



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NALABILA CREEK PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD OPE FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution dated April 29, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement
- an order permitting the Landlord to retain all or part of the security deposit;
- an order of possession based on a notice to end tenancy for end of employment; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by E.W. and A.Z. The Tenants were represented at the hearing by N.Z. All parties giving evidence provided a solemn affirmation.

The Landlord submitted 35 pages of documentary evidence to the Residential Tenancy Branch on September 16, 2016. However, the Landlord's documentary evidence was served on the Tenant in May 2016, and the Tenant acknowledged receipt at that time. No issues were raised with respect to service or receipt of the Landlord's Application or documentary evidence. The Tenant did not submit any documentary evidence.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Preliminary and Procedural Matters

The parties confirmed at the outset of the hearing that the Tenants are no longer living in the rental unit. Accordingly, the Landlord's agents confirmed the Landlord no longer requires an order of possession. This aspect of the Landlord's Application will not be considered further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order permitting the Landlord to retain all or part of the security and pet damage deposits?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. The tenancy agreement confirms a month-to-month tenancy began on July 1, 2012. Rent in the amount of \$500.00 was payable each month for the 3-bedroom unit. The Tenant N.Z. was employed by the Landlord as a site caretaker and the rent payment was deducted from his paycheque. The Tenants paid a security deposit of \$250.00 at the beginning of the tenancy. The tenancy ended on or about August 31, 2015, when the employment relationship between the Landlord and N.Z. ended.

The Landlord's monetary claim was summarized on a Monetary Order Worksheet. I address each item in turn:

Key replacement. The Landlord seeks to be compensated \$2,042.10 to re-key the entry to each of four buildings and to provide replacement keys to a total of 44 tenants.

In reply, N.Z. testified he gave back the master and service room keys directly to the Landlord's agent. E.W. agreed but noted that N.Z. was provided with additional master and storage room keys that were not returned. N.Z. stated these were left in a storage room.

Painting. The Landlord claimed \$4,098.05 to paint the rental unit. A.Z. testified there was extensive colouring on walls with a metallic pen. She referred to photographs submitted into evidence by the Landlord. The photographs depicted drawings and writing on the walls of the rental unit. A.Z. testified that considerable preparation and priming was required and that the colour still bled through. Photographs of the drawings were provided in support.

In addition, A.Z. advised the Tenants painted parts of the rental unit with bright orange and blue paint. A.Z. conceded the Landlord gave the Tenants permission to paint in the rental unit, but that the agreement was that the Tenants would paint the rental unit a neutral colour at the end of the tenancy. Photographs and a receipt were provided in support of this expense.

In reply, N.Z. acknowledged that his daughter drew on the walls and that the Tenants painted parts of the rental unit orange and blue. However, N.Z. suggested he was a painter for many years and that a special primer is available to inexpensively deal with this.

Carpet and underlay. The Landlord claimed \$3,639.64 to replace carpet and underlay throughout the rental unit. A.Z. testified that it appeared that some solution had been poured on the carpet throughout the rental unit, and that the solution had “burned” the carpet fibres. A.Z. also advised that a portion of the carpet was spray-painted with red paint. Photographs depicting the damage and a receipt for this expense were submitted in support.

In reply, the N.Z. testified that he never left the carpets in the condition alleged by A.Z. and shown in the photographs. He does not know where the marks came from.

Appliances. The Landlord seeks to be reimbursed \$276.79 for the cost to replace components of the oven and fridge. A receipt was provided in support.

In reply, N.Z. stated that the Tenants left the rental unit “nice and clean”, and that the appliances were in “perfect running condition”.

Plumbing. The Landlord claimed \$233.45 due to plumbing issues discovered after the tenancy ended. According to A.Z., all drains in the rental unit needed to be augured as a result of heavy grease discovered down all drains. In addition, A.Z. testified the toilet was clogged with a round item resembling a Christmas decoration. Photographs depicting the round item and a receipt were provided in support of this aspect of the Landlord's claim.

