



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on November 14, 2016 for:

1. A Monetary Order for unpaid rent - Section 55;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on March 20, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

It was noted that the detail of the Landlord’s application contains very difficult to read writing. The Landlord confirmed that the details of his application indicate those costs that are set out in the monetary order worksheet, originally filed with the application.

The Landlord submitted an evidence package to the Residential Tenancy Branch (the “RTB”) on April 25, 2017 that included a revised monetary order worksheet setting out additional claims and a greater total of claimed costs than set out in the application. The Landlord did not file an amendment to the application with the RTB.

Rule 2.2 of the RTB Rules of Procedure (the “Rules”) provides that the claim is limited to what is stated in the application. Rule 4.1 of the Rules provides that an applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

As the Landlord did not complete the form to amend the application I find that the Landlord’s claim is restricted to the total amount set out in the application with the claimed costs detailed in the original monetary order worksheet.

Issue(s) to be Decided

Did the Landlord take steps to mitigate its claim for lost rental income?

Is the Landlord entitled to compensation for unpaid utilities?

Did the Tenants fail to leave the unit reasonably clean?

Did the Tenants breach an agreement in relation to the kitchen paint?

Is the Landlord entitled to compensation for its time in obtaining another tenant and participating in the dispute proceedings?

Are the Tenants entitled to return of the security and pet deposit?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2016 for a fixed term to end April 1, 2017. The tenancy ended on November 1, 2016. Rent of \$1,975.00 was

payable on the 31st day of each month. The Tenants were responsible for the payment of 2/5 of the total gas and hydro costs during the tenancy. At the outset of the tenancy the Landlord collected \$987.50 as a security deposit. On July 25, 2016 the Landlord collected \$450.00 as a pet deposit. The Parties mutually conducted a move-in inspection with completed report copied to the Tenants. The Tenant provided its forwarding address on the move-out report dated November 1, 2016. The Parties dispute whether the Tenant accompanied the Landlord through each room at move-out. The Tenant signed the move-out report and provided its forwarding address on that report dated November 1, 2016. A copy of this report was provided to the Tenants. The Tenants owe the Landlord **\$200.00** for the utility costs claimed by the Landlord.

The Tenants claim return of the security and pet deposit. The Tenants withdraw their claim for moving costs.

On October 4, 2017 the Landlord served the Tenants with a one month notice to end tenancy for cause. The effective date stated on the Notice was November 1, 2016. The Tenants became aware that this was the wrong effective date. The Tenants offered to move out of the unit on November 1, 2016 by mutual agreement. The Landlord did not accept that agreement. The Landlord states that by October 18, 2017 the unit was advertised with a sign outside the building and on various web sites. The Landlord states that the unit was advertised for \$2,200.00 per month with an available occupancy of November 1, 2016. The Landlord states that although the unit was thereafter shown to prospective renters every day, for various reasons including an original restriction on pets and the time of year, no tenants were interested. The Landlord states that by removing the pet restriction and reducing the rent to \$2,150.00, the Landlord was successful in finding a tenant for a December 15, 2016 start date for a two year fixed term tenancy. The Landlord states that the rent initially advertised was below market value and was set at this level as the market could sustain that amount of rent and that since the Tenants left the unit the Landlord could charge market value for the unit. The Landlord claims lost rental income for the period November 1 to December 15, 2016, inclusive.

The Landlord states that although the Tenants did an initial clean it was not up to the Landlord's standards. The Landlord states that for instance during the move-out inspection the Landlord pointed out that the windows were not cleaned so the Tenant's parent used paper towels to wipe them down. The Landlord states that he also had to remove stains on the deck left by candles by using a power washer and stain remover. The Landlord states that the move-out report does not indicate any dirty rooms as the Landlord did not fill that part out due to the Tenants' pressure during the move-out inspection. The Landlord states that he cleaned the unit and claims his labour costs of 8 hours at \$25.00 per hour for a total of \$200.00. The Landlord provided photos of the unit taken about a week after the end of the tenancy.

