



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR, MNDC -S, FF

Introduction

This hearing was convened in response to an application by the landlord made January 06, 2019 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid rent and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposits of the tenancy in partial satisfaction of the monetary claim.

Both parties participated in the hearing. The tenant acknowledged receiving all of the document and photo evidence of the landlord in person at their business address; and that they provided 2 pages of narrative in response to the landlord's claims. The landlord claims they received any evidence from the tenant. None the less, I accepted the tenant's evidence orally. Each party provided testimony during the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

The hearing proceeded on the merits of the landlord's original application. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence *relevant* to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The landlord testified they took ownership

and possession of the rental unit on July 15, 2016. The tenancy began in July 15, 2016 and has since ended. I have benefit of the tenancy agreement which states that the tenancy was contracted with a total of 3 individuals including the respondent. Rent in the amount of \$3500.00 was payable in advance on the fifteenth day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1750.00, which the landlord retains in trust. The tenancy ended July 17, 2018, 2 days later than Ordered by a previous Decision, when the tenant vacated the unit and returned the keys. The tenant in attendance to this matter had vacated earlier and did not dispute the landlord's evidence in the above regard. None the less, the tenant also testified that they remain in contact and in communication with the other 2 tenants of this tenancy agreement.

The parties agreed they conducted a mutual inspection of the unit at the start of the tenancy. The landlord provided into evidence the Condition Inspection Report (CIR) indicating the parties agreed the report fairly represented the condition of the unit at the start of the tenancy; however the landlord testified that the parties *were not* in agreement in respect to the cleanliness of the rental unit, which they identified in the CIR. They further testified that as a result of the discrepancies the tenant was provided \$100.00 compensation for cleaning. The landlord did not conduct a move out condition inspection in accordance with Part 3 of the Regulation. They testified that they attempted to do so and awaited the tenant's cooperation with paperwork in hand, however the tenants would not co-operate in doing the inspection, therefore they conducted their own and provided same into evidence. The landlord acknowledged they did not provide the tenant with a written *final opportunity to schedule an inspection* document, in accordance with the Regulation. The CIR does not include the tenant's forwarding address. The tenant acknowledged they have never provided the landlord with a forwarding address prior to the landlord filing their application.

The landlord filed their claim in part for loss *other than damage* to the unit. The landlord makes the following monetary claims as per their "Monetary Order Worksheet" document.

Landlord's application

The landlord provided evidence that the rent for the last month of occupancy was partially paid with a balance remaining of \$2150.00. The tenant did not dispute this portion of the landlord's claims.

The landlord provided evidence that they entered into a new tenancy agreement starting July 15, 2019, as this date was previously agreed by the parties of this matter as the end of the tenancy and as such was reflected in an Order of the Director. It is

undisputed that the rental unit was not ready on July 15, 2019 to be re-occupied due to a myriad of deficiencies and lack of cleanliness. As a result the landlord is claiming a loss of revenue in the amount of \$1600.00, or 2 weeks of the new tenancy, which they compensated the incoming tenants.

The landlord provided photo image evidence of a quantum of belongings left behind by the tenants upon vacating the unit, including a box spring unit and mattress, miscellaneous furniture and a myriad of other smaller items; all for which the landlord provided a receipt for removal of the castoffs in the amount of \$781.20. The tenant did not dispute this portion of the landlord's claims.

The landlord claims \$200.00 for repairing a hole in a door and to remediate burn marks on the bathroom countertop. The landlord provided into evidence photo image evidence and an estimate representing the value of the claim. The tenant did not dispute this portion of the landlord's claims, further stating that they were not wholly familiar with the upper portion of the rental unit as they primarily occupied the basement.

The landlord claims the cost of material to repair 2 screen door screens in the amount of \$34.52. The tenant testified they recalled that at least one screen door appeared damaged during the tenancy.

The landlord provided evidence indicating that the rental unit was left unclean and that the stairs carpeting was left unreasonably dirty. The landlord provided evidence they paid \$250.00 for general cleaning and \$136.50 for carpet cleaning. The tenant did not dispute this portion of the landlord's claims

The landlord claims \$25.00 for a missing wall clock left in the rental unit kitchen, for which they provided a photo image purportedly taken at the start of the tenancy. The landlord testified that they previous owners left it in the house. The landlord provided a quote for a similar wall clock as representation of the value of the claim.

The landlord claims they repainted the rental unit and for which they are claiming from the tenant half the \$3800.00 amount paid of \$1900.00. The landlord provided photo image evidence of a myriad of small wall holes and other wall anomalies. The tenant testified that the wall paint easily came off when cleaned and that it appeared dingy and needing fresh paint. During questioning the landlord could not provide as to how old the interior painting was as they had acquired the property as is 2 years earlier. The tenant did not rebut the landlord's claim.

The landlord claims the cost of replacing the carpeted areas of the unit with new laminate flooring in the sum of \$952.35 (\$407 + 545.35). The landlord testified to and provided photo image evidence of the carpeting which appeared to be in an unclean state. During questioning the landlord could not provide as to how old the carpeting was as they had acquired the property as is 2 years earlier. The tenant did not rebut the landlord's claim.

The landlord claims \$400.00 for repainting the ceiling in two rooms left with apparent hand prints on the painted ceiling, as well as re-installing a towel bar in the bathroom and fixing the associated wall anomaly. The tenant did not dispute the landlord's claim respecting the towel bar.

