



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *_MNDC, MNSD, MND, FF*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of replacing the carpet, for painting the walls, to retain the security deposit and for the recovery of the filing fee. The tenant applied for a monetary order for the return of double the security deposit, for compensation pursuant to s.51 of the *Residential Tenancy Act*, for moving costs, for the cost of replacing filters during the tenancy, photocopying, postage and for double the filing fee.

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.

During the hearing the tenant withdrew his claim for the cost of replacing filters. Based on the testimony of both parties, I find that the tenants agreed to a deduction off the security deposit in the amount of \$600.00 and the landlord returned the balance of \$175.00 to the tenant. Since the security deposit has already been dealt with by mutual agreement, I dismiss this portion of the applications of both parties.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of replacing the carpet, for painting the walls and for the recovery of the filing fee? Is the tenant entitled to compensation pursuant to s.51 of the *Residential Tenancy Act*, for moving costs, photocopying, mailing costs and for double the filing fee?

Background and Evidence

The tenancy started on September 01, 2010. A copy of the tenancy agreement was filed into evidence. The monthly rent at the end of the tenancy was \$1,588.75 and was payable on the first of the month.

On April 07, 2016 the landlord served the tenant with a notice to end tenancy for landlord's use of property. The effective date of the notice was June 30, 2016. The reason for the notice was that the landlord had all the permits and approvals required by law, to renovate the rental unit in a manner that required the rental unit to be vacant.

The tenant did not dispute the notice, moved out on May 31, 2016 and received compensation in the amount of one month's rent. A move out inspection was conducted in the presence of both parties and a report was filed into evidence. Discrepancies were noted on the report. The carpet was significantly damaged and the walls had stickers that when removed caused damage to the walls. The parties came to a mutual agreement regarding compensation for both the carpet and the walls in the amounts of \$400.00 and \$200.00 respectively. The landlord retained this amount from the security deposit and returned the balance of \$175.00 to the tenant.

The tenant provided the landlord with a forwarding address on the move out inspection report on May 31, 2016. The landlord made this application on June 13, 2016. Even though the parties agreed to a total of \$600.00 for the cost of replacement of the carpet and repair to the walls, the landlord made a claim for an additional \$1,500.00 for the carpet and \$500.00 for repair to the walls. The landlord agreed that the carpet was 14 years old.

The landlord is claiming the following:

1.	Cost to replace flooring	\$1,500.00
2.	Repair walls	\$500.00
3.	Filing fee	\$100.00
	Total	\$2,100.00

After moving out the tenant made some enquiries and found out that the landlord had not applied for permits to renovate the rental unit. The landlord stated that he intended to put the house up for sale and wanted to do some renovation that did not require permits and therefore he did not apply for permits or have them in hand at the time he served the tenant with the notice to end tenancy. The landlord stated that he informed the tenants of his intentions.

The landlord explained that the reasons cited on the notice did not apply to his situation and this was the only box that he could check off as the reason on the notice to end tenancy that was the closest to what his plans for the property were. The landlord confirmed that he intended to do some renovation prior to listing the property for sale.

The tenant also filed a copy of an advertisement that the landlord placed on line sometime in May 2016 advertising the availability of the rental unit for June 2016, at a considerably higher rent.

The landlord agreed that he had advertised the unit as available for rent but stated that he was doing so just to assess the rental market. He stated that he had no intention of renting out the unit and that he had followed through with his plans to renovate and sell the unit. The landlord stated that the rental unit sold in August 2016.

The tenant is claiming compensation in the amount of two months' rent pursuant to s51 of the *Residential Tenancy Act*. The tenant stated that the notice to end tenancy resulted in a lot of inconvenience, added expense and stress to his family. The tenant has filed photographs and receipts to support his claim and is claiming the following:

1.	Moving costs	\$630.00
2.	Compensation of 2 months' rent	\$3,177.50
3.	Photo copying	\$58.29
4.	Canada Post	\$28.77
5.	Filing fee - double	\$200.00
	Total	\$4,094.56

Analysis

Landlord's application:

The landlord has already dealt with the cost of replacing the carpet and repairing the walls by mutual agreement and has received \$600.00 for these items. The landlord stated that the amount he retained was insufficient and therefore he was making an additional claim.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet and the painting. As per this policy, useful life of flooring is ten years and the useful life of interior painting is four years. The landlord agreed that the carpet was 14 years old and therefore if find that the carpet had outlived it useful life and would have had to be replaced at the landlord's cost anyways.

In addition the tenancy was more than five years old and therefore the landlord would have had to paint the unit at his own expense as the useful life of interior paint is only four years.

Based on the above policy guideline and the fact that the landlord has already been compensated for the cost of replacing the carpet and repairing the walls, by mutual agreement, I find that I must dismiss the landlord's claim for the additional cost that he incurred to replace the carpet and repair the walls. Since the landlord has not proven his case, he must bear the cost of filing his own application.

Tenant's application:

1. Moving costs - \$630.00

The tenant had the option of disputing the notice to end tenancy but chose to move out. Therefore the tenant is responsible for the cost of moving and accordingly I dismiss his claim.

2. Compensation of 2 months' rent - \$3,177.50

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord had all the necessary permits and approvals required by law to renovate the rental unit in a manner that required the rental unit to be vacant.

Based on the testimony of both parties and the evidence filed by the tenant, I find that the landlord advertised the availability of the rental unit at a higher rent, did minor renovations and eventually sold the rental unit. The actions of the landlord which include advertising the availability of the unit within a week after the tenant moved out indicate that he intended to re rent the unit. Since the landlord did not have permits and approvals in place and the unit was not used for the stated purpose which is for renovation that required the unit to be vacant, I find that the landlord must pay the tenant compensation (\$3,177.50) which is the equivalent of double the monthly rent.

3. Photocopying - \$58.29

4. Canada Post - \$28.77

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claims for the above two items are dismissed.

5. Double the filing fee - \$200.00

The tenant has proven his case and is entitled to the filing fee of \$100. There is no provision in the *Act* for granting double the filing fee.

Overall the tenant has established the following claim:

1.	Moving costs	\$0.00
2.	Compensation of 2 months' rent	\$3,177.50
3.	Photocopying	\$0.00
4.	Canada Post	\$0.00
5.	Double the filing fee	\$100.00
	Total	\$3,277.50

The tenant has established a claim of \$3,277.50. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$3,277.50**.
The landlord's application is dismissed in its entirety.

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 09, 2016

Residential Tenancy Branch