The Tenants state that they cleaned the unit thoroughly at move-out, including the appliances, windows and floors. The Tenant states that during the move-out inspection the Landlord and the father of one of the Tenant's moved out the fridge and stove and the Tenant swept up the floor. The Tenant states that it took both to move the appliances as they were not on wheels and that they were heavy to move. The Tenants provided photos taken of the unit at move-out. The Tenant questions when the Landlord photos were taken.

The Landlord states that the Tenants were given permission to paint the kitchen blue as long as they returned the color to white at the end of the tenancy. The Landlord states that the kitchen has not yet been repainted and that the Landlord did not want to spend the money if it could not be recovered. The Tenant states that at the time the Landlord agreed they could paint the kitchen the Landlord also stated that it would not be known until move-out whether the kitchen had to be returned to the original color. The Tenant states that they asked the Landlord in an email dated October 11, 2016 whether they needed to repaint the kitchen and that the Landlord did not respond.

The Landlord states that the Tenants left both the unit garbage bins full of their household garbage at move-out and also filled the neighbour's garbage bins. The

Landlord provides a letter from a neighbour indicating that the neighbour witnessed the Tenants placing garbage in their bin. The Landlord states that he paid \$25.00 in cash for this garbage disposal. No receipt was provided. The Tenant denies that they put any garbage in the neighbour's bin and question the validity of the neighbour's letter since it is recently dated.

The Landlord claims \$550.00 as costs for his time spent in relation to evicting the Tenant, conducting move-in and move-out inspections, advertising and showing the unit for rental, and carrying out preparations for the hearing.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. On the Landlord's own evidence of advertising the unit at a higher rent than was being paid by the Tenants I find that the Landlord has failed to take any reasonable steps to reduce the rental claim. I find that the Landlord is therefore not entitled to the lost rental income claimed and I dismiss the claim.

Based on the agreed facts I find that the Landlord has substantiated that the Tenants failed to pay utilities owing and that the Landlord is entitled to the **\$200.00** claimed. It is noted that the Tenants never disputed the utilities.

Whether or not the Tenants were to repaint the kitchen at the end of the tenancy given the Landlord's evidence of not having painted the kitchen and no evidence of any other loss associated with the kitchen paint color, I find that the Landlord has not substantiated either a loss or the amount claimed. I dismiss the claim for painting.

I consider a neighbour's witness evidence to be generally reliable as they would have nothing to gain by giving false evidence. Further I consider that a neighbour would reasonably have recall of a garbage incident even several months later. Given the neighbour's letter in relation to the garbage I find on a balance of probabilities that the Landlord has substantiated that the Tenants left garbage behind that should have been removed. Although the Landlord has not provided a receipt given the reasonable and minimal amount claimed I find that the Landlord is entitled to the costs claimed of **\$25.00** for garbage removal.

Nothing in the Act provides for compensation for a Landlord to carry out its obligations under the Act and tenancy agreement. Nothing in the Act provides compensation for a Landlord to participate in dispute proceedings other than the filing fee. As such I dismiss the Landlord's claims for his own costs in dealing with the tenancy.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. There is nothing in the move-out condition report that indicates any cleaning required. I have carefully considered the photos from both Parties and find on a balance of probabilities that the Landlord has not substantiated the extent of cleaning claimed. I note that the Landlord's photos of under the appliances contradict the undisputed evidence that the Tenants swept under the appliances during the move-out inspection. I note that the Landlord's photos show minor cleaning that might take up to an hour to complete. I do not consider power washing of a deck to be a tenant's responsibility, particularly since the photo does not show anything over reasonable wear and tear and since the tenancy was only a few months. As a result I find that the Landlord has only substantiated an entitlement of **\$25.00** to reflect the amount of minor cleaning that was required to bring the unit to a reasonable standard.

As the Landlord's application has met with minimal success I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$250.00** from the combined security and pet deposit plus zero interest of **\$1,437.50** leaves **\$1,187.50**. As the Tenants have been substantially successful with their application I find that the Tenants are entitled to recovery of their \$100.00 filing fee for a total entitlement of **\$1,287.50**.

Conclusion

I Order the Landlord to retain \$250.00 from the security deposit plus interest of \$1,437.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$1,287.50**. If necessary, this order may be filed in the Small Claims Court and enforced 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: May 12, 2017

Residential Tenancy Branch