



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent, for money owed or loss under the Act, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing, I informed that landlords that I would not consider their claim for travel expenses as they do not live in the Province of British Columbia. It was the landlord's business choice to own property in an area that they do not reside. Therefore, all claims related to travel are dismissed, this includes motel costs.

Procedural matter

As the hearing proceeding for nearly the allotted time and I had not heard the submission of the tenants, I suggested to the parties that the matter be adjourned to give the tenants sufficient time to respond. However, the tenants' objected to the matter being adjourned and stated that their response would be very brief. Therefore, I allowed the hearing to continue after the allotted time to accommodate the brief submission of the tenants.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for money owed or loss?

Are the landlords entitled to monetary order for damages to the rental unit?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on July 1, 2015. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenants.

On February 24, 2016, the parties attended a dispute resolution hearing. At the hearing the landlords were granted an order of possession of the rental unit. The tenancy ended on February 26, 2016.

A move-in condition inspection report was completed. Filed in evidence is a copy of the report.

The landlords claim as follows:

a.	Unpaid rent January and February 2016	\$ 2,000.00
b.	Damages to the rental unit (materials)	\$ 7,794.96
c.	Labour	\$11,070.00
d.	Mileage 714 km @.54 km	\$ 385.58
e.	Loss of revenue for March 2016	\$ 1,000.00
f.	Filing fee	\$ 100.00
	Total claimed	\$21,964.96

Unpaid rent January and February 2016

The landlords testified that the tenants did not pay January and February 2016, rent. The landlords seek to recover the amount of \$2,000.00.

The tenants acknowledged that rent for January and February 2016, were not paid. The tenants acknowledged that they did not have the permission or the authority under the Act to withhold rent.

Damages

The landlords testified that the tenants were served with an eviction notice as they were smoking cannabis in the rental unit. The landlords stated that the tenants left the rental unit unclean and they deliberately caused damage. Filed in evidence in support of the damages are photographs, receipts and itemized spreadsheets for material, labour and mileage.

The landlords testified that the tenants made no effort to remove their personal items and they left a lot of garbage behind. The landlords stated that it took them two days to remove the abandoned items and garbage.

The landlords testified that the rental unit was filthy, the stove was covered in what appeared to be baked on lasagna and the refrigerator was not cleaned. The landlords stated there were gummy bears (candy) in the window frames which the tracks of the windows had to be removed in order to remove the melted sugar. The landlords stated that the entire rental unit needed to be cleaned.

The landlords testified that the bathroom was damaged by the tenants urinating on the walls and floors. The landlords stated that the smell of urine was unbearable and the urine penetrated the base of the cabinet, the baseboards and the lower portion of the drywall. The landlords stated that they had to remove and dispose of the cabinet, baseboards and drywall. The landlords stated that they then had repair the drywall, and replace the cabinet.

The landlords testified that the toilet was not cleaned during their tenancy and was so dirty, that even after they used a toilet acid would not come clean. As a result they had to replace the toilet.

The landlords testified that the urine on the floor in the bathroom travelled along the baseboard into the hallway popping the laminate tiles and penetrating the outer edge of the drywall. The landlords stated that the tiles and drywall had to be removed and replaced.

The landlords testified that after they removed the garbage from the unit they discovered that the tenants had urinated in the middle of the living room carpet which

penetrated the underlay. The landlords stated that the carpet and underlay had to be removed and replaced. The landlords stated that the bedroom carpet also had to be removed as there were melted gummy bears (candy) on the carpet. The landlords stated it took them one full day to remove the carpets and underlay.

The landlords testified that they replaced the carpet with laminate floor which was double the cost of the carpet and tile; however, they seek to recover the amount they would have had to pay for carpet in the amount of \$1,590.16 and the tiles in the amount of \$506.31.

The landlords testified that because the tenants were smoking cannabis and the odour was overwhelming; they had to paint the entire rental unit, which included the ceilings. The landlords stated that they had to first use a special sealer to seal the smell and then paint over the sealer. The landlords stated that the rental unit was newly painted at the start of the tenancy.

The landlords testified that the tenants also physically damaged the kitchen cupboards as some of the doors were broken at the hinges, which had to be repaired.

The landlords testified that they were unable to find contractors on short notice and it would be a 6 to 8 week wait before they were available. The landlords stated that as a result they had to do the work as they could not afford to leave the rental unit empty and loss further revenue.

