



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made on July 28, 2016, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, damage of loss under the Act, to retain the security and pet deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The tenant confirmed the co-tenant was served with Notice of the hearing. Evidence of service by registered mail was supplied by the landlord.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

I note that the claim for unpaid rent represents loss of rent revenue.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for loss of rent revenue?

May the landlord retain the pet and security deposits?

Background and Evidence

This one year fixed term tenancy commenced on August 11, 2015. Rent was \$2,950.00 due by the first day of each month. The tenants paid a security deposit in the sum of \$1,475.00 and a pet deposit in the sum of \$1,000.00. At the conclusion of the term, August 31, 2016, the tenants were to vacate the rental unit.

A move-in condition inspection report was completed.

The landlord has made the following claim, adjusted downward from the monetary worksheet supplied in evidence:

Loss one-half July 2016 rent	1,332.50
Liquidated damages	425.67
Carpet cleaning	404.25
Yard clean up	500.00
Painting	735.00
TOTAL	\$3,397.42

A move-out condition inspection report was completed. A copy of the reports was supplied as evidence. The tenants and the agent for the landlord met on July 5 and 11, 2016. The tenant said the final inspection took place on July 15, 2016.

On July 13, 2016 the tenants emailed the landlord a forwarding address. Within 15 days the landlord applied claiming against the deposits.

The landlord had claimed the cost of a fridge door. The tenant confirmed they had signed the move-out inspection report, agreeing to a deduction from the deposit of \$450.00 plus GST for the fridge door. The door was originally included in the claim made. The tenants did not agree to any other deductions for damage.

The tenants gave notice to end the tenancy and vacated on June 22, 2016. On April 28, 2016 the landlord issued the tenants a letter acknowledging the notice to end the tenancy and setting out the requirement that the tenants attempt to locate a sublet, as the tenants would remain responsible for rent and utilities to the end of the term or until a new tenant was located. The tenants were reminded of the tenancy agreement liquidated damages clause five, which provides, in part:

“If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct, or an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages....”

Loss of Rent Revenue:

The tenants paid rent for June 2016. The landlord was able to locate new tenants effective mid-July 2016. The landlord has claimed the loss of rent revenue for the first two weeks of July 2016.

The tenant confirmed they vacated on June 22, 2016 and that no rent was paid for the month of July, 2016. The tenant said he understood the nature of this claim.

Liquidated Damages:

As the tenants ended the tenancy prior to the end of the fixed term the landlord has claimed liquidated damages. The sum claimed is reduced from that indicated in clause five of the tenancy agreement.

The tenant said the landlord had agreed to the end of tenancy. The tenant pointed to an email sent by the landlord on April 23, 2016 in which the landlord would mitigate damages against the owner to secure a new tenant. The landlord wrote that once written notice was given they would commence advertising the unit and would list it available for June 14, 2016. The tenants would be required to pay all of June rent but if a new tenant was located for mid-month, the balance of June's rent would be returned to the tenants. The tenant said that this communication provided an indication the landlord intended to relieve the tenants of any responsibility for loss of rent beyond June 2016.

Carpet Cleaning:

Clause 23 of the tenancy agreement required the tenants to have the carpets professionally cleaned at the end of the tenancy, if the carpets were new or professionally cleaned at the start of the tenancy. There was no dispute that the rental unit and carpets was new at the start of the tenancy.

The landlord misplaced the invoice for carpet cleaning and asked the cleaning company to reissue the invoice. The landlord supplied a copy of a January 1, 2017 invoice for the rental unit in the sum of \$557.55. The invoice indicated there was an odor from dogs and ozone treatment was recommended.

The tenant said the landlord did not mention any problem with the carpets during the final inspection. After the final condition inspection the landlord text the tenant to request a copy of the tenants' carpet cleaning invoice. The tenant said they did not have the carpets professionally cleaned, but they were left in a clean state. The tenant questioned the reproduced invoice and rejected that invoice as a fabrication, due to the date of issue.

