



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Application made September 20, 2016: OPR; OPB; MND; MNR; MNSD; MNDC; FF
Amended October 11, 2016: to increase monetary claim

Introduction

This is the Landlords' Application for Dispute Resolution seeking an order of possession; a monetary award for unpaid rent, damages and compensation for damage or loss; to apply the security deposit towards their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony.

The Tenants testified that they moved out of the rental unit on September 13, 2016. The Landlords stated that the Tenants gave no notice that they were moving out early. The Landlords agreed that they no longer require an order of possession and therefore this portion of their Application is dismissed.

The Landlords testified that they served the Tenants with their Notice of Hearing documents on September 22, 2016, by registered mail. They stated that they also served the Tenants with their amended Application and additional documentary evidence on October 12, 2016. The Landlords testified that the Tenants did not provide a forwarding address, but that the Landlords found out their address.

The Tenant AG testified that she received the Landlords documents, but that the documents were sent to her work address. The Tenants BB's and PS's copies of the Landlords' documents were sent to PS's work place. The Tenants stated that they did not get a copy of the Notice of Hearing document and that they had to call the Residential Tenancy Branch in order to get the date, dial-in information and access code. The Tenants stated that the Landlords did not provide the Tenant KW's full legal name on their Application. Despite not receiving the Notice of Hearing, the Tenants stated that they wished to "go ahead with the Hearing anyway".

I find that the Landlords provided insufficient evidence to prove that the Tenant JW was served and therefore, I dismiss their claim against him.

On November 8, 2016, the Tenants provided the Residential Tenancy Branch with 3 pages of documentary evidence. The Landlords had not received the Tenants' evidence before Hearing on November 9, 2016. I ordered the Tenants to provide the Landlords with copies of this documentary evidence by registered mail within 5 days of the date of the Hearing. I invited the Tenants to give me that portion of their evidence orally.

Issue(s) to be Decided

Are the Landlords entitled to a monetary award, and if so, in what amount?

Background and Evidence

This tenancy began on April 1, 2016. The tenancy agreement is a term lease, ending September 30, 2016. Rent was \$1,600.00 per month, not including utilities, due on the 1st day of each month. The rental unit is a partially furnished suite. One of the Landlords resides in the other suite. The Tenants paid a security deposit in the total amount of \$800.00 at the beginning of the Tenancy.

The Landlords gave the following testimony:

The Tenant AG moved out of the rental unit in July, 2016. August rent was paid, but September rent was unpaid. The Tenants did not pay their share of the utilities for August and September, 2016.

The Landlords posted a notice on the Tenant's door on August 9, 2016, advising that the tenancy is ending at 1:00 p.m. on September 30, 2016, and that a condition inspection will take place on September 30, 2016, at 12:30 p.m. The Tenants did not attend for the move-out condition inspection and did not return the keys to the rental unit. The Landlords provided a copy of the letter advising of the condition inspection date.

The Tenants left a "mess" in the rental unit. No cleaning was done and there was garbage and junk everywhere and used condoms on the floor. The Landlords provided photographs of the rental unit at the end of the tenancy.

The Landlords seek a monetary award, calculated as follows:

Unpaid rent for September, 2016	\$1,600.00
Unpaid utilities	\$618.06
Late fees	\$200.00
Replace broken blinds	\$68.36
Junk removal (\$854.00 + \$380.00)	\$1,234.00
Replace broken shelf in fridge	\$80.00
Replace burnt-out light bulbs	\$67.13
Replace broken planter	\$223.99
Replace broken closet organizer	\$140.00
Change lock and key	\$106.00
Replace broken mirror	\$106.40
Cleaning (Landlords' labour @\$40.00 per hour)	<u>\$400.00</u>
TOTAL claim	\$4,843.67

The Landlords provided a copy of the condition inspection report, receipts and utility bills in support of their claim.

The Tenants gave the following testimony:

The Tenants agreed that they owe rent for the month of September, 2016. With respect to the Landlords' remaining claim, they gave the following submissions:

The Tenants stated that the Landlords have calculated unpaid utilities using the wrong formula. They submitted that there were only 3 people living in the rental unit after the end of July, 2016, and the Landlord has calculated the Tenants' share as if there were 4 people still living in the rental unit.

They submitted that late fees are \$25.00, and that the Landlords are entitled to only two late fees for a total of \$50.00.

The Tenants did not dispute that the Landlords are entitled to the cost of replacing the blinds; however, they submitted that the Landlords' calculation of the cost (including tax) is incorrect. The Tenants submitted that the actual cost is \$63.80.

