



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 is the Landlord's application for a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he hand delivered the Notice of Hearing documents to the Tenant on May 21, 2013, and sent another copy along with his documentary and digital evidence to the Tenant, by registered mail, on May 22, 2013. The Tenant's agent acknowledged service of the documents and stated that he was able to open the digital evidence.

The Tenant did not provide any documentary or digital evidence to the Residential Tenancy Branch, or the Landlord.

Issues to be Decided

- Is the Landlord entitled to compensation for loss of revenue for December, 2012, and January, 2013; for the cost of cleaning the rental unit; replacing the carpets; and for the cost of repairing damaged walls, doors and reglazing the bath tub?
- May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

Background and Evidence

Neither party was certain of the date that the tenancy started, but they agreed that the Tenant lived in the rental unit for approximately 4 ½ years. The Landlord purchased the rental unit on October 1, 2012.

Monthly rent was \$650.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy.

On November 15, 2012, the Tenant gave the Landlord written notice that he was ending the tenancy "on Friday or Saturday of this weekend". The Landlord provided a copy of the notice in evidence.

The Landlord gave the following testimony:

The Landlord stated that he posted a 24 hour Notice to inspect the rental unit on November 23, 2013, but that when he entered the rental unit on November 24, he found it abandoned. The Landlord seeks loss of revenue for the month of December, 2012, because the Tenant did not give due notice to end the tenancy. He also seeks loss of revenue for the month of January, 2013, because the rental unit was not ready to show to prospective tenants until the middle of January. The total claim for loss of revenue is **\$1,300.00**.

The Landlord stated that he has been renting for 20 years and has never seen anything like the mess the Tenant left at the end of the tenancy. He testified that it looked like the Tenant was a hoarder and stated that major clean-up and repairs were required, as follows:

- The carpets had cat litter and cat feces on them, with cat urine soaked right through to the plywood floorboards. The floorboards, underlay and carpets all had to be replaced. The carpets were not new at the beginning of the tenancy, but were in fair condition. The Landlord estimated that the carpets were 6 years old. The Landlord is not seeking to recover the cost of the plywood, but seeks to recover 50% of the cost of the carpet (**\$573.23**), the cost of the underlay (**\$254.80**) and the cost of installing the carpet (**\$1,050.00**).
- The bathtub was filled with garbage and stained with mildew. It had to be re-glazed. The Landlord seeks to recover that cost, in the amount of **\$442.40**.
- There were 42 holes in the walls, some of them were so large and numerous that some of the walls had to be replaced. The Landlord seeks to recover the cost of repairing/replacing the drywall, in the amount of **\$1,150.00**.
- The Landlord's handy man spent 55 hours of work painting, doing small repairs and cleaning the rental unit, at \$15.00 per hour. The Landlord seeks to recover this cost in the amount of **\$825.00**. The Landlord also seeks compensation for his own labour in the amount of **\$285.00** (19 hours at \$15.00 per hour for smaller repairs and some cleaning) and to recover the cost of miscellaneous items required to affect the repairs, in the total amount of **\$14.87**.

The Landlord provided copies of invoices, a written statement from the previous manager of the rental property attesting to the generally good condition of the rental unit at the time the tenancy started in 2009, photographs and digital photographs of the rental unit at the end of the tenancy.

The Tenant's agent gave the following testimony:

The Tenant's agent stated that the Tenant did not dispute that the rental unit was dirty at the end of the tenancy. He stated that he went to clean the rental unit on November 23, 2013, but the Landlord told him that he would do it.

The Tenant's agent agreed that the Tenant was responsible for the following amounts:

Cleaning	\$285.00
Miscellaneous supplies	\$14.87
December rent	<u>\$650.00</u>
TOTAL	\$949.87

He stated that the tub may or may not have required re-glazing, but that in any event the Tenant should only have to pay for half of the cost of re-glazing the tub and less than 100% of the cost of installing the carpet and underlay. The Tenant's agent submitted that the Tenant acknowledges the carpet had to be replaced, but stated that 40% of the cost of the carpet was fair, and only 50% of the cost of the underlay. He questioned whether 684 square feet of carpet was laid pursuant to the invoice for the carpet; or 1,050 square feet, pursuant to the invoice for installation.