Yard Cleanup:

The move out condition inspection report records that there were some weeds in the back yard. The landlord submitted a series of coloured photos showing a number of thistles in the mulched flower beds. The tenants had signed a "Lawn and Garden Maintenance Form" agreeing to weed the flower bed and deadhead flowers at least once every two weeks. The tenants agreed to complete a fall and spring "clean up" of the beds. If the work is not up to the landlords' expectations the tenants agreed the landlord would hire a landscaping company, at the tenants' expense.

The landlord had a landscape company complete weeding, cultivation of flower beds and blowing walkways. The work took eight hours at a cost of \$280.00. There was an additional charge for a dump fee in the sum of \$20.00.

The tenant responded that approximately two weeks prior to vacating the weeding had been completed. The tenant said there were maybe three weeds in the garden, which were removed during the final inspection that took place on July 15, 2016. The tenants assume that between June 22 and the time new tenants took possession, some weeds would have appeared.

The tenants supplied a copy of a text message sent by the agent on July 15, 2016 which indicates the landlord will have someone come in to take care of weeding as it was not completed.

The landlord countered that the tenants and agent had to meet on several occasions at the end of the tenancy as there had been deficiencies with the unit.

Painting:

There was no dispute that the tenants placed some holes in the walls for art and a television bracket. The tenants painted the walls in an attempt to repair the holes. The condition inspection report includes notations for the entry, hallway, living room and several bedrooms where the landlord determined there was a "poor match of paint." The report also indicated some poor repairs were made to the walls in the hallway. The landlord said the tenants attempted to make repairs but that the paint colour did not match. The landlord was required to have the walls repainted fully, so that the mismatched colour was covered. The landlord said the home had been brand new at the start of the tenancy so wear and tear was not a likely explanation. The landlord provided photographs taken of the walls. The landlord said photos do not easily show the damage.

An August 25, 2016 invoice in the sum of \$735.00 was provided for repair and painting of select walls throughout the unit.

The tenant responded that photos supplied show that there was damage to some areas of the walls at the time they moved into the unit. The tenants supplied a number of

photographs of the walls, after they had been repaired and painted. The tenants' written submission indicates that the landlord refused to provide samples of paint colours. The tenant said there was no damage left after they moved out.

The landlord responded that even the tenants' photos show areas where a difference shade can be seen. The landlord said this was a new home and that touching up the mismatched paint was not sufficient; complete walls had to be painted.

The landlord said that \$560.00 of the deposits has been returned to the tenants. The tenant said he had no record of any funds having been returned by the landlord.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

Residential Tenancy Branch policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 45(2) of the Act provides:

Tenant's notice

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the

service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

From the evidence before me I find that the tenants gave notice to end the tenancy in breach of section 45 of the Act. Based on the notice given by the tenants I find, pursuant to section 44(f) of the Act that the tenancy ended effective June 30, 2016; the date up to which rent had been paid. I find that the landlord took steps to mitigate a loss of rent revenue by locating new tenants within two weeks of the end of the tenancy. There was no evidence that the landlords' stated intention for June, should they locate new tenants for mid-month, was confirmation the landlord would not seek compensation for loss of revenue.

Therefore, I find that the landlord is entitled to compensation for loss of rent revenue as claimed.

The tenants signed a tenancy agreement that requires payment of liquidated damages should the tenants vacate before the end of the fixed term. As the tenants gave notice and vacated prior to the end of the fixed term I find that the landlord is entitled to compensation as set out in clause 5 of the tenancy agreement. The sum claimed is slightly lower than that included in the tenancy agreement.

I have considered section 32 of the Act and the terms of the tenancy agreement against the claims set out by the landlord. Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement

Clause 23 of the tenancy agreement required the tenants to have the carpets professionally cleaned at the end of the tenancy if the carpets were new at the start. The tenant confirmed the carpets were new and that they were not professionally cleaned at the end of the tenancy. It does not matter that the carpets were clean; the tenants were required to have them professionally cleaned, as set out in the tenancy agreement signed by the parties.

