet cleaning and **\$50.00** for window covering cleaning.

With regard to the landlord's claim for damage to the garage door frame; I am not satisfied that this damage was caused by the tenants. It is clear from the evidence before me that the garage door frame was already damaged at the start of the tenancy, further to this I find the tenants' evidence that children used the area for skate boarding to be plausible and as the landlord has insufficient evidence to show this damage was caused through the tenants' actions or neglect then I find the landlord has not meet the burden of proof in this matter and their claim for \$259.00 is dismissed.

With regard to the landlord's claim for painting; I am satisfied from the evidence before me that the tenants caused some scrapes on the walls which went beyond normal wear and tear during this tenancy. It is not the responsibility of a landlord's agent to inform a tenant how to move their furniture into a unit but rather tenants must take due care when moving in. I find the landlord's claim for painting is minimal and therefore award the landlord the amount claimed for paint and labour of **\$104.04**.

With regard to the landlord's claim for the damage to the counter top; I am satisfied from the evidence before me that this damage was not in place at the start of the tenancy; yet it is shown at the end of the tenancy. The landlord's photographic evidence shows this is a pot sized burn ring which is easily noticeable and required the replacement of the kitchen counter top. The useful life of a kitchen counter top is 25 years as noted in the useful life guide of the Residential Tenancy Policy Guidelines #40. I therefore find the landlord's claim has already taken into account the depreciation of the countertop over the last 17 years and they have adjusted their claim accordingly to **\$232.26**. I therefore find in favor of the landlord's claim to recover this amount from the tenants.

With regard to the landlord's claim for the repair of the cracked siding; I am satisfied from the evidence before me that this siding was not cracked at the start of the tenancy; I must therefore conclude that this crack occurred during the tenancy through the tenants' actions or neglect. I therefore find in favor of the landlord's claim for **\$105.00** to have this section of the siding replaced.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain the tenants' security deposit of **\$700.00** in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. I find the landlord is entitled to a Monetary Order pursuant to s. 67 of the *Act* as follows:

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|--------------------------|------------|
| Loss of rent for October | \$1,400.00 |
|--------------------------|------------|

| | |
|---|-------------------|
| Cleaning | \$80.00 |
| Carpet and window covering cleaning | \$202.75 |
| Painting and repair | \$104.04 |
| Replacement counter top | \$232.26 |
| Siding replacement | \$105.00 |
| Subtotal | \$2,124.05 |
| Less security deposit | (-\$700.00) |
| Plus filing fee | \$50.00 |
| Total amount due to the landlord | \$1,474.05 |

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,474.05**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: May 04, 2016

Residential Tenancy Branch