The Tenant's agent questioned the number of holes in the walls. He also stated that two of the invoices appeared to charge for the same items. He submitted that the invoice for the drywall replacement and patching included a charge for replacing a bathroom door, which was also charged by the handyman. The Tenant's agent stated that the handyman's invoice for \$825.00 included cleaning charges, which the Landlord had also billed for.

The Landlord gave the following reply:

The Landlord stated that 2 people did different jobs on the same door. He stated that the handyman framed the door and put the hardware on.

The Landlord submitted that he was more than fair with his application for compensation. He stated that other flooring had to be replaced and that he also had to replace a kitchen drawer and the blinds in the bedroom, but did not charge for those items, the subfloor, or for other smaller repairs.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the Act requires a tenant to end a periodic tenancy by giving written notice to the landlord. This notice must end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case I find that the Tenant did not comply with the requirements of Section 45 of the Act, and that the Landlord suffered a loss as a result of the Tenant's failure to comply. A notice given on November 15, 2012, would not be effective until December 31, 2012. Therefore, I find that the Landlord is entitled to loss of revenue for the month of December, 2012.

Section 37(2) of the Act provides that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. Based on the testimony of both parties and the photographs provided, I find that the Tenant did not comply with Section 37(2) of the Act. I find that the rental unit required considerable repairs at the end of the tenancy and that the damages were not due to reasonable wear and tear. There are multiple holes in the walls, which appear to be fist sized. I also find that the Tenant did not leave the rental unit reasonably clean. The photographs show that the rental unit was filthy and filled with garbage.

I accept the Landlord's documentary evidence and oral testimony that the repairs were completed in mid-January, 2013, and that the rental unit was not in a state to show to prospective tenants until then. I allow the Landlord's request for compensation for loss of revenue for the month of January, 2013.

Based on the testimony of both parties and the documentary and digital evidence, I am satisfied that the Tenant caused damage to the rental unit as claimed by the Landlord, contrary to Section 37(2) of the Act. Section 67 of the Act provides me with the authority to determine the amount of compensation due to the Landlord for the damage caused.

The Landlord testified that the carpets were approximately 6 years old at the end of the tenancy. Residential Tenancy Branch Policy Guideline 40 provides the useful life for materials. The Guideline indicates that carpets have a useful life of 10 years. Therefore, taking into consideration the depreciated value of the carpets, I find that the Landlord is entitled to 40% of the cost of the carpets and underlay:

Cost of underlay	\$254.80
Cost of carpet	<u>\$1,141.46</u>
Total materials	\$1,396.26

$$\$1,396.26 \times 40\% = \textbf{\$558.50}$$

I award the Landlord 100% of the cost of installing the carpet based on 684 square feet, for a total of **\$684.00** (\$1.00 per square foot, pursuant to the invoice).

I find that the photographs support the Landlord's claim that the bathtub required repairs. I further find that the Landlord mitigated his loss by having it re-glazed rather than purchasing and installing a new tub. Therefore, I allow this portion of the Landlord's claim in the amount of **\$442.40**.

I also accept the Landlord's evidence that the walls were badly damaged and that some required replacement. I allow the Landlord's claim in the amount of **\$870.00**, pursuant to the invoice provided.

I also find that the Landlord has established a claim for cleaning, painting and miscellaneous repairs in the total amount of **\$1,110.00** [(55 hours + 19 hours) x \$15.00 per hour]. I allow the Landlord's claim in the amount of **\$14.87** for miscellaneous items.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Loss of revenue	\$1,300.00
Carpet and underlay	\$558.50
Installation of carpet	\$684.00
Cost of re-glazing bath tub	\$442.40
Replacing and repairing walls	\$870.00
Labour (74 hours @\$15.00 per hour)	\$1,110.00
Miscellaneous items for repair	\$14.87
Recovery of the filing fee	\$50.00
Subtotal	\$5,029.77
Less security deposit	- \$325.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$4,704.77

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$4,704.77** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 27, 2013

Residential Tenancy Branch