I have rejected the tenants' suggestion that the invoice was fabricated and, as a result, that the landlord has committed fraud. The landlord brought the invoice forward, with what I found was a reasonable explanation of the date found on the invoice; January 1, 2017.

Therefore, I find that the landlord is entitled to compensation for carpet cleaning in the sum claimed.

From the evidence before me I find that at the end of the tenancy there were some weeds that had not been removed by the tenants. The inspection report makes no reference to any other deficiency; such as the need for blowing or cultivation of flower beds. From the photographic evidence it is difficult to assign the cost of dump fees to the tenants, as there do not appear to be sufficient weeds to merit a dumping fee. Therefore, I have reduced the sum for weeding costs to a nominal amount of \$40.00. The balance of this claim is dismissed.

From the evidence before me I find that the tenants rented what was a new unit for a tenancy that ended after less than one year. A tenant is permitted to make a reasonable number of holes in walls, for the hanging of art. For some reason the tenants chose to paint a number of the walls in the rental unit. I have considered the photographic evidence and the submissions of each party and find that the walls were not painted properly as they did not match. This was set out in the condition inspection report.

The inspection report is somewhat confusing as there are six references to poor paint matches on walls and a separate notation that nine walls are damaged. The report does not set out specific damage to walls outside of a notation of minor damage to a bathroom wall.

Neither sets of photos meant to show the paint coverage were sufficient to show any mismatched paint. I agree with the landlords' submission that this type of damage is difficult to capture in a photograph. Therefore, based on the inspection report supplied, the fact that this was a new rental unit and the tenants' confirmation that they painted without the benefit of information on a proper matched paint, that the landlord is entitled to costs for repainting the six walls specifically notated as mismatched on the inspection report and repair of the minor damage to the bathroom wall.

Therefore, I have reduced the sum due to the landlord to \$500.00, for painting of the walls referenced on the inspection report and repair of the bathroom wall.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Loss one-half July 2016 rent	1,332.50	1,332.50
Liquidated damages	425.67	425.67
Carpet cleaning	404.25	404.25
Yard clean up	500.00	40.00
Painting	735.00	500.00
TOTAL	\$3,397.42	\$2,702.42

The balance of the claim is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

At the end of the tenancy the tenants signed agreeing to a deduction from the deposit in the sum of \$472.50 (\$450.00 plus GST.) Therefore, I find that the value of the security deposit was reduced to \$1,002.50. The balance of the security and pet deposits would then be \$2,002.50. However, the landlord said that \$560.00 was returned to the tenants. If that is correct the security deposit held by the landlord would be reduced to \$442.50. This would affect the off-set value of the monetary order.

If the landlord has evidence of repayment of \$560.00 of the security deposit to the tenants, the landlord may bring evidence of that payment forward at the point of enforcement. Evidence of payment of the \$560.00 may be provided to the tenants, who, if they accept that evidence, may agree that the value of the monetary order must be increased by \$560.00. At this time I have no evidence that \$560.00 has been returned and find that the landlord is holding the full amount of the deposits in the sum of \$2,002.50.

Therefore, I find that the landlord is entitled to retain the tenant's security and pet deposits in the amount of \$2,002.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order for the balance of \$699.92. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court. This order may be increased by \$560.00 if the landlord brings forward evidence of payment made in that sum to the tenants.

Conclusion

The landlord is entitled to compensation as set out above.

The landlord may retain the security and pet deposits.

The landlord is at liberty to prove that \$560.00 of a deposit has been returned to the tenants. If the landlord has evidence of such a payment made refunding a portion of a deposit, the amount of the monetary order will increase by \$560.00.

This decision is final and binding and 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: February 03, 2017

Residential Tenancy Branch