In reply, N.Z. testified that the Tenants never put grease down the drains, but suggested it had come from the rental unit below that of the Tenants. He also stated the issue with the toilet was reported by the Tenants but was not fixed by the Landlord.

General maintenance. The Landlord sought reimbursement of \$930.00 paid to perform various repairs around the suite, which included walking through the rental unit; making a list of necessary repairs; removing broken doors and fixtures; removing garbage; sanding walls; installing lights, baseboards, blinds and drapes; and materials. According to A.Z., these tasks were completed by a maintenance person to avoid having to pay a tradesperson and therefore keep the cost down. A time sheet detailing the date, activity, time spent, and hourly rate was provided in support.

In reply, N.Z. submitted that there was no need for the work to be done. He testified that the unit was almost empty when he moved in and did not have doors and some fixtures installed. A.Z. agreed but confirmed they were installed later and were damaged or absent when the Tenants moved out.

Cleaning. The Landlord wished to be compensated \$431.25 for cleaning required in the rental unit. Cleaning included washing walls, windows, floors and appliances. A number of items were also left in the rental unit including various household items and furniture. A time sheet detailing the date, activity, time spent, and hourly rate was provided in support. Photographs were submitted in support.

In reply, N.Z. acknowledged the debris around the rental unit depicted in various photographs submitted by the Landlord was left by the Tenants but questioned the apparent duplication of work completed by the painters, maintenance person and cleaner.

Paint supplies. The Landlord wished to be reimbursed \$500.00 for paint supplies used by the painting company referred to above. However, A.Z. acknowledged the amount sought was an estimate and that no receipt was provided in support.

In reply, N.Z. repeated his concerns about the cost as described in the testimony above.

Lost rent. The Landlord claimed lost rent for six months totalling \$7,200.00. According to A.Z., this amount is being claimed because it took time to source a painter, maintenance person and cleaner, and the rental unit was not ready until March 1, 2016. She stated the rental unit has since been rented for \$1,200.00 per month.

In reply, N.Z. questions this aspect of the Landlord's claim, noting six months to replace carpet and paint the rental unit is too long.

Finally, the Landlord has requested to retain the security deposit paid by the Tenants in partial satisfaction of any monetary award granted.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord alleged the Tenants caused damage to the rental unit and that the damage resulted in losses. Each of the Landlord's claims has been addressed in turn:

Key replacement. The Landlord has claimed \$2,042.10 to re-key the entry to each of four buildings and to provide replacement keys to 44 tenants. Section 2 of the *Act* confirms that the *Act* applies to "tenancy agreements, rental units and other residential

property.” The *Act* does not apply to employment disputes. I find that the relief sought by the Landlord arose out of the employment relationship between the Landlord and N.Z., and not out of the tenancy. Accordingly, I dismiss this aspect of the Landlord’s claim.

Painting. The Landlord claimed \$4,098.05 to paint the rental unit. The Landlord’s agent testified that the damage took considerable effort to repair. In this case, N.Z. acknowledged his daughter drew on the walls and that the Tenants painted bright colours on the walls. Policy Guideline 1 states:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

I find it was necessary to paint the rental unit due to damages for which N.Z. claimed responsibility. However, I find the 109.5 hours at \$35.00 per hour to be excessive. Based on the condition of the rental unit as depicted in the Landlord’s photographic evidence and the length of time the Tenants resided in the rental unit, I grant the Landlord an award of \$2,730.00. This amount allows 22 hour for preparation work, 16 hours to prime, and 40 hours to paint the rental unit, which I consider to be reasonable based on the evidence before me. I dismiss the remainder without leave to reapply.

Carpet and underlay. The Landlord claimed \$3,639.64 to replace carpet and underlay throughout the rental unit. The Landlord provided oral testimony and photographic evidence depicting the condition of the carpets. I find the carpet damage depicted in the Landlord’s photographic evidence indicates the damage was more likely than not to have been caused either intentionally or negligently by the Tenants during the tenancy. Accordingly, I find the Landlord is entitled to a monetary award of \$3,639.64 to replace the carpet and underlay in the rental unit.

