



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, SS, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order for the landlord to serve the tenant in a manner not provided under s. 89 of the *Residential Tenancy Act* (Act); and to recover the filing fee from the tenant for the cost of this application.

At the hearing the landlord's agent testified that they withdraw their application for Substitute Service as they were able to serve the tenant under s. 89 of the Act. Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the Act; served by registered mail on September 24, 2016 to an address determined by a process servicer. Canada Post tracking numbers were provided by the landlord in documentary evidence and evidence showing the hearing documents were collected and signed for by the tenant on September 27, 2016.

The landlord's agent (the landlord) 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

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order to recover a loss of rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord testified that this tenancy started on February 01, 2013 for a fixed term of one year, thereafter continuing as a month to month tenancy until the tenant vacated the rental unit without proper notice sometime between October 18 and October 31, 2015. Rent for this unit was \$2,600.00 per month

due on the 1st of each month in advance. The tenant paid a security deposit of \$1,300.00 on January 25, 2013.

The landlord testified that no rent was received from the tenant for August, September and October, 2015 to a total amount of \$7,800.00. The tenant advised the landlord on October 17, 2015 that the tenant was not going to extend his tenancy and intended to vacate the rental unit. The landlord is unsure when the tenant actually moved and only determined the rental unit was empty in early November, 2015.

The landlord testified that due to the improper notice and the condition the rental unit was left in by the tenant, the landlord was not able to re-rent the unit for the month of November, 2015. The landlord therefore seeks to recover the loss of rent for November of \$2,600.00.

The landlord testified that the tenant left the rental unit in a filthy condition with many items damaged. The tenant had also kept a pet in the unit which appeared to have been left unattended for weeks at a time, while the tenant was away working, as this pet had urinated and defecated on the walls and flooring.

The landlord testified that they had not done a move in condition inspection report but did take photographs of the unit prior to the tenant moving in. At the end of the tenancy the landlord again took photographs showing the condition of the rental unit. The landlord has provided some of these photographs to show the comparison between the unit at the start and end of the tenancy and depicting the damage in the unit.

The landlord referred to the invoice from the contractor who was contracted to do the cleanup and the repair work in the unit. The landlord described the areas that required work as follows:

Repainting - The unit had to be repainted due to scuffs, on the walls along with human and pet urine and feces. The unit was last repainted in September 2012. The landlord seeks to recover \$3,795.00 as shown on the invoice for the materials and labour for this work.

Replacement dishwasher – The dishwasher had been in perfect working order at the start of the tenancy. It had been let pulled out from the wall and trashed. The tenant had never informed the landlord that the dishwasher had a problem that required repair. The dishwasher was approximately 10 years old and was replaced for the same type of basic dishwasher. The landlord seeks to recover \$492.33.

Plumbing and materials- The toilet was left in a disgusting condition with human waste sitting in it for months. This could not be cleaned and the toilet had to be replaced. A sink also had to be replaced as it

had dog feces in it. The sink and faucets were also damaged. The sink and toilet were 12 years old. The landlord seeks to recover \$2,140.72 for this work.

The flooring was the original hard wood flooring which had been destroyed by dog urine. The urine had soaked into the wood and had actually bleached the wood. The landlord agreed the flooring was 50 or 60 years old. The landlord seeks to recover \$3,743.25 for replacement flooring.

The kitchen and bathroom faucets were damaged and left in a disgusting condition. One faucet had been ripped off the sink. These were approximately 12 years old. The landlord seeks to recover \$188.06.

Bathroom sink – the landlord seeks to recover the cost to replace the sink of \$119.36.

Electrical materials and services – the landlord seeks to recover \$224.25 but is unsure what this cost is for.

Decking material, base shoe and general supplies – the deck railing had been ripped off, there was dog damage to the deck and roughly a quarter of the deck needed to be replaced. The deck was approximately five years old.

General materials – The landlord testified that this is for screws and nails. The landlord seeks to recover \$98.40.

Construction cleaning – The landlord testified that this is for the clean up after the construction work was completed. The landlord seeks to recover \$410.71.

The landlord testified that the invoice also shows a charge for labour costs of \$4,143.50. The landlord testified that this is for other trades to be hired to do work such as an electrician, plumber and decking company.

The landlord testified that with GST of \$812.90 the total invoice comes to \$17,078.83. The landlord therefore limits their claim to \$25,000 including the unpaid rent.

Analysis

The tenant did not appear at the hearing to dispute the landlord's 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 landlord's undisputed evidence before me.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. 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.

I am satisfied from the undisputed evidence before me that the tenant failed to pay rent for August, September and October, 2015 to a total amount of **\$7,800.00**. I therefore find in favor of the landlord's claim to recover this amount from the tenant.

With regard to the landlord's claim for a loss of rent for November, 2015; I refer the parties to s.45(1) of the Act which states:

45 (1) A tenant may end a periodic 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, and

(b) 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.

As this was a month to month tenancy the earliest the tenant could legally end the tenancy if he gave Notice to the landlord in October would be at the end of the following month or November 30, 2015. If the tenant does not provide proper notice under s. 45(1) of the Act the landlord is entitled to recover a loss of rent for November if the unit cannot be re-rented for November. Further to this if the tenant leaves the rental unit in a condition that prevents the rental unit being re-rented until repairs or cleaning are carried out then the tenant is also responsible for any loss of rent. Consequently, I find the tenant did not provide proper notice to end the tenancy and failed to leave the rental unit in a suitable condition to allow the landlord to mitigate any loss by re-renting it. I therefore find the landlord has established a claim to recover a loss of rent for November of **\$2,600.00**.

