



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on November 20, 2016. Canada Post tracking numbers were provided by the landlord in her oral testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord GT 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

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- What are the landlords other issues?

Background and Evidence

The landlord testified that this month to month tenancy started on May 01, 2016. Rent for this unit was \$1,200.00 per month due on the 1st of each month. The tenant paid a security deposit of \$600.00 on July 20, 2016.

The landlord testified that the landlords had applied for a Direct Request Proceeding in September, 2016 after the tenant failed to pay rent for September, 2016. The landlords' application was successful and they were issued an Order of Possession and a Monetary Order for the unpaid rent for September of \$800.00. The landlord testified that the tenant was served the Order of Possession on September 30, 2016 and should have vacated the rental unit two days later.

The landlord testified that they did not enforce the Order of Possession in Supreme Court and let the tenant remain in the rental unit until she vacated. The landlord testified that the tenant did not vacate the rental unit until November 02, 2016. The landlord is unsure if the tenant paid rent for October, 2016 but the landlords do seek to recover unpaid rent for November, 2016 of \$1,200.00.

The landlord testified that the tenant caused considerable damage in the rental unit and yard. The tenant left a number of cigarette burns in the vinyl covering the deck. The landlords have provided a quote for the costs to replace the vinyl on the deck of \$4,950.00 and seek to recover this cost from the tenant.

The landlord testified that the tenant failed to clean the rental unit. The landlord GT had to clean all areas of the unit and the tenant's agent who attended the move out condition inspection checked the box on the inspection report to show that she agreed that the report fairly represents the condition of the unit. The landlord has provided a breakdown of the cleaning done in the unit and the hours taken to clean. This breakdown shows the landlord cleaned for 53 hours and they seek to recover \$25.00 an hour. The landlord testified that she used to be a professional cleaner. The landlord seeks to recover the amount of \$1,375.00.

The landlord testified that the tenant failed to repair the damage in the unit. This consisted of an excessive amount of nail and screw holes in all the walls in all the rooms. The other landlord RT had to remove these, and fill and sand the holes then repaint the walls. The unit was last repainted in 2015. The tenant also damaged the linoleum flooring in the third bedroom which had a large tear in it. This flooring was 19 months old at the end of the tenancy. The landlord testified that the linoleum had to be replaced and cost \$500.00. The landlord RT did the work to install the new linoleum. It must be noted here that the worksheet for repairs also includes snaking a blocked toilet and the purchase of a new toilet. RT spent 39.5 hours doing the repair work as detailed on his breakdown sheet. The landlords seek to recover \$25.00 an hour for this work to an amount of \$1,501.50n which includes the cost for the linoleum and a new toilet.

The landlord testified that the landlords had to clean up the yard and dispose of the tenant's trash. This consisted of old toys and lawn furniture; a barbeque, broken dressers and beds and bags of garbage that were bleeding through which the landlord believes had frozen meat in which had gone bad. The landlord has provided some photographic evidence showing the condition of the yard. The landlords seek to recover \$654.00 for this work.

The landlords seek to recover \$121.60 for the cost of sending registered mail to the tenant via Canada Post.

The landlords seek to retain the tenant's security deposit in partial satisfaction of their claim and seek to recover the filing fee of \$100.00.

Analysis

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

With regard to the landlords' claim for unpaid rent for November, 2016; the landlords were issued an Order of Possession and served this to the tenant on September 30, 2016. The tenant had two days to vacate the rental unit and failed to do so. The landlords' recourse is then to file in Supreme Court to have that Order of Possession enforced. The landlords did not do so and therefore allowed the tenant to continue to live in the rental unit until November 02, 2016. The landlords have insufficient evidence to show that rent was paid or not for October. A landlord has a duty to mitigate any loss and should have enforced the Order of Possession before November, 2016. I find that as the tenant was allowed to overhold in the rental unit until November 02, 2016 that the landlords are only entitled to recover rent for two days in November to an amount of **\$80.00.**

With regard to the landlords' claim for a Monetary Order for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlords' claim for the cost to replace the vinyl decking of \$4,950.00; I am not satisfied that the landlords have met the test used above. The move out condition inspection report does not show that this damage exists; the landlords have also failed to provide any further evidence such as photographs showing cigarette burns in the vinyl decking. Accordingly I find there is insufficient evidence to meet the burden of proof in this matter and this section of the landlords' claim is dismissed without leave to reapply.

