



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 12, 2020 and July 7, 2020. The Landlords applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlords and one of the Tenants attended the first hearing. The Tenant confirmed receipt of the Landlords' application and evidence, and did not take issue with the service of these documents. The Tenants did not submit any documentary evidence.

The Tenants did not attend the second hearing. However, the Landlords did.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent and utilities or for damage or loss under the Act?
- Are the Landlords entitled to retain all or a portion of the Tenants' security and pet deposit in partial satisfaction of the monetary order requested?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the lease agreement was provided into evidence, and the tenancy was for a fixed term, ending December 31, 2019, reverting to a month-to-month tenancy thereafter. Monthly rent was set at \$2,095.00 and was due on the first of the month. The Tenants also agreed to pay \$50.00 per month towards the sewer and fire protection utility as part of this tenancy agreement. The Landlords still hold a security deposit of \$1,047.50 and a pet deposit of \$1,047.50.

The Landlords are seeking to recover unpaid rent and utilities for the first part of January (1st - 8th) of 2020, as well as rent compensation for the Tenants short notice for the remainder of January 2020, because the unit sat empty. The Landlord is also seeking to recover money for damage to the rental unit. These items are listed below, along with the relevant testimony and evidence.

The Landlords and the Tenants did a move-in inspection on December 29, 2018, and some general damage was noted. The condition inspection form was not on the approved government inspection report template, and did not break down each room, or the specific components of each room in the rental unit. The move-out inspection was done on January 9, 2020, after the Tenants had vacated the unit, without notice. Again, the move-out inspection was not on the approved form, and only detailed a couple of damaged items, and did not document the condition of each room, along with the different components of each room (ie- walls, fixtures, floors, appliances, windows, doors). Neither condition inspection report provided a fulsome account of the condition of all aspects of the suite, and it appears only some damaged items were noted, generally.

The Landlords are seeking the following items:

- 1) \$2,095.00 – January Rent Losses

Although the Landlords separated some of the rent amounts out in their application, they clarified in the hearing that they are seeking the full month of rent for January 2020, in the amount of \$2,095.00 because the Tenants did not give proper written Notice that they would be vacating, and because the Landlords were unable to re-rent the unit until March 2020. More specifically, the Landlords stated that the Tenants left, without proper Notice, on January 8, 2020, and did not pay any rent for January. The Landlords stated that they had several conversations with the Tenants by text message leading up to them moving out, but nothing was ever communicated in a clear or instructive way. The

Landlords stated they never had anything formal or in writing to go from, until they received a text message on January 8, 2020, when the Tenants indicated they had already moved out, and would not be coming back.

The Landlord stated that due to the location of the rental unit, it is not easy to show it, and attract interest. It is also difficult to find cleaning staff, and to repair the unit. The Landlord stated they were unable to get cleaning staff until January 27, 2020, and the Tenants failed to do any cleaning, so this was a requirement prior to re-rental. The Landlords explained that they reposted the ad for the rental unit on January 11, 2020, 3 days after the Tenants left, for \$2,249.00. The Landlords stated that they lowered the rental price 2 weeks later after only getting limited interest. The Landlords stated that they re-rented the unit on March 3, 2020.

The Tenants did not refute that they lived in the unit from January 1-8, 2020, and did not pay any rent for that period. The Tenants stated that the Landlords should have known that they were moving out because of all the conversations they had by text message, leading up to their departure. The Tenants acknowledged that they did not provide any formal notice in writing, saying when they would be leaving, other than the text message conversations that were had, talking generally about moving and their financial troubles.

2) \$50.00 – BC Hydro and Fortis BC bill estimate

The Landlords stated that the Tenants transferred the gas and electricity bills out of their name, to the Landlord, as of January 1, 2020, despite continuing to live there for 8 days in January. The Landlords stated they have no idea what the Tenants actual usage was because they have no way to break down the amounts. The Landlords stated they estimated that the Tenants used \$30.00 worth of electricity and \$20.00 worth of gas in those 8 days but could not support how this was arrived at.

This item was discussed at the second hearing, and the Tenants were not present.

The following items below (items #3 onwards) were discussed at the end of the first hearing, and also at the second hearing. The Tenants were only present for item #3 below (end of first hearing), and were not present for the remainder of the discussion on the other items. When the Tenants were given a chance to respond the 3rd item below, at the end of the first hearing, they stated “I don’t have anything else to say”, and did not comment any further on the items claimed by the Landlord. The Tenants threatened to disconnect at the end of the first hearing, and they did not attend the second hearing, so the Landlords were the only people who testified to the remaining items.

