



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began February 1, 2011 with monthly rent of \$1250.00; the tenants paid a security deposit of \$625.00 and the fixed term tenancy agreement has an end date of January 31, 2012.

On August 9, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent; the tenants have not filed to dispute this notice.

On August 23, 2011 the tenants gave the landlord notice in writing that they would be vacating the rental unit August 31, 2011.

The landlord testified that a date for the move out inspection was provided to the tenants which the tenants requested to reschedule. The landlord accommodated the tenants request to reschedule the move out inspection however the tenants did not attend and the landlord completed the move out inspection on their own. The move out inspection reflects damage to the rental unit, the rental unit being left dirty, keys not returned and that the tenant had constructed an addition on the balcony. The tenants stated that they did not attend the move out inspection as they were paying movers and could not stay as it would have cost them more money.

The landlord stated that the tenants had attached two boards on the balcony, painted the balcony and placed bamboo screening on the balcony and that the tenants had started to paint the living room without the landlord's permission. The landlord stated that the rental unit has been freshly painted at the start of this tenancy but that the walls in the rental unit were very marked by the tenants and the entire unit needed to be

repainted. The tenants disputed the landlord's claim that the walls were all marked by them and the tenants swore that they had not started to re-paint the living room. The tenants stated that the paint used on the balcony was provided by the building manager and the same paint that is used on all the building balconies. The tenants also stated that it would take a matter of minutes for the landlord to remove the bamboo screening on the balcony and the 2 boards that had been nailed up.

The landlord also stated that the bedroom window had been broken during the tenancy and the tenants stated that they had reported the broken window to the building manager in April and that they believe a bird a flown into the window as it was broken in and not out. The landlord commented that she had no knowledge of the broken window and should have as all repairs are done under a work order.

The tenants did not dispute that they owed the landlord unpaid rent however they disputed the landlord's claim for the September 2011 rent. The landlord stated that they had completed all of the repairs to the rental unit within 3 days time but that they did not advertise the rental unit for September as they had no idea how long it would take to complete the repairs.

The landlord stated that the tenants left items behind in the rental unit that had to be hauled to the dump and that their contractor charged the landlord a flat fee of \$150.00.

The tenants noted that although the landlord is claiming for replacement of the tenant's manual, the tenant's manual is clearly noted in one of the landlord's photographs that have been submitted as evidence.

The landlord in this application is seeking \$5000.00 the following:

July 2011 unpaid rent	\$1090.00
September 2011 unpaid rent	\$625.00
August 2011 parking	\$20.00
July & August late charges	\$50.00
Liquidated damages	\$300.00
Cleaning charges	\$250.00
Painting of suite	\$500.00
Carpet cleaning	\$263.00
Drape cleaning	\$149.51
Tenant manual	\$10.00
Broken window	\$125.00
Trash removal	\$150.00
Repair balcony	\$300.00
Total Claim	\$5705.51

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for cleaning costs, damages, unpaid rent and liquidated damages.

The tenancy agreement specifies:

#5. Liquidated Damages, that the tenants will be required to pay the landlord \$300.00 if they are in breach of the terms of the fixed term tenancy.

#10. Arrears, that the tenants will be charged \$25.00 for late rent payments or NSF cheques.

#23 Carpets and Window Coverings, that the tenants will pay to have both professionally cleaned at the end of the tenancy.

The tenants also acknowledge that they did not clean the rental unit and that there is unpaid rent for July and August 2011. Therefore the landlord is entitled to \$3372.51 for these portions of their claim.

The landlord in this claim is seeking \$1250.00 loss of rent for the month of September 2011 however the landlord in the hearing acknowledged that they took possession of the rental unit on August 28, 2011 and that it only took 3 days to complete all of the repairs and cleaning required in the rental unit. The landlord after seeing the condition of the rental unit on August 28, 2011, should have been capable of estimating approximately how long the work would take as it was being done 'in-house', and should have taken steps to mitigate their loss and rent the unit for at least part of, if not all of the month of September. I am not satisfied that the landlord actively sought new tenants for any part of the month of September and made attempts to mitigate their loss therefore this portion of the landlord's claim is dismissed without leave to reapply.

In regards to the landlords claim for painting, I find that there was some painting required in the rental unit but that the landlord did not substantiated their claim that the entire unit needed to be repainted. Therefore the landlord is entitled to \$250.00 for painting.

The modifications the tenant made to the balcony were minimal at best and it should have taken a very short amount of time for the landlord to remove the two boards and bamboo screening. The tenant also painted the balcony, with the same paint used on all the balconies and I find this portion of the landlord's claim unreasonable. Therefore the landlord is entitled to \$25.00 for repairs to the balcony.

The landlord's photo show the items left in the rental unit by the tenants and while the landlord makes the claim that it cost them \$150.00 to haul the items to the dump, I find this amount excessive and award the landlord \$50.00 for trash removal.

I accept the tenants testimony that they did not break the window however as the window was broken during this tenancy, they will be responsible for some of the cost of this repair. Therefore the landlord is entitled to \$75.00 for repairs to the window.

	Claim	Award
August 2011 unpaid rent	\$1250.00	\$1250.00
September 2011 unpaid rent	\$1250.00	\$0.00
August 2011 parking	\$20.00	\$20.00
July & August late charges	\$50.00	\$50.00
Liquidated damages	\$300.00	\$300.00
Cleaning charges	\$250.00	\$250.00
Painting of suite	\$500.00	\$250.00
Carpet cleaning	\$263.00	\$263.00
Drape cleaning	\$149.51	\$149.51
Tenant manual	\$10.00	\$0.00
Broken window	\$125.00	\$75.00
Trash removal	\$150.00	\$50.00
Repair balcony	\$300.00	\$25.00
	Total Award	\$3772.51

Accordingly I find that the landlord is entitled to a monetary order for \$3772.51.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$3772.51 in unpaid rent, cleaning costs and damages. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$625.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$3147.51**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) 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: December 12, 2011.

Residential Tenancy Branch