



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF (Landlords' Application)
 DRI, FF, MNDC, OLC (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution the Landlords requested monetary compensation for damage to the rental unit, authority to retain the Tenants' security deposit and to recover the filing fee. In the Tenants' Application for Dispute Resolution they disputed an a rent increase, sought an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, monetary compensation for rent paid in excess of the allowable amount and to recover the filing fee.

The hearing was conducted by teleconference on August 14, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlords be compensated for damage to the rental unit?
2. What should happen with the Tenants' security deposit?

3. Should the Tenants be compensated for the increased rent paid?
4. Should either party recover the filing fee?

Background and Evidence

The Landlord, E.J., testified as follows. He stated that the tenancy began November 15, 2013. Monthly rent at the time the tenancy began was \$800.00 and the Tenants paid a security deposit in the amount of \$400.00.

A copy of the move in and move out condition inspection was provided in evidence and confirmed the move in inspection occurred on November 15, 2013 and the move out on February 28, 2017. Notably, handwritten notations on the report indicate the Tenants dispute the Landlords' claim that a move in inspection was conducted.

The Landlord testified that the rent was raised during the tenancy from \$800.00 to \$835.00 per month as of June 2016. He confirmed that he did not issue a Notice of Rent Increase in accordance with the *Residential Tenancy Act*, and *Residential Tenancy Regulation*. He stated that he asked the Tenants to pay the additional \$35.00 and they agreed to as of June 1, 2016. He confirmed that he only gave them a months' notice.

The Landlords sought monetary compensation in the amount of \$760.36 for the following:

Unpaid electrical utility	\$163.93
Replacement of door and blinds	\$285.50
Garbage disposal	\$18.90
Cleaning costs	\$267.00
Garbage removal	\$25.00
TOTAL CLAIMED	\$760.36

The Landlord stated that the Tenants were supposed to pay half of any overages of the electrical utility over and above \$100.00 per month per unit. Page 3 of the residential tenancy agreement provided that electricity was included in the rent payment up to \$100.00.

The Landlord stated that he is only asking the Tenants to pay the additional electrical utility charges for the last few months of their tenancy.

The Landlord stated that the blinds were broken during the tenancy by a cat the Tenants brought into the rental unit despite the clear wording of the residential tenancy agreement which provided that the Tenants were not to have pets. The Landlord sought the cost of \$142.91 for the cost to replace three blinds.

The Landlord also stated that the door had a hole in it at the end of the tenancy and therefore required replacement. He confirmed that at the time he filed his application he only had a quote, however since filing he has replaced the door at a cost of \$112.00.

The total claimed by the Landlords for the replacement of the blinds and door is \$285.50 with tax.

The Landlord confirmed that the Tenants left piles of garbage at the rental unit when they moved out. He confirmed he paid a disposal fee of \$18.90 as well as \$25.00 to T.B., who he hired to remove the garbage.

Photos submitted by the Landlords confirmed the condition of the blinds, the door as well as the garbage left by the Tenants.

The Landlords also sought the sum of \$267.00 as the cost to clean the rental unit as well as the \$100.00 filing fee.

M.F. made submissions on behalf of the Tenants. B.F. also testified.

He stated that it was the Tenants' position that the electrical utility was not their responsibility as there was another building used by the Landlord, comprising of a shop with an office attached to it, which was hooked up to their hydro such that it drew on the electrical utility.

B.F. testified the door and blinds were damaged when they moved in. He claimed that there was no move in condition inspection conducted, nor was a report done. The report provided in evidence included the following handwritten comments:

“not agreeing
the initial inspection report was not completed
this is fictitious”

[Reproduced as Written]

B.F. also claimed that they intended to take photos during the initial “walk through” but as that never happened they did not take photos.

B.F. initially stated that the Tenants were opposed to compensating the Landlord for the cost to remove the garbage as the Landlord regularly removed their garbage; however during the hearing they confirmed that they were not opposed to the cost to dispose of the garbage, or the \$25.00 cost paid to T.B. to dispose of it.

B.F. stated that he felt the cleaning costs were high. He stated that they did not leave the rental unit dirty and the Landlords photos were not clear.

The Tenants confirmed that they disputed the \$35.00 rent increase on the basis that they did not receive three months’ notice, and the amount was 4.375% when the allowable amount was only 2.9%. They stated that they started paying the increased rent amount on June 1, 2016.

The Tenant also confirmed that they sought recovery of the \$100.00 filing fee.

In reply the Landlord testified that the Tenants’ claim that the move in condition inspection report was not completed is false. He also stated that “no one goes three years without a move in inspection”. He stated that he did forget to have the Tenants sign the move in report, although he did complete the report at the same time he had them sign the tenancy agreement. He also noted that if there was damage when they were in the rental, such as to the blinds and the door, he presumed they would have communicated with him about this, or reported him to the rental board.