- 3) \$59.93 - Damage to exterior vinyl siding, east side
Materials (receipt attached)
- 4) \$165.00 - Vinyl Siding Repair and cleanup of oil stains (for purchase time, cutting, and installation); Cleaning of Oil Stains in Garage. The Landlords withdrew this item at the second hearing.

The Landlord pointed to the condition inspection report to show that this damage was not pre-existing, and the Tenants caused the siding on the house to melt. The Landlords stated that they are not sure how it was melted, but there were a few panels that required replacement on the exterior vinyl siding adjacent to the fireplace. The Landlords pursued the cost of the siding (#3 above) but withdrew their claim for the labour involved for the replacement/repair, and oil cleaning (item #4), even though it took 4-5 hours to replace the siding.

- 5) \$131.25 - Carpet Cleaning Costs by Clean Evolve (See Invoice)

The Landlords stated that when the Tenants left on January 8, 2020, they did not clean up, nor did they clean the carpets. The Landlords stated that the Tenants had a dog and lived there for a year. The Landlords stated that there was debris and staining on the carpets. A receipt for this item was provided.

- 6) \$6.72 - Kitchen Puc Light burned out and replaced (See Receipt)

The Landlords stated that there was one burned out bulb that required replacement. This bulb burned out during the tenancy. A receipt was provided.

- 7) \$56.07 - Kitchen Lights above cabinetry burned out and replaced.

The Landlords withdrew this item at the hearing.

- 8) TBD - Granite Chip Kitchen Countertop - Work to be completed

The Landlords stated that the Tenants chipped the granite countertop in the kitchen. The Landlords pointed to the condition inspection report as evidence that it was chipped at the end of the tenancy, but not the start. The Landlords have not obtained an estimate, or paid for any repairs yet. The Landlords are not sure what this will cost.

9) \$405.00 – House Cleaning costs

The Landlords provided an invoice/receipt for the cleaning they had to have done at the end of the tenancy because of the mess left behind. The Landlords stated that nothing was cleaned before the Tenants left, and the whole house (3 bedroom - 1,800 sq ft) required cleaning. The walls, windows, floors, appliances, kitchen, washroom, and garage were all very dirty. The Landlords stated that they paid a cleaner to come in and clean the unit, and it took her 13.5 hours at a rate of \$30.00 per hour.

10) \$460.00 - French Door Glass Break - Door Replacement

The Landlords stated that the Tenants broke one of the panes of glass in the interior French door. The Landlords found an equivalent new door, and noted that it cost \$460.00. The Landlords have not replaced this item, nor have they had it repaired yet. The Landlord did not indicate if this item is repairable, or if the single glass pane could be fixed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

First, I turn to the issue regarding move-in and move-out condition inspection reports.

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

I note that section 20 of the Regulations lists a variety of things that must be included in the condition inspection report. The report does not need to be on the government

issued form. However, it must contain specific details about the state and repair of each room, and the different items in each room. The report developed by the Landlord does not sufficiently do this, and is absent much of the detail required under this regulation. As such, I do not find it is sufficiently detailed as to be a reliable indicator as to the state of the rental unit at the beginning or the end of the tenancy. I have assigned it little to no weight in the decision. I have relied on oral testimony, receipts and photos only. I will address each of the Landlords' items listed above in the same order, for simplicity:

1) \$2,095.00 – January Rent Losses

I find it important to note the following portion of the Act:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A copy of the lease agreement was provided into evidence, and the tenancy was for a fixed term, ending December 31, 2019, reverting to a month-to-month tenancy thereafter. Monthly rent was set at \$2,095.00 and was due on the first of the month. Although the Tenants could have given written Notice to end tenancy effective the last day of their fixed term lease (December 31, 2019), there is no evidence they provided any formal written Notice to the Landlords. I do not find the text message conversations they had were sufficiently clear or formal such that they meet the requirements placed on the Tenants to end the tenancy legally, and in writing. As there is insufficient evidence the Tenants provided the Landlords with written Notice, I find they breached section 45 of the Act. Although there were some preliminary discussions about the Tenants moving out, nothing was ever formalized and it appears the Tenants sent the Landlord a text message on January 8, 2020, saying they had moved out. I find this type of last minute communication would have significantly contributed to the inability to re-rent the unit for the rest of January.

