



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kelson Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's Application made November 16, 2016: MND; MNDC; MNR; MNSD; FF

Tenant's Application made November 22, 2016: MNDC; MNSD; FF

Introduction

This Hearing was scheduled to consider cross-applications. The Landlord seeks a monetary award against both Tenants for carpet and paint damage, unpaid rent, and the cost of cleaning the rental unit at the end of the tenancy; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenant RJ seeks compensation for loss or other money owed; return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord's agents and the Tenant RJ attended the Hearing and gave affirmed testimony.

The Landlord's agent JM testified that she mailed the Landlord's Notice of Hearing documents and copies of the Landlord's documentary evidence, by registered mail, to each of the Tenants on November 21, 2016. JM stated that the documents were mailed to the forwarding address provided to the Landlord on November 15, 2016. Copies of the registered mail receipts and tracking numbers were provided in evidence. I find that both of the Tenants were duly served.

The Tenant RJ testified that he hand delivered his Notice of Hearing documents to the Landlord's agent LH on November 28, 2016. The Landlord's agent did not dispute being served on this date and in this manner. RJ did not provide any documentary evidence. I find that the Landlord was duly served.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Background and Evidence

The Landlord's agent JM gave the following testimony:

A copy of the tenancy agreement was provided in evidence. This tenancy began on January 1, 2016. This was a fixed term tenancy, ending December 31, 2016. Monthly rent was \$1,125.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$562.50.

The tenancy ended "at the end of August, 2016", as a result of an uncontested One Month Notice to End Tenancy for Cause. The Tenants paid only half of August's rent. The Landlord seeks a monetary award for August's unpaid rent in the amount of **\$562.50**.

The Landlord's agent and RJ met for a move-out condition inspection at the end of the tenancy. RJ did not agree with the Landlord's agent's assessment of damages and cleaning charges, and therefore did not sign the Condition Inspection Report. A copy of the Report was provided in evidence.

JM stated that the Tenants' cat damaged the carpet and that the Landlord was unaware that the Tenants had a cat until the end of the tenancy. JM testified that the Tenants hung a TV on the bedroom wall, which left holes that required filling and repainting. She stated that there were also smaller holes left from hanging items on the walls, but that the Landlord considered that to be normal wear and tear and was not seeking compensation for filling those holes. In addition to the damages, JM stated that the Tenants did not leave the rental unit in reasonably clean condition.

JM testified that LH completed the repairs and cleaned the rental unit at a cost of \$25.00 per hour. She stated that if the Landlord had hired a contractor to repair and paint the walls, the labour cost would have been \$50.00 per hour.

JM testified that the estimate for the cost of repairs and cleaning was higher than the actual cost. The Landlord provided an invoice, an employee timesheet, the Tenant Ledger, and a photograph of carpet damage in evidence. The Landlord seeks a monetary award for cleaning and damage repair, as follows:

Carpet repair	\$210.00
Cleaning the rental unit (9 hours @ \$25.00 per hour)	\$225.00
Repairing and painting walls (3 hours @ \$25.00 per hour)	<u>\$75.00</u>
TOTAL	\$510.00

The Tenant RJ gave the following testimony:

RJ stated that he did not think the holes left by the TV would be an issue because it was only a 28 inch TV and the holes were “not massive”.

RJ testified that he had a conversation with LH after he moved out and that LH told him that “everything looked great”.

RJ testified that he did not believe the photograph of the carpet damage was the Tenants’ carpet. He stated that their cat had not “badly scratched” the carpet.

RJ stated that the Landlord damaged his credit score by sending a notice to Equifax about charges that the Tenant did not agree to pay.

RJ testified that he gave the Landlord his forwarding address on September 28, 2016, by hand delivering it to the Landlord’s agent LH. The Tenant seeks a monetary award in the equivalent of double the amount of the security deposit, \$1,025.00.

The Landlord’s agents gave the following response:

JM stated that she stated that she received an e-mail from RJ on November 9, 2016 at 10:13 a.m., writing that he did not agree with the charges and that he was “trying to get in touch with [the Landlord] about giving a forwarding address”. JM testified that she told RJ to send his forwarding address to her and not to LH.

LH acknowledged receipt of the Tenants’ forwarding address. Although he was not certain of the date, he acknowledged that it may have been delivered on September 28, 2016.

Analysis

Regarding the Landlord’s application for a monetary award:

Section 37(2)(a) of the Act provides:

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

RJ did not deny that the Tenants had a cat. He did not deny there was some damage to the carpet, only the extent of the damage. The Landlord is seeking \$200.00 for professional repairs to a small area of the carpet beside the bedroom door. I find that it is most likely that the Tenants' cat did damage to the carpet. The invoice for the carpet repair indicates that the Landlord was charged a "minimum labour" charge of \$210.00 for repairing the carpet in the rental unit and another suite in the rental property. Therefore, I allow this portion of the Landlord's claim in the amount of **\$105.00**, because the invoice is for two minor repairs to two separate suites (one of which is not the rental unit and therefore not the Tenants' responsibility).

RJ did not dispute that the Tenants paid only ½ of August 2016 rent. The Tenant Ledger confirms this. I find that the Landlord is entitled to its claim for the balance of August's rent in the amount of **\$562.50**.

The Landlord claims \$225.00 for the cost of cleaning the rental unit at the end of the tenancy (9 hours @\$25.00 per hour); however the time sheet indicates that it took LH 8.5 hours to clean the rental unit. I find that the damage caused to wall by erecting a TV does not fall within "normal wear and tear" and should have been repaired by the Tenants at the end of the tenancy. Based on the documentary evidence from the Landlord, and the lack of documentary evidence from the Tenant, I allow the Landlord's claim for cleaning costs and repairing/painting the bedroom wall, calculated as follows:

Cleaning (8.5 hours @\$25.00 per hour)	\$212.50
Repair and painting wall damage beyond normal wear and tear	<u>\$75.00</u>
TOTAL	\$287.50

Based on the parties' testimony and the balance of probabilities, I find that the Landlord has established a monetary award, calculated as follows:

Unpaid rent	\$562.50
Carpet repair	\$105.00
Cleaning and wall repair	<u>\$287.50</u>
TOTAL MONETARY AWARD	\$955.00

Regarding the Tenant RJ's claim for a monetary award:

Section 38(1) of the Act provides:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the testimony provided, I find that the Tenants provided the Landlord with their forwarding address on September 28, 2016, by delivering their address in writing to the Landlord's agent LH. The Landlord made its application against the security deposit on November 11, 2016, which is beyond the 15 days provided under the Act. Therefore, I find that the Tenant is entitled to compensation under Section 38(6) of the Act in the amount of **\$1,025.00**.

Set-off of monetary awards and recovery of filing fees:

I find that both parties' Applications had merit and therefore I decline to order that either party recover the cost of the filing fee from the other.

I set-off the parties' monetary awards and issue a Monetary Order to the Tenant RJ, calculated as follows:

Tenant RJ's monetary award	\$1,025.00
Less Landlord's monetary award	<u>- \$955.00</u>
TOTAL	\$70.00

Conclusion

The Tenant RJ is hereby provided with a Monetary Order in the amount of **\$70.00** for service upon the Landlord. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: June 13, 2017

Residential Tenancy Branch