



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed July 8, 2017 wherein the Landlords requested an Order of Possession based on a 2 Month Notice to End Tenancy for Landlords' Use, monetary compensation for damage to the rental unit, authority to retain the Tenants' security deposit and to recover the filing fee.

The hearing was conducted by teleconference on January 4, 2018. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlords testified that they personally served the Tenants, C.R. and M.G. with the Notice of Hearing and the Application. A copy of the Affidavit of Service for both was provided in evidence by the Landlords. I find the Tenant M.G. was duly served as of July 13, 2017 and the Tenant, C.R., was duly served as of July 14, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' 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.

Preliminary Matter

The Landlords confirmed at the outset of the hearing that the Tenants vacated the rental unit such that an Order of Possession was no longer required.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation for damage to the rental unit?
2. Should the Landlords be entitled to retain the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement providing that the tenancy began April 1, 2016. Monthly rent was payable in the amount of \$1,100.00 and the Tenants paid a security deposit in the amount of \$550.00. D.R. testified that as a result of a flood shortly before the tenancy was to begin the Tenants were not able to move into the rental unit until the last week of April 2016.

The Landlords issued a 2 Month Notice to End Tenancy for Landlord's Use on April 25, 2017. D.R. confirmed that the Tenants did not apply to dispute the Notice and moved out on July 3, 2017.

In the within hearing the Landlords sought monetary compensation in the amount of \$3,462.61 for the following:

compensation for Landlords' time to clean and repair the rental unit	\$2,150.00
compensation for items purchased to clean and repair rental unit	\$1,312.61
filing fee	\$100.00
TOTAL CLAIMED	\$3,562.61

The Landlords confirmed that due to the flood shortly before the tenancy began the rental unit was essentially "brand new" as everything "two feet and down" in the rental unit was removed and replaced including new drywall, new paint, new laminate flooring, new carpet and new baseboards.

Introduced in evidence was a copy of the move in condition inspection report confirming the new condition of the rental at the time the tenancy began.

The Landlords submitted that at the end of the tenancy they were shocked to see the condition of the rental unit. They stated that the rental unit was left in very poor condition, with significant cleaning required, garbage strewn about the rental unit and

outside, as well as damage to the floors and walls. A copy of the move out condition inspection report dated July 2, 2017 was provided in evidence as well as numerous photos of the rental unit confirming the condition as reported by the Landlords.

The Landlord also provided a detailed breakdown of the time required to clean and repair the rental unit between July 2, 2017 and July 19, 2017.

Analysis

After consideration of the undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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.

Section 32 of the *Act* mandates the Tenant's obligations in respect of repairs to the rental unit and provides in part as follows:

32 ...

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

...

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find the Tenants breached sections 32 and 37 of the *Act* by leaving the rental unit damaged and unclean. I am persuaded by the Landlord's testimony, the move out condition inspection report filed in evidence, as well as the numerous compelling photos submitted by the Landlords that the Tenants failed to clean and repair the rental unit as required. I accept the Landlords' undisputed testimony that as a result of the condition the rental unit was left in by the Tenants that they spent a considerable amount of time cleaning and repairing the unit, and I find they are entitled to compensation for their time as well as for the out of pocket expenses incurred.

As noted during the hearing, the Landlords' evidence was very well organized and persuasive. They have met the burden of proving their claims and are entitled to the amounts sought. As they have been entirely successful I also award them recovery of the filing fee.

Conclusion

I find the Landlords are entitled to compensation in the amount of \$3,562.61 for the following:

compensation for Landlords' time to clean and repair the rental unit	\$2,150.00
compensation for items purchased to clean and repair rental unit	\$1,312.61
filing fee	\$100.00
TOTAL AWARDED	\$3,562.61

The Landlords are authorized to retain the Tenants' security deposit in the amount of \$550.00 and are granted a Monetary Order for the balance due in the amount of \$3,012.61. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

On September 28, 2017 Arbitrator Wilson granted the Landlords' request for an Order that they be permitted to serve their evidence on the Tenant, M.G. by email. During the hearing before me, the Landlord confirmed that to their knowledge C.R. moved from the address noted on the Landlords' Application for Dispute Resolution Pursuant at the end of August 2017. The Landlord testified that they were not aware of the address to which C.R. moved. The Landlord further testified that during the tenancy the parties regularly communicated by email.

Pursuant to section 71 of the *Residential Tenancy Act*, I permit the Landlords to serve the Monetary Order on the Tenants by email to the email addresses noted on the unpublished cover page of this my Decision.

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: January 4, 2018

Residential Tenancy Branch