The Landlord confirmed that there was a shop and room put onto the property during the tenancy. He stated that the shop is a storage building and does not have heat, although it does have a few lights. The Landlord stated that in all fairness he was willing to “knock off” the additional hydro charge.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find, based on the evidence before me, the testimony of the parties and on a balance of probabilities as follows.

The Tenants allege the Landlords did not complete a move in inspection report as required. The Landlord, E.J., testified that he completed the report during the inspection, but forgot to have the Tenants sign the report when he had them sign the tenancy agreement. While it is always difficult to reconcile conflicting testimony, I prefer the testimony of the Landlords in this regard. I found E.J. to be forthright and compelling in his testimony. I also note that the handwriting on the document is different for entries for the beginning and end of the tenancy. I therefore find that the move in inspection was completed at the time the tenancy began.

The tenancy agreement clearly indicated that electricity was included to a limit of \$100.00 per month. However, the parties agreed that the Landlords built another building on the rental property which was for their use, and which drew on the electrical utility. The Landlords submit that the amount of electricity used was minimal and stated he was willing to knock off some portion of the claimed charges.

I am not able, based on the evidence before me, to determine what amount of the outstanding electrical utility bill relates to the Tenants' consumption or the Landlords by way of this additional building. I therefore find the Landlords have failed to prove this portion of their claim and I deny their request for \$163.93.

The Tenants agreed to reimburse the Landlords for the cost to remove and dispose of their garbage. I therefore award the Landlord the **\$25.00** and **\$18.90** claimed.

I also find, based on the testimony of the Landlords as well as the photos submitted in evidence, that the Landlords are entitled to recovery of the amounts claimed for replacement of the door and blinds. The Tenants suggest these items were in this condition at the start of the tenancy. I agree with the Landlords and find it unlikely that the Tenants would not have requested replacement or repair of these items during the tenancy had they in fact been in that condition.

The Tenants disputed the Landlords' claim for cleaning costs on the basis that they were "too high". The Tenants also note that the photos submitted by the Landlords were not clear.

Notably the move out condition inspection report does not indicate that cleaning was required. Section 21 of the *Residential Tenancy Regulation* provides that a condition inspection report is evidence of the state of the repair and condition of the rental unit on the date of the inspection unless the landlord or tenancy has a preponderance of evidence to the contrary.

The photos submitted by the Landlords are indeed unclear. As such, the best evidence before me of the condition of the rental unit is the move out condition inspection report, which as noted does not support a finding that cleaning was required. I therefore dismiss the Landlords' claim for related compensation.

The Landlords are awarded the sum of **\$329.43** for the following.

Replacement of door and blinds	\$285.50
Garbage disposal	\$18.90
Garbage removal	\$25.00
TOTAL AWARDED	\$329.43

The Tenants seek reimbursement of funds paid pursuant to an alleged illegal rent increase. The Landlord conceded that the rent was raised during the tenancy from \$800.00 to \$835.00 per month as of June 2016 and that he did not issue a Notice of Rent Increase in accordance with the *Residential Tenancy Act*, and *Residential Tenancy Regulation* or give the Tenant's the required three months' notice.

I find the Landlord failed to follow the *Residential Tenancy Act* and the *Residential Tenancy Regulation* when raising the rent from \$800.00 to \$835.00 in June of 2016. The Landlord failed to issue the required Notice of Rent Increase and did not give the Tenants the required Notice.

For greater clarity, I reproduce the relevant sections of the *Act* and *Regulations* in this my Decision as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The rent increase is also contrary to Part 4 of the *Residential Tenancy Regulation* which reads as follows:

Part 4 — Rent Increases

Annual rent increase

22 (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

In all the circumstances, I find that the rent increase was contrary to the *Act* and *Regulations*; consequently, the Tenants are entitled to compensation in the amount they overpaid due to these unauthorized increases. I find the Tenants are entitled to reimbursement in the amount of **\$315.00** for the payment of rent over the allowable amount as follows:

June 2016 to December 2016	7 x \$35.00 =	\$245.00
January to February 2017	2 x \$35.00 =	\$70.00
TOTAL OVERPAID		\$315.00

As the parties have enjoyed divided success, I find they shall each bear the cost of their filing fee.

Conclusion

The Landlords are awarded the sum of **\$329.43** for replacement of the door and blinds as well as garbage removal and disposal fees.

The Tenants are awarded compensation in the amount of **\$315.00** representing rent paid pursuant to an illegal rent increase.

The amounts awarded to the Landlords, namely \$329.43, is to be offset against the amount awarded to the Tenants in the amount of \$315.00 such that the Landlords are entitled to the sum of **\$14.43**.

~~The Landlords are authorized to retain \$14.43 from the Tenants' \$400.00 security deposit. The Tenants are entitled to return of the balance of their deposit in the amount of \$385.57.~~ In furtherance of this my Decision, I grant the ~~Tenants~~ Landlords a Monetary Order in the amount of ~~**\$385.57**~~ **\$14.43**. This Order must be served on the ~~Landlords~~ Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 25, 2017

Date of Correction: September 22, 2017

Residential Tenancy Branch