The landlords testified that it took them a total of 422 hours to remove the garbage, remove and replace the flooring, remove and repair the bathroom damage, to repaint the unit and to clean the premises. The landlords stated that they seek to be compensated at the rate of \$25.00 for a total of \$10,550.00. The landlords stated that they were able to find casual labour to assist and seek to recover casual labour in the amount of \$320.00.

The landlords testified that the tenants also left a van behind on the property which had to be towed.

Mileage

The landlords testified that they had to travel to purchase materials for the above noted damages. The landlords seek to recover 714 km at the rate of \$.54 as they determined the amount by the federal guidelines for travel. The landlords seek to recover the amount of \$385.58.

Loss of revenue for March 2016

The landlords testified that due to the condition of the rental unit they were unable to rent the premises for the month of March 2016. The landlords seek to recover loss of revenue in the amount of \$1,000.00.

Tenants' Response to damages

The tenants testified that they did not cause damage to the premises by urinating on the floors causing the damage. The tenants stated that there was a humidity problem in the rental unit that caused the damage.

The tenants testified that they did leave the van behind; however, they had sold it.

Landlords' argue

The landlords argued that the only problem was in the cold room which is on the other side of the rental unit. There were no problems within the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid rent January and February 2016

Section 26 of the Residential Tenancy Act states:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the both parties was the tenants did not pay rent owed for January and February 2016. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$2,000.00**.

Damages

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect.

I am satisfied that the rental unit was left unreasonable clean, with large amount of garbage and abandoned property as this is support by the documentary evidence.

I accept the landlords' version over the tenants' version that the tenants caused deliberate damage to the rental unit by urinating on the bathroom walls, floors and living room carpet.

I do not accept the tenants' version that the damage was caused by humidity as that would not cause an overwhelming smell of urine. Nor would it be significant enough to cause the cabinet, baseboard and drywall to absorb such liquid, if it was not deliberate neglect on their behalf. Further, it is not reasonable that humidity would only impact the center of the living room carpet.

I find the tenants have breached the Act when they left the rental unclean and when they caused deliberate damage.

I have considered Residential Tenancy Policy Guideline 40, which states when tenant's caused damages to the rental unit an Arbitrator may consider the useful life of a building

element and the age of the item. As I have the discretion, I decline to consider the use life, as this damage was caused by the deliberate act of the tenants.

The landlord is claiming the amount of \$7,794.96 for materials. The landlord has provided an itemized list and receipt in support of their claim. However, I have reduced their claim by the following items plumbing repairs, electrical repairs and black mould repairs as the landlords provided no testimony on these issues. Further, electrical repairs and plumbing repairs are the landlords' responsibility.

Further, in the material portion the landlords are claiming travel time from their accommodation to the rental unit. I find traveling to or from the rental unit is the cost of the landlords doing business. I further reduced that amount from the amount claimed. Therefore, I find the landlords are entitled to recover for materials the amount of **\$6,753.84**.

I am satisfied that the landlords had to complete a considerable amount of work. The hours claimed of 422, I find is not unreasonable based on the work completed. However, I am not satisfied that the landlords are entitled to claim \$25.00 per hour, as it is reasonable that it would take the landlords longer to complete the work, rather than a qualified trades person. I find a reasonable hourly rate of \$15.00. Therefore, I find the landlords are entitled to recover for labour the amount of **\$6,330.00**

Mileage

The landlords are claiming to recover the cost of 714 km at the rate of \$.54 per km for traveling to obtain materials. I have review the itemize list and I find it unreasonable as it shows that the landlords are claiming for 54 return trips to obtains supplies, I find this many trips is unreasonable. Further, this amount also includes 162.4 km for traveling to and from the rental to their accommodation. As I have previous found traveling from their accommodations to the rental unit is the cost of doing business.

However, I am satisfied that the landlords would have had to travel to purchase materials to make the necessary repairs. Therefore, I grant the landlord a reasonable amount in the amount of **\$100.00**.

Loss of Revenue

As I have found the tenants breached the Act when they failed to leave the rental unit cleaned and undamaged. I find the landlords are entitled to recover loss of revenue for March 2016, as the landlords are entitled to be in the same position as if the tenants not

breached the Act. Therefore, I find the landlords are entitled to recover loss of revenue the amount of **\$1,000.00**.

I find that the landlords have established a total monetary claim of **\$16,283.84** comprised of the above-described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$15,783.84**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 16, 2016

Residential Tenancy Branch