Analysis

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

The landlord, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: that is, destruction, breakage or collapse exceeding reasonable wear and tear under normal circumstances.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and damage made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the test established by Section 7 is as follows,

1. *Proof the loss exists,*
2. *Proof the loss was the result, solely, of the actions of the other party in violation of the Act or Tenancy Agreement*
3. *Verification of the actual amount required to compensate for the claimed loss.*
4. *Proof the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss.*

Effectively, the landlord bears the burden of establishing their claims pursuant to the test established by Section 7 above proving *the existence of a loss* and that it *stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant*. Once that has been established, the landlord must then *provide evidence that can reasonably verify the monetary value or amount of the loss*. Finally, the landlord must show that *reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed*.

Landlord's claim

Section 26 of the Act states that rent must be paid as contracted within the tenancy agreement. I find that the landlord has provided sufficient evidence to support their claim for unpaid rent in the amount of **\$2150.00**.

I find that the landlord's failure to provide the tenant with a final scheduling opportunity to conduct a move out condition inspection prevented them from making a claim against the security deposit for damage to the unit. However, in this matter the landlord also has claimed unpaid rent and loss of revenue; and in lacking a forwarding address to return any security deposit I accept the landlord's retention of the deposit which will be used to offset any valid portion of the landlord's monetary claim and any balance returned to the tenant.

In respect to the landlord's claim for a missing wall clock left to the landlord by the previous owners of the rental unit, I find the landlord's own condition inspection at the end of the tenancy failed to capture that the clock was absent despite capturing that the walls and ceilings of the unit were left wanting. I find it unlikely that the wall clock's absence would not have been noted. But moreover, I find that the wall clock is not noted within the tenancy agreement as included in the rent. I find the landlord has not provided sufficient evidence to support this portion of their claim and it is therefore **dismissed**, without leave to reapply.

I find that the landlord has provided sufficient evidence to support their claim for a door repair and bathroom countertop burn mark in the claimed amount of **\$200.00**.

I find that the landlord has provided sufficient evidence to support their claim for materials to repair a screen door screen in the claimed amount of **\$34.52**.

I find that the landlord has provided sufficient evidence to support their claim for cleaning of the carpeted stairs in the claimed mount of **\$136.50**.

I find that the landlord has provided sufficient evidence to support their claim for cleaning of the rental unit in the claimed amount of **\$250.00**.

I find that the landlord has provided sufficient evidence to support their claim for refuse removal or removal of items left by the tenant(s) in the claimed amount of **\$781.20**.

I find that the landlord has provided sufficient evidence to support their claim for refinishing the ceilings and affixing a missing towel bar(s) in the claimed amount of **\$400.00**.

I find that **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements - Finishes** states the useful life for an interior painting finish is 4 years. I find that Policy takes a reasonable stance. I have not been presented with evidence of the age of the interior paint or that the interior paint was less than 4 years old. **Section 7(2)** of the Act imposes on the landlord a duty to *reasonably mitigate or minimize their loss /claim*. Therefore, in respect to the landlord's claim for repainting the interior finish I find that even if I were to accept that the tenant is responsible for, or by their action damaged the rental unit walls, I find that the factored mitigated or depreciated value of the landlord's entitlement for repainting would be reduced 100% and the resulting allowable compensation to the landlord would be \$0.00. Effectively, I therefore **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements - Finishes** states the useful life for carpeting is 10 years. I find that Policy takes a reasonable stance. I have not been presented with evidence of the age of the carpeting replaced by the landlord with laminate flooring or that the age of the carpeting was less than 10 years. **Section 7(2)** of the Act imposes on the landlord a duty to *reasonably mitigate or minimize their loss /claim*. Therefore, in respect to the landlord's claim for replacement of the carpeting with an alternate flooring, I find that even if I were to accept that the tenant is responsible for damage to the carpeting, I find that the factored mitigated or depreciated value of the landlord's entitlement for any remedy for the carpeting would be reduced 100% and the resulting allowable compensation to the

landlord would be \$0.00. Effectively, I therefore also **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that the landlord has provided sufficient evidence to support their claim that as a result of the tenant's conduct they expended time to clean and repair the rental unit in preparation for the next tenant and as a result on a balance of probabilities forwent revenue for a period of 2 weeks. Therefore, I grant the landlord their claim for loss of revenue in the amount of **\$1600.00**.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is as follows:

Unpaid rent	\$2150.00
Bathroom door and countertop repair	\$200.00
Screen door repair	\$34.52
Carpeted stairs cleaning	\$136.50
Rental unit cleaning	\$250.00
disposal / removal cost	\$781.20
Ceiling remediation and affixing towel bar(s)	\$400.00
Loss of rent revenue	(add) <u>\$1600.00</u>
landlord's filing fee	\$100.00
total of landlord's awards	\$4052.22 <u>\$5652.22</u>
<i>Less tenant's security deposit in trust</i>	<i>- 1750.00</i>
Monetary Order for landlord	\$2302.22 <u>\$3902.22</u>

I Order that the landlord may retain the tenant's security deposit in its entirety in partial satisfaction of their award.

I grant the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of ~~\$2302.22~~ **\$3902.22**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part has been granted, and the balance dismissed.

This Decision is final and binding.

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: April 30, 2019

Residential Tenancy Branch

*This Decision amended pursuant to Section 78(1)(c)
of the Residential Tenancy Act this 13th day of May 2019, **as indicated.***