



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant's representative, the mother of one of the tenants called in and participated in the hearing. The landlord served the tenants with the application, Notice of Hearing and evidence package sent by registered mail on August 24, 2016

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a house in Port Alberni. The tenancy began December 1, 2013. The monthly rent was \$895.00, payable on the first of each month. The tenants paid a security deposit of \$450.00 and a pet deposit of \$250.00 at the start of the tenancy.

The tenants moved out of the rental unit at the end of March, 2016. The landlord submitted copies of move-in and move-out inspection reports. The move out inspection was conducted on April 3, 2016. The landlord did not submit a monetary order worksheet as part of his evidence. In his application for dispute resolution filed on April 19, 2016 he claimed payment of the sum of \$5,200.00 said to be for the following:

- Damage to flooring, drywall and fixtures
- Cleaning costs
- Hydro bill from March 19, 2016 to April 1, 2016
- Damage/replace carpet/broken window
- Recover filing fees

- Lost rent

The landlord submitted invoices as part of his documentary evidence as follows:

• carpet replacement and installation:	\$601.74
• a quotation for carpet and laminate flooring:	\$3,487.19
• an invoice for broken window replacement:	\$73.70
• repair materials and paint supplies:	\$236.00
• receipt for labour:	\$600.00
• unpaid Hydro account:	\$28.94

The landlord testified that the tenants caused extensive damage to the drywall and the floors throughout the rental unit. There were holes in the drywall as well as permanent marker stains and other marks and stains on the walls. The landlord testified that the carpet and laminate flooring was badly damaged. He referred to pictures taken before the tenancy began and after it ended as evidence of the damage to the rental unit said to have been caused by the tenants.

The landlord testified that the flooring in the rental unit was new when the tenancy started and all the damage to the flooring and carpets was caused by the tenants. The landlord submitted an invoice for repair materials, paint and supplies and an invoice for labour for painting and drywall repairs in the amount of \$600.00.

The landlord also provided a copy of the Hydro bill showing that the amount of \$28.94 was due for the last month of the tenancy.

The tenant's representative testified that the tenant was deaf and the landlord, who is well aware of the tenants' circumstances, is using this proceeding to take advantage of the tenants; she denied that there was any truth to any of the landlord's claims. The landlord's representative said that the landlord has taken advantage of the tenants throughout the tenancy and by bringing this claim against the tenants. She said that the tenant requested an adjournment of the hearing. The request was made by email on September 20, 2016, the day before the hearing.

Analysis

The landlord's claim was properly commenced; it was not served in accordance with section 59 of the *Act*, but it was served as required section 89 by registered mail and received by the tenants on August 29, 2016. The tenants did not object or request an adjournment until September 20, 2016. The request was received by the Residential Tenancy Branch on the day of the hearing. The tenants did not communicate with the landlord at any time after the application was served. It is up to the tenants to seek an

adjournment or request different form of hearing and provide time for the landlord and the Residential Tenancy Branch to address the request. The tenant's had the opportunity to submit documentary evidence and photos in response to the landlord's claims and the tenant's representative, who said she was familiar with all the issues, had the opportunity to respond on the tenant's behalf. I find that this matter should not be adjourned because the tenants did not raise the matter until the day before the hearing; The Residential Tenancy Branch did not receive any communication from the tenant until the day of the hearing and the landlord was never notified of the tenants' objection to the hearing.

With respect to the landlord's claims, the landlord's photographs and the condition inspection report shows that there was significant paint and drywall damage at the end of the tenancy that was not present at the outset. The front window was broken and had to be replaced at a cost of \$73.70 and the tenants did not pay the final Hydro bill in the amount of \$28.94. I allow these claims in the amounts stated.

The landlord claimed \$236.00 for paint and materials to repair the drywall and \$600.00 for labour. The damage inspection report prepared at the start of the tenancy showed that there was pre-existing damage to the walls in the rental unit. The inspection report noted scuffs and pencil marks, some paint peeling, damage and marks on trim and lifting wainscoting. Not all the damage was caused by the tenants during the tenancy and some is due to reasonable wear and tear. I allow the landlord's claim for supplies and labour for drywall repairs and painting for two thirds of the amounts claimed, namely: \$157.33 for materials and \$400.00 for labour.

The landlord claimed \$601.74 for carpet replacement. The inspection report noted that carpet was stained and dirty. The landlord did not provide evidence to establish the age of the carpet at the beginning of the tenancy. The landlord did not provide evidence to show that any effort was made to clean the carpet before it was replaced. I find that the landlord's evidence does not establish on a balance of probabilities that the carpet could not be cleaned and that the tenants should bear the full cost of replacement. I find that the landlord has not satisfied the burden of proving entitlement to the amount claimed for the cost of carpet replacement and this claim is denied.

The landlord claimed the sum of \$3,487.19 for the cost to replace laminate flooring. The landlord said the flooring was new at the beginning of the tenancy. The landlord provided a quote for replacing the laminate floor. The floor was not replaced. I accept that the photographic evidence shows damage to the floor in several locations in the living room, in the hall and in two bedrooms. Presumably the rental unit has been re-rented since the tenants moved out. I find that the floor damage, although significant, is not so extensive that it renders the floors unusable and I find that the landlord should be compensated for the floor damage by an award that reflects diminution in value, rather

than by an award for the entire replacement cost of all the laminate flooring. Such an award although necessarily somewhat arbitrary, should take into account the diminished attractiveness of the flooring and the reduced life expectancy due to the damage. I fix the appropriate award for diminution in the value of the floor over its remaining life in the amount of \$500.00.

The landlord's claims have been allowed as follows:

• For window replacement:	\$73.70
• For unpaid Hydro:	\$28.94
• For paint and materials:	\$157.33
• For labour:	\$400.00
• For diminution in values of flooring:	\$500.00
 Total award:	 \$1,159.97

The landlord is entitled to recover the \$100.00 filing fee for his application, all other claims by the landlord are dismissed without leave to reapply. I order that the landlord retain the security deposit and pet deposit in the total amount of \$700.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$459.97. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's claim has been allowed in the amount stated and he has been granted a monetary order in the amount of \$459.97.

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: October 26, 2016

Residential Tenancy Branch