



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MNR-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package and an initial documentary evidence on November 21, 2017 via Canada Post Registered Mail. Both parties also confirmed that the landlord served the tenants with a supplementary documentary evidence package on May 26, 2018 via Canada Post Registered Mail. Both parties also confirmed that the tenants served the landlord with a documentary evidence package on June 9, 2018 via facsimile. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2016 on fixed term tenancy ending on July 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated May 17, 2016. The monthly rent was \$1,895.00 payable on the 1st day of each month. The monthly rent at the end of tenancy was \$2,115.00. A security deposit of \$947.50 and a FOB deposit of \$150.00 were paid on May 17, 2016 and is currently held by the landlord. A condition inspection report for the move-in was completed on July 30, 2016. An incomplete condition inspection report for the move-out was made by the landlord with a witness on October 16, 2017.

The landlord seeks a monetary claim of \$2,697.07 which consists of:

\$200.00	Wall Damage Repairs
\$382.07	\$25.00 NSF Charge
	\$118.13 Cleaning
	\$128.94 Blind Cleaning
	\$10.00 Missing Key
	\$100.00 Filing Fee
\$2,115.00	Unpaid Rent, October 2017

The landlord claims that the tenants vacated the rental premises on October 16, 2017 in compliance with a 10 Day Notice for October 2017, leaving it dirty, with 7 nail holes, scuffs and dents in the walls, the blinds dirty requiring cleaning, failing to return a mail box key and a \$25.00 late rent payment fee as per the signed tenancy agreement for October 2017. The landlord clarified that the NSF charge was in fact a late rent payment fee as per a letter dated September 18, 2017. The landlords clarified that the \$200.00 wall repairs were based upon an estimate, but that work was performed by the landlord's agents (4 hours @ \$50.00 an hour for labour, the purchase of special tools and materials). The landlord was unable to provide any specific details of these claims or expenses, but stated it was based upon the estimate. The landlord clarified that the blind cleaning invoice of \$128.94 was submitted in error and that the actual submitted invoice for \$168.65 was the cost for blind cleaning. The landlord detailed that 7 nail holes were found, various deep scuffs, dents and chips were found at the end of tenancy in the walls.

The tenants agreed that "a little bit of damage" was present, but not to the extent of \$200.00 in repairs. The tenants argued that the nail holes were due to normal wear and tear. The tenants confirmed the remaining items of claim by not disputing them. The tenant confirmed in their direct testimony that rent for October 2017 was not paid and that they had been informed of the \$25.00 late rent payment fee prior to the landlord issuing in a letter from the landlord dated September 18, 2017. The tenants stated that they had complied with the 10 Day Notice issued by the landlord.

In support of these claims the landlord has submitted copies of:

- A letter dated September 18, 2017, re late rent payment fee
- A 10 Day Notice dated October 6, 2017
- Copies of photographs showing the condition of the rental premises in contrast with the completed condition inspection report for the move-in
- A copy of the completed condition inspection report for the move-in dated July 30, 2016
- A copy of the incomplete condition inspection report for the move-out dated October 16, 2017 completed without the tenants
- A copy of an estimate used to determine the cost to the landlord's own expenses
- A copy of an invoice dated October 27, 2017, re: cleaning
- A copy of an invoice dated October 20, 2017, re: Blind Cleaning
- A copy of the signed tenancy agreement, addendum and parking agreement

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of the landlord and find that the tenants vacated the rental premises on October 16, 2017 without paying rent for October 2017 as confirmed by the tenants. Although the tenants have disputed the wall damage and the late rent payment fee, I find that the landlords have provided sufficient evidence on all claims that the tenants ended the tenancy without paying October 2017 rent of \$2,115.00. I also find that the tenants were given notice of a \$25.00 late rent payment fee in a letter dated September 18, 2017 which is in accordance with the signed tenancy agreement. I also accept the undisputed affirmed evidence of the landlord on the remaining claims as the tenants have not disputed them in any form. I note that the landlord's claim of \$200.00 for wall damage is based upon a self-made invoice dated November 30, 2017 and that the landlord stated that this amount was based upon estimations for 4 hours of labour @ \$50.00/hour, the purchase of special tools and materials used. The landlord did not provide sufficient evidence regarding these estimations to support this portion of the actual cost of this claim of \$200.00. However, I grant the landlord an arbitrary monetary award of \$50.00 as it is clear that there is some moderate damage to the walls beyond normal wear and tear.

The landlord has established a total monetary claim of \$2,583.78 which consists of:

\$50.00	Wall Damage Repairs
\$382.07	\$25.00 Late Rent Payment Fee
	\$118.13 Cleaning
	\$165.65 Blind Cleaning
	\$10.00 Missing Key
	\$100.00 Filing Fee
\$2,115.00	Unpaid Rent, October 2017

In offsetting these claims, I authorize the landlord to retain the combined \$1,097.50 security and fob deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$1,486.28.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: June 19, 2018

Residential Tenancy Branch