



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue

The tenant advised that she was going to “appeal the decision because I have lots of evidence but was too busy to submit it”. In the tenants own testimony she acknowledged that she received the landlords evidence in accordance with the legislated timeline as per the Act and the Rules of Procedure. The tenant gave testimony that she gave the landlord her work address for the landlord to forward documents, and that a coworker signed for and accepted such delivery.

The tenant gave testimony that the coworker did not pass it along to her until the last allowable day under the Act, and didn’t have time to put together her evidence package. I find no fault can be attributed to the landlord. The landlord served the documents to the address as directed by the tenant. The issue of whether the tenants’ coworker didn’t give her the documents in a timely manner is solely the responsibility of the tenant and not the landlord. I proceeded and completed the hearing on that basis.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 15, 2015 and ended on September 1, 2015. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The tenancy agreement is a verbal one. No condition inspection reports were conducted in writing at move in or move out.

The landlord stated that the unit was fully renovated in 2013. The landlord stated that the tenants left the unit dirty and with some minor damage. The landlord stated that the tenant failed to pay utilities as per their verbal tenancy agreement. The landlord stated the unit had to be painted and that some items had to be repaired or replaced. The landlord stated that they had to give the incoming tenant a rent reduction due to the landlords' entering the unit to conduct repairs.

The landlord is applying for the following:

1.	Towel Hanger and Toilet paper holder	\$41.87
2.	Paint Supplies	\$457.18
3.	Door Lock	\$35.27
4.	Carpet Cleaning	\$230.26
5.	Utilities for July and Aug (Fortis BC and BC Hydro)	\$96.42
6.	Registered Mail	\$45.29
7.	Labour	\$900.00
8.	Reduced Rent for incoming tenant	\$550.00
9.	Filing Fee	\$50.00
	TOTAL	\$2406.29

The tenants' testimony is as follows.

The tenants stated that they dispute the majority of the landlords claim. The tenants stated that they do not think they should have to pay for the landlords renovations. The tenants stated that unit was in poor condition when they moved in and requested on numerous occasions, that condition inspection reports be done, but were denied. The tenants stated that the majority of the issues the landlord is claiming for were pre-existing problems.

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 address the landlord's claims and my findings around each as follows.

1. Towel Hanger and Toilet Paper Holder - \$41.87

The landlord stated that the tenant damaged these items and required them to be replaced. The landlord submitted a receipt for this claim.

The tenants dispute this claim. The tenants stated that one week after moving in both items became loose. The tenants stated that they made a request to the landlord to install these properly but the landlord never did. The tenant stated that the items need to be "screwed back in, that's all".

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

2. Paint and supplies - \$457.18

The landlord stated that the unit was painted in September 2013. The landlord stated that the unit was left with many holes in the wall and that many marks and scratches were the result of the tenants' actions.

The tenants stated that they agree that they put in several holes in the wall to mount their television. The tenants stated that they felt they should be responsible for "about

thirty dollars of repairs". The tenants stated that the unit was already in rough condition and find it hard to believe it was painted in 2013.

Policy Guideline 1 addresses the tenants' responsibility to fill nail holes if the amount or size appears to be excessive. The landlord submitted a statement that they allege was from the previous tenant that states the walls were in good condition when they moved out. This person has not participated in this hearing, there is no proof they were in fact tenants and the document is unsigned; I do not find this document helpful and lacks any evidentiary weight. As stated in the previous claim, in the absence of the condition inspection report the landlord has not provided sufficient evidence to prove their claim.

I accept the tenants' version that they did in fact make some large holes to mount the television and that they have limited responsibility. I do not agree that thirty dollars is an appropriate amount based on the evidence before me. I find that the appropriate amount for labour and supplies to patch the holes, sand and paint them is \$100.00. I grant this amount to the landlord.

3. Door Lock - \$35.27

The landlord stated that the tenant only returned two of the three keys they were issued and that it required them to replace the lock.