With regard to the damage to the rental unit; a landlord is required to complete a move in and a move out condition inspection report with the tenant at the start and end of the tenancy. The landlord failed to do these inspection reports; however, the landlord did take photographs of the unit at the start and end of the tenancy. I refer the parties to s. 21 of the Residential Tenancy Regulations which states:

21. In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I am satisfied from the evidence before me that the rental unit, although older, was in a good, clean condition with regard to its age, at the start of the tenancy and at the end of the tenancy the condition of the unit was of disrepair and was left in a filthy condition.

With this in mind I have reviewed the contractor's invoice and find this gives a description of some of the work carried out in the unit to repair the damage caused by the tenant or the tenant's pet. From this evidence I conclude that the tenant is responsible for the repairs and cleaning in the rental unit. I do; however, have to take into account the depreciation of items claimed before a final figure can be determined. I have therefore referred to the Residential Tenancy Policy Guidelines #40 which provides guidance on the useful life of building materials. Accordingly I have used these guidelines to determine the useful life of the items claimed by the landlord as follows.

Repainting - The unit was last repainted in September 2012. The useful life of interior paint is four years. As the tenancy ended in October, 2015 I find I must make a deduction from this claim for the depreciated value over three years. The landlord is therefore entitled to recover the amount of **\$948.75**.

Dishwasher - This appliance was 10 years old. The useful life is 10 years. Therefore taking into account the depreciation over its useful life the landlord is not entitled to claim for this replacement dishwasher as it was at the end of its useful life. This section of the landlord's claim is therefore dismissed.

Plumbing and materials - The toilet and sink were 12 years old. The useful life of toilets and sinks is 20 years. Although this section of the invoice is not clear as to what the cost of \$2,140.72 was for I have deducted the depreciated value for 12 years and find the landlord is entitled to an amount of **\$856.28**.

Flooring – The landlord agreed the flooring was 50 or 60 years old, the useful life of hardwood flooring is 20 years. The landlord has claimed \$3,743.25; however, as the life of the hardwood floor is well past the useful life I find the depreciation of this flooring means the landlord is not entitled to recover the costs to replace the flooring. This section of the landlord's claim is therefore dismissed.

Kitchen and bathroom faucets – These faucets were 12 years old, the useful life is 15 years. The landlord has claimed \$188.06. I have therefore deducted the depreciated value of 12 years and find the landlord is entitled to an amount of **\$37.61**.

Bathroom sink – The sink is 12 years old. The useful life is 20 years. The landlord seeks to recover \$119.36. I have therefore deducted the depreciated value of 12 years and find the landlord is entitled to an amount of **\$47.74**.

Electrical materials and services – the landlord was unable to provide any description or evidence to show what damage the tenant caused to any electrical systems or services. I cannot therefore conclude

that any damage was caused through the tenant's actions or neglect and that any repairs where not just updates of the system. This section of the landlord's claim is therefore dismissed.

Decking materials, base shoe and general supplies – I am satisfied from the testimony before me that the deck was damaged during the tenancy. The landlord testified that the deck was approximately five years old. The useful life of a deck is 20 years. As the invoice shows an amount for this work of \$603.06 I have deducted the depreciated value of five years and find the landlord is entitled to an amount of **\$452.29**.

General materials –I am satisfied when doing repairs that general material must be purchased. There is no breakdown on the invoice to show what materials were purchased. I therefore make a nominal monetary award for **\$75.00**.

Construction clean – I am satisfied that the work done to repair this rental unit was as a result of the tenant's actions or neglect and therefore I find the construction cleanup costs must be the responsibility of the tenant. The landlord is therefore entitled to recover **\$410.71**.

Labour costs – I am satisfied that the landlord incurred labour costs to make repairs; however, as some of the repairs made were to items past their useful life then it is likely at some point the landlord would have to replace these items that were damaged due to their age. I therefore award the landlord a portion of the labour costs charged to an amount of **\$2,000.00**

Taxes applied to the invoice – the landlord seeks to recover the taxes paid for this invoice of \$812.90; however, as I have reduced the landlord's claim for damages I must therefore reduce the tenant's tax liability for these damages. I therefore find the landlord may recover the amount of **\$241.41**.

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

Unpaid rent for August, September and October	\$7,800.00
Loss of rent for November	\$2,600.00
Damages to the unit	\$5,069.78
Filing fee	\$100.00
Total amount due to the landlord	\$15,569.78

The landlord continues to hold the tenant's security deposit in trust. I refer the parties to s. 39 of the Act which states:

39 *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The tenancy ended in October, 2015. The tenant has not provided his forwarding address to the landlord and the landlord had to engage the services of a process server to track the tenant and serve documents for this hearing. I find therefore the tenant has extinguished their right for the return of the security deposit and I order the landlord to keep the security deposit. The security deposit of **\$1,300.00** will be offset against the landlord's monetary claim under s. 72(2)(b) of the Act.

Monetary Order due to the landlord - \$15, 569.78 - \$1,300.00 = \$14,269.78

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$14,269.78**. 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: March 23, 2017

Residential Tenancy Branch