



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security and pet 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 tenant for the cost of this application.

At the hearing the landlord withdrew their application for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 04, 2016. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The hearing documents were not claimed by the tenant and the landlords then served the tenants with a process server who has provided a sworn affidavit that the tenant was served in person on June 01, 2016.

The landlord DE appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit site or property?
Are the landlords permitted to keep all or part of the security and pet deposits?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy originally started with two tenants in April, 2014. A new tenancy agreement was entered into on May 01, 2015 for a fixed term that was due to end on October 31, 2015. The male tenant was later removed from the tenancy agreement and the tenancy continued in the female tenant's name only. The tenancy ended on or about July 01, 2015. Rent for this unit was \$1,600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$800.00 and a pet deposit of \$200.00 on or about April 01, 2014.

The landlord testified that the tenant caused extraordinary damage to the rental unit. The landlords had insurance for vandalism but the insurance company only paid out for the items they considered to be vandalised and not all the damage. The insurance company paid for the damage to the dishwasher, stove, fridge and washer; for six broken doors that had been ripped off their hinges and for three damaged light fixtures. The landlords had to pay an insurance deductible of \$1,000.00 and they seek to recover this from the tenant. A copy of the insurance documents have been provided in documentary evidence.

The landlord testified that all other damage was paid for by the landlords and the landlord referred to their photograph evidence showing the unit at the start of the tenancy in a good condition and the photos at the end of the tenancy in a deplorable condition. The landlords hired a contractor to do much of the repair work and his invoice provided details as to the extent of the work. This was a non-smoking unit in accordance to the addendum to the tenancy agreement. The tenant and or her children and guests smoked in the unit and everything was covered in nicotine and the unit smelt of cigarette smoke. The landlords' contractor had to wash all the walls, ceilings, trims and cupboards to get rid of the nicotine. The contractor had to apply a product to get rid of the nicotine. The holes in the walls and woodwork caused by the tenant had to be filled and sanded. The door frames had to be repaired and the entire unit had to be repainted with two coats of paint. The landlords were charged \$8,000.00 for this work.

The contractor also had to sand and re-finish the hardwood floors as the tenant had left the floors in the living room and small bedroom with deep gouges. Stain was then applied and two coats of varnish. The landlords were charged \$1,500.00 for this work.

Three windows were also repaired by the contractor. Two windows were left by the tenant with cracked glass and one window had missing glass. All other interior windows had to be cleaned due to nicotine and grease stains. The landlords were charged \$300.00 for this work.

The tenant abandoned all her old furniture, personal belongings and garbage in the unit. The landlords' neighbours told the landlords that the tenant had held a house wrecking party for two days before she moved out. None of the abandoned belongs was worth more than \$500.00 so the landlords' contractor removed and disposed of everything abandoned in the unit. The landlords were charged \$500.00 for this work.

The entire unit was left unclean and the tenant had made no attempt to clean before she vacated. The landlords' contractor did this work and charged the landlords \$500.00 to clean for two days.

The landlord testified that the skylights in the loft bedroom were broken by the tenant. These had to be replaced and the landlord referred to the invoice provided in documentary evidence for new skylights. The landlord seeks to recover this cost of \$1,783.60. The landlord testified that the skylights were approximately 20 years old.

The landlord testified that the tenant failed to return the keys to the unit and the landlord had to have the dead bolt and the front door knob locks changed at a cost of \$143.55. The landlord has not provided the invoice in documentary evidence for this cost.

The landlord testified that they had to remove a substantial amount of rotting garbage from under the porch. The tenant had left this garbage there rather than take it out to the kerb. The landlord testified that the hatch to the space under the porch had been screwed shut but the tenant must have taken the screws out to hide the garbage in this space. This garbage was maggot infested and the landlords had to wear masks to bag it up into contractor bags. The garbage filled 40 contractor bags with three garbage bags in each contractor sized bag. All this

garbage was then taken to the dump. The landlords seek to recover \$500.00 for their labour in dealing with this disgusting mess.

The landlord testified that as they had to use a process server to serve hearing documents upon the tenant the landlords seek to recover the fee for this work of \$120.00. The landlords have provided the invoice in documentary evidence

The landlords seek an Order to permit them to keep the security and pet deposits in partial satisfaction of their claim and to recover the filing fee of \$100.00.

Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords' undisputed evidence before me.

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 I find as follows:

With regard to the landlords' claim to recover the insurance deductible of \$1,000.00; I am satisfied from the evidence before me that the landlords had to make a claim against their insurance that covered them for vandalism. It is clear that the tenant caused significant damage to areas of the property and the landlords' belongings that the insurance company agreed was vandalism on the part of the tenant. I am satisfied that the landlords had to pay the deductible of \$1,000.00 and therefore they have established a claim to recover this from the tenant.

Consequently, I find in favor of the landlords' claim for **\$1,000.00**.

With regard to the landlords' claim for the costs incurred for the damage repaired by their contractor to a total amount of \$10,850.00. The tenant has not appeared to dispute the landlords' evidence. I have considered the evidence before me and find the landlords have sufficient evidence in the form of the before and after photos of the unit showing the condition it was left in by the tenant and the contractors detailed invoice which details the damage done and the repairs carried out. I therefore find the landlords have met the burden of proof regarding the damage done by the tenant and find in favor of the landlords' claim to recover **\$10,850.00**.

With regard to the landlords' claim for the costs to rekey the locks; the landlord has not provided the invoice for this work in documentary evidence; however, the landlord's undisputed testimony was that the tenant had vacated the rental unit and failed to return the keys. Considering the condition the unit was left in by the tenant and on a balance of probabilities I have little doubt that the tenant did fail to return the keys; however, without an invoice to show the actual amount paid for new lock and deadbolt I must limit the landlords' claim to an nominal amount of **\$100.00**.

With regard to the landlords' claim for the repair to the broken sky lights. I have insufficient evidence to show the condition of the skylights at the start of the tenancy. The landlord has not provided photos showing these were in good working order at the time the tenant moved into the unit. Furthermore as the skylights were 20 years old I find in accordance with the Residential Tenancy Policy Guidelines #40 that the skylights were past there useful life of 15 years. Consequently, as the deprecation of these skylights over their life time would not warrant a monetary award to the landlords I must dismiss this section of the landlords' claim.

With regard to the landlords' undisputed claim for garbage removal; I am satisfied that the tenants left an exceptional amount of rotting garbage under the porch which had to be removed by the landlords. There is no way to define how long this garbage had been left under the porch but certainly long enough for it to become infested with maggots making this an unpleasant and potentially hazardous job for the landlords to remove. I therefore find the landlords' claim to recover **\$500.00** for this work to be a justifiable amount.

With regard to the landlords' claim to recover the fee for the process server of \$120.00; there is no provision under the *Act* for fee charged for the service of hearing documents. This section of the landlords' claim is therefore dismissed.

I Order the landlords to retain the tenant's security and pet deposit of **\$1,000.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords' monetary claim.

As the landlords' claim has merit I find the landlords may recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Insurance deductible	\$1,000.00
Repairs, cleaning and removal of tenants personal items	\$10,850.00
Lock change	\$100.00
Garbage removal from under the porch	\$500.00
Subtotal	\$12,450.00
Plus filing fee	\$100.00
Less security and pet deposits	(-\$1,000.00)
Total amount due to the landlords	\$11,550.00

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$11,550.00**. The Order must be served on the respondent. Should the respondent 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: September 19, 2016

Residential Tenancy Branch