I note the Tenants were living in the unit from January 1-8, 2020, and no rent was paid, and they left with very short and informal notice, leaving the Landlords with limited options to find new tenants. I note the Landlord reposted the ad within 3 days, and started cleaning and repairing as soon as they could. Although the Landlords initially reposted the ad for slightly more money, I note they lowered the rent back down within 2 weeks and were able to find new tenants by March 2020. The Landlord is only seeking to recover January 2020 rent, even though February the unit was empty as well. I find the Landlords sufficiently mitigated their losses for January, and I find the Tenants are responsible for January 2020 rent in full, due to their breach of section 45 of the act (improper written notice given), and for vacating in the manner they did, without paying rent for that month. I award the Landlords the full month's rent for this item, \$2,095.00.

2) \$50.00 – BC Hydro and Fortis BC bill estimate

I note the onus is on the applicant to demonstrate the value of the loss. In this case, the Landlords provided no evidence to show how this was calculated. The Landlords were unable to speak to this item such that I could find they sufficiently demonstrated the value of their loss. I dismiss this item, in full.

3) \$59.93 - Damage to exterior vinyl siding, east side
Materials (receipt attached)

4) \$165.00 - Vinyl Siding Repair and cleanup of oil stains (for purchase time, cutting, and installation); Cleaning of Oil Stains in Garage. The Landlords withdrew this item at the second hearing.

I note the condition inspection report is not particularly helpful on this matter. However, the Landlords stated that the Tenants damaged the exterior siding and it appeared melted. The Landlords provided a receipt showing what it cost to replace the siding. The Landlords did not pursue the labour associated with this repair (item #4). The Tenants did not speak to this item, and replied by saying they had nothing else to say. I find the Landlords statements on this matter, were not sufficiently rebutted, and I find the Landlords have sufficiently demonstrated that the Tenants caused damage to the siding. I award item #3, in full.

5) \$131.25 - Carpet Cleaning Costs by Clean Evolve

I note the Tenants had a pet, and they failed to clean the carpets before they moved out. The Landlords stated they paid a company to come in and clean them carpets for

the above amount and the Tenants did not speak to or refute this claim. I award this item, in full, as the Tenants should have cleaned the carpets, given they had a pet.

6) \$6.72 - Kitchen Puc Light burned out and replaced (See Receipt)

I accept the undisputed testimony that the light burned out during the tenancy. I find the Tenants are responsible for this item.

7) \$56.07 - Kitchen Lights above cabinetry burned out and replaced.

The Landlords withdrew this item at the hearing.

8) TBD - Granite Chip Kitchen Counter Top - Work to be completed

As stated above, the onus is on the applicant to demonstrate the value of their loss. In this case, the Landlords have not obtained an estimate, or paid for any repairs yet. The Landlords are not sure what this will cost. I find the Landlords have failed to sufficiently establish the value of their loss. I dismiss this item, in full, without leave.

9) \$405.00 – House Cleaning costs

I accept the Landlords' undisputed statements that nothing was cleaned before the Tenants left, and the whole house (3 bedroom - 1,800 sq ft) required cleaning. The walls, windows, floors, appliances, kitchen, washroom, and garage were all very dirty. The Landlords stated that they paid a cleaner to come in and clean the unit, and it took her 13.5 hours at a rate of \$30.00 per hour. I note an informal invoice was provided, and I find the amount sought is reasonable, given the size of the house, the location, and the amount of cleaning that was required. The Tenants did not speak to this item. I award this item in full.

10) \$460.00 - French Door Glass Break - Door Replacement

I accept the undisputed testimony that the Tenants broke one of the panes of glass in the interior French door. However, the Landlords did not speak to whether or not this small glass pane, as shown in the photo, was repairable or whether this was investigated. The Landlords are looking to replace the whole door, but given the pane is small, and they did not speak to why it cannot be repaired, I find they have failed to sufficiently demonstrate the value of the loss.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal amount is more appropriate in this case. I award the Landlords \$50.00 for this broken pane of glass.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were substantially successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution. Also, I authorize the Landlords to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlords are entitled to the following monetary order:

Item	Amount
Lost Rent	\$2,095.00
Vinyl Siding	\$59.93
Carpet Cleaning	\$131.25
Kitchen Light	\$6.72
House Cleaning	\$405.00
Glass Door – Nominal	\$50.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,847.90
LESS: Security and Pet Deposit	\$2,095.00
Total Amount	\$752.90

Conclusion

The Landlord is granted a monetary order in the amount of **\$752.90**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: July 8, 2020

Residential Tenancy Branch