Appliances. The Landlord seeks to be reimbursed \$276.79 for the cost to replace components of the oven and fridge. A receipt was provided in support. Although N.Z. testified the appliances were left in good working order when the Tenants vacated the rental unit, I find it unlikely the Landlords would have had the parts replaced unnecessarily. Accordingly, I find the Landlord has demonstrated an entitlement to an award of \$276.79 to replace components of the oven and fridge.

Plumbing. The Landlord claims \$233.45 for plumbing issues that were discovered after the tenancy ended. Specifically, grease was found in the drains, and an object was found in the toilet. The Tenant suggested the grease was from the rental unit below. However, I find it to be more likely than not that the grease and the round object were either intentionally or negligently the fault of the Tenants. Accordingly, I find the Landlord is entitled to an award in the amount of \$233.45.

General maintenance. The Landlord claimed \$930.00 for various minor repairs in the rental unit. The Tenant suggested there appeared to be duplication between the work performed by the painters and the Landlord's maintenance person. On review of the time sheet submitted by the Landlord, no less than 14.5 hours were spent sanding and filling holes in the walls. This number of hours was in addition to the 22 hours of preparation performed by the painting company. Accordingly, I have deducted 14.5 hours from timesheet and find the Landlord is entitled to an award of \$640.00 for repairs, which was calculated based on 17 hours at \$20.00 per hour, plus \$300.00 for materials. I find this amount to be reasonable based on the evidence before me. The remainder is dismissed without leave to reapply.

Cleaning. The Landlord wished to be compensated \$431.25 for cleaning required in the rental unit. This amount reflects 28.75 hours of work at \$15.00 per hour, as highlighted on a time sheet provided by the Landlord. Again, the Tenant suggested the amount claimed was excessive. On review of the time sheet, and in light of the painting and carpet replacement completed by the Landlord, I agree. I find the amount claimed to be excessive and award the Landlord \$240.00, which reflects 16 hours of work at \$15.00 per hour, which I consider to be reasonable based on the evidence before me. I dismiss the remainder without leave to reapply.

Paint supplies. The Landlord wished to be reimbursed \$500.00 for paint supplies used by the painting company referred to above. However, A.Z. acknowledged the amount sought was an estimate and that no receipt was provided in support. As the Landlord has failed to meet part three of the test for damages or loss, this portion of the Landlord's claim is dismissed due to insufficient evidence.

Lost rent. The Landlord claimed lost rent of \$7,200.00 for the six month period from September 2015 to February 2016. The Landlord's agent testified that the repairs took so long because of difficulties sourcing contractors and other workers. N.Z. submitted the work should not have taken so long.

The Tenant is not responsible for difficulties faced by the Landlord in attempting to find contractors and other workers to complete painting and cleaning. Given the nature and extent of the damage depicted in the Landlord's photographic evidence, I find it appropriate to award the Landlord one month rent, or \$1,200.00, for this aspect of the Landlord's claim. The remainder of the Landlord's claim for lost rent is dismissed due to what I find to be a failure on the part of the Landlord to minimize the damage or loss, pursuant to section 7 of the *Act*.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee.

The Landlord wishes to apply the security deposit in partial satisfaction of the claim, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$8,809.88, which has been calculated as follows:

Claim	Allowed
Key replacement:	\$0.00
Painting:	\$2,730.00
Replace carpet and underlay:	\$3,639.64
Appliance repairs:	\$276.79
Plumbing:	\$233.45
General maintenance:	\$640.00
Cleaning:	\$240.00
Paint supplies:	\$0.00
Lost rent:	\$1,200.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$250.00)</i>
TOTAL:	\$8,809.88

Conclusion

The Landlord's Application is partially successful. Accordingly, the Landlord is granted a monetary order in the amount of \$8,809.88. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 8, 2016

Residential Tenancy Branch