With regard to the landlords' claim for cleaning; the landlord testified that she had to clean all areas of the rental unit and the landlord has detailed the areas cleaned; however, these details do not correspond to the details provided on the move out condition inspection report. The landlord testified and has documented that she had to clean the cupboards inside and out in the kitchen and the fridge yet the move out report shows that the cupboards are mostly clean and the fridge is good. In the living room the report shows that the blinds have not been washed and that other areas are poor, in the dining room the walls and trim and marked as good with just the window coverings and the light fixtures need cleaning. The report goes on to show that other areas in all rooms require some cleaning; however, there appears to be a discrepancy between the

cleaning required as shown on the inspection report to the cleaning done by the landlord.

The purpose of completing a move in and a move out condition inspection report is to compare the condition of the unit at the start and end of the tenancy so any damage done during the tenancy can be shown. The report also provides the tenant or a representative attending the inspection to agree or disagree with the details shown of the condition of the unit at the start and end of the tenancy. If the landlords then go on to do more work than is shown on the move out report then this may not have been brought to the attention of the tenant or the tenant's representative when they signed the report to agree that it fairly represented the condition of the unit at the end of the inspection.

Due to these discrepancies I find I am not satisfied in full with the landlords' claim for cleaning the unit and I therefore limit the landlords' claim to **\$900.00**.

With regard to the landlords' claim for repair work to all the walls in the unit; I have again considered the move out report which documents that the walls in the kitchen, dining room, and main bathroom are good, While the report details other walls have scuffs, stickers, and a knob hole they do not document an excessive amount of nail or screw holes. While I accept that the landlords' photographic evidence does show the existence of some damage to some walls and that this damage would need to be repaired I am not satisfied from the evidence before me that the landlords have met the burden of proof in this matter that the walls in the entire unit had to be repaired and repainted due to an excessive amount of nail or screw holes. Part of this repair claim is also for the linoleum in the third bedroom. I am satisfied that the linoleum was torn from the evidence before me. The landlord testified that the linoleum cost standing alone was \$500.00 yet the landlords' repair document shows the linoleum was \$304.50. The linoleum was 19 months old and although the Residential Tenancy Policy Guidelines # 40 does not indicate the useful life of linoleum I estimate it has a useful life of 10 years. I must therefore deduct 20 percent for depreciation and find the landlord is entitled to

recover \$243.60. This same repair document shows the landlord had to purchase a new toilet at a cost of \$210.00. The landlord gave no explanation during the hearing about any damage to a toilet in the unit and the repair document only states that the toilet was blocked and snaked several times with an improvement of 40 percent. The move out report does not detail any damage to a toilet that would require a toilet to be replaced because of the actions or neglect of the tenant. I therefore cannot consider this section of the landlords' claim. Accordingly, I must limit the landlords' claim for repairs to **\$950.00**.

With regard to the landlords' claim for cleaning the yard; I am satisfied from the evidence before me in the form of photographs that the tenant left a substantial amount of abandoned furniture, toys and garbage in the yard that had to be removed by the landlords. Even though the landlord has not documented this on the move out report under the exterior section, the landlords' photographic evidence clearly shows the condition of the yard. Accordingly, I find the landlords have established their claim to recover **\$654.00** to clean the yard and remove the tenant's belongings and garbage.

With regard to the landlords claim to recover \$121.60 for registered mail and other costs; there is no provision under the Act for costs associated with gathering evidence or sending documents to the respondent. This section of the landlords' claim is therefore dismissed without leave to reapply.

I Order the landlords to retain the tenant's security deposit of **\$600.00** in partial satisfaction of this claim pursuant to s. 38(4)(b) of the *Act*. I further find the landlords are entitled to recover the filing fee from the tenant of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the balance due as follows:

Rent for November	\$80.00
Cleaning	\$900.00
Repairs	\$950.00

Yard clean up	\$654.00
Subtotal	\$2584.00
Plus filing fee	\$100.00
Less security deposit	-\$600.00
Total amount due to the landlords	\$2,084.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,084.00**. 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: April 10, 2017

Residential Tenancy Branch