The tenant stated that they agree that they returned two of the three keys, but stated they had informed the landlord that they lost a key early in the tenancy. The tenants stated the landlord advised them "not to worry about it". The tenants stated that the landlords never mentioned to them to have another key cut or they would have done so. The tenants dispute that the lock needed replacing as the lock was working and the key has been lost for so long that it's not an issue.

The landlord did not dispute the version of events as stated by the tenants. The landlord has not satisfied me that the lock required to be replaced and I therefore dismiss this portion of their application.

4. Carpet Cleaning - \$230.26

The landlord stated the carpets were left dirty and stained. The landlord provided a receipt to support this claim.

The tenant stated that she borrowed a steam cleaner from a friend and that she did clean the carpets. The tenant stated that on the last day of the tenancy her daughter accidentally dropped green tea on the carpet. The tenant stated that she did agree that

the carpets would have to be cleaned again. Based on the tenants' acknowledgement and acceptance of responsibility, I find that the landlord is entitled to \$230.26.

5. Utilities – \$ 96.42

The landlord stated that the tenants were responsible for “three portions of the utilities”. The landlord stated that the tenants did not pay their portion for July and August.

The tenants dispute this claim. The tenants stated that they did pay the bills. The tenants stated that they were never provided copies of the bills and question if they have “double paid”.

The landlords have not provided any documentation that the tenants are responsible to pay for “three portions” of the utilities. In addition, the tenants stated that they have paid. In the absence of any supporting documentation, the landlord has not provided sufficient evidence to prove this claim and I therefore dismiss this portion of their application.

6. Registered mail – \$45.29

The landlord is seeking the recovery of registered mail costs

The Act does not prescribe for the recovery of these costs as these are the costs associated in litigating ones claim, accordingly, I dismiss this portion of the landlords application.

7. Labour costs - \$900.00

The landlords stated that they unit required extensive cleaning and painting. The landlords' stated that they each worked 10 hours a day for three days. The landlords are seeking 60 hours of labour at \$15.00 per hour = \$900.00.

The tenants dispute this claim. The tenants stated that they left the unit in better condition than they got it and renewed their position that the landlord is attempting to renovate the unit at the tenants' expense.

Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. I have addressed the labour involved for the patching of the holes in the wall and the landlords have been awarded an amount for that claim. Beyond the wall patching, the landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

8. Rent Reduction - \$550.00

The landlord stated that the new tenant felt it was unfair that he had to pay the full months' rent for September since the landlords were constantly going in and out of the suite conducting repairs. The landlord stated that they negotiated with the new tenant and felt that a \$550.00 rent reduction was fair and that the old tenants should pay for that. The landlord stated that they did not observe the condition of the unit prior to the new tenant moving in. The landlord stated that the tenant in the basement wanted her son to move into the subject unit and that it was rented to him sight unseen.

The landlords were negligent in their approach to this, or at the very least, careless. The landlords rented out a unit without having an opportunity to inspect and prepare for any issues with the unit. In addition, the landlords gave testimony that they had the unit cleaned and painted in three days, but now seek the subject tenant to bear a \$550.00 or an almost 40% cost that they negotiated with the new tenant. This clearly is an error that the landlords made that they want the subject tenants to pay for. I do not accept this claim as a result of the tenants' actions and I therefore dismiss this portion of the landlords' application.

9. Filing Fee – 50.00.

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

Conclusion

In summary, the landlord has been successful in the following claims:

Wall Patching	\$100.00
Carpet Cleaning	\$ 230.26
Filing Fee	\$50.00
	\$
	\$
	\$
Total:	\$380.26

The landlord has established a claim for \$380.26. I order that the landlord retain \$380.26 from the security deposit in full satisfaction of the claim. The landlord is to

return the remaining \$319.74 to the tenants. I grant the tenants an order under section 67 for the balance due of \$319.74. This order may be filed in the Small Claims Court 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: October 15, 2015

Residential Tenancy Branch