The Tenants disputed the Landlords' claim for junk removal. They did not dispute that they left junk at the rental unit, but stated that one of the Landlords' "receipts" is a quote and there is no proof that payment was made or who paid it. The Tenants submitted that the second receipt is in the Landlord DH's handwriting and is on the same kind of receipt form as the receipt that was issued for the Tenants' security deposit. The

Tenants stated that BB works for the company which purports to have issued the second receipt and that it is not in the form used by that company.

The Tenants stated that the fridge shelf was cracked when they moved in; half of the lights didn't work; the Tenants did not use the closet organizer; and the mirror was broken when the Tenants moved in.

The Tenants denied damaging the Landlords' planter.

The Tenants stated that they were prepared to pay \$51.50 for replacement of the lock and key.

The Tenants submitted that they had to clean the rental unit when they moved in because it was dirty. Therefore, the Tenants are disputing that they owe the Landlords anything for cleaning the rental unit at the end of the tenancy.

Analysis

The Notice to End Tenancy for Unpaid Rent was posted to the Tenants' door on September 2, 2016. Service in this manner is deemed to be effected 3 days after posting the documents. Therefore, **I find that the tenancy ended on September 15, 2016.**

With respect to unpaid utilities, the tenancy agreement provides that utilities be split equally between the numbers of occupants in the rental property. The Tenant AG did not reside in the rental property for the months of August and September. Based on the documentary evidence provided, and pursuant to the provisions of Section 67 of the Act, I find that the Landlords are entitled to unpaid utilities, calculated as follows:

Shaw cable:

$$\$137.00/4 \times 3 = \$102.75$$

However, the Landlords seek compensation in the amount of **\$100.80** only, and I award them the amount claimed.

Water bill:

April 25 to July 31, 2016	97 days @ \$1.75 per day/5 x 4 =	\$135.80
August 1 to September 15, 2016	45 days @ \$1.75 per day/4 x 3 =	<u>\$59.06</u>
		\$194.86

Hydro:

July 19 to August 17, 2016 = \$96.14 (30 days) = \$3.0247 per day

July 19 to 31, 2016 (13 days) @ 5/4, August 1 to 17, 2016 (17 days) @ 4/3

13 days x \$3.0247 = \$39.32, \$39.32/5 x 4 = \$31.46

17 days x \$3.0247 = \$51.80, \$51.80/4 x 3 = \$38.85
\$70.31

August 18 to September 16, 2016 = \$81.74 (30 days) = \$2.7247 per day

August 18 to September 16, 2016 = 29 days

29 days x \$2.7247 = \$79.02, \$79.02/4 x 3 = \$59.26

$\$70.31 + \$59.26 = \$129.57$

The regulation provides for late fees in the amount of \$25.00. The Tenants acknowledged that the Landlords are entitled to late fees in the amount of \$50.00 and therefore, I award the Landlords **\$50.00** for late fees.

I find that the Landlords have established their claim for the cost of replacing the blinds in the amount of **\$63.81** (\$56.97 + \$2.85 GST + \$3.99 PST).

The Tenants submitted that the fridge shelf and the mirror were damaged when they moved into the rental unit. The Condition Inspection Report does not reflect that these items were in need of repair. There may be some small defects that are missed on a Condition Inspection Report and in that event, a tenant may advise the landlord about the damages. In this case, the Tenants provided insufficient evidence that they advised the Landlords that the items were broken at move-in. However, the Landlords have claimed for the cost of a new mirror and shelf without consideration of depreciation due to the age of the items. Therefore, I allow this portion of the Landlords' claim in the nominal amount of **\$50.00** for both items.

Likewise, there is insufficient evidence that the Tenants advised the Landlords that some of their lights were burnt out at the beginning of the tenancy. Tenants are responsible for replacing burnt-out light bulbs. I award the Landlords **\$67.14** for this portion of their claim.

The Landlords seek \$140.00 for replacing the broken "closet organizer"; however, I find that they did not provide evidence as to the age of the item. Therefore, I allow this portion of the Landlords' claim in the nominal amount of **\$25.00**.

The Tenants did not dispute that they left rubbish at the rental unit. The Landlords provided photographs of the rental unit at the end of the tenancy and I find that there was a considerable amount of rubbish left behind by the Tenants.

The Landlords did not provide a receipt for both of the junk removers. One is an estimate and the second one was questioned by the Tenants. I find that there is insufficient evidence that the Landlords paid the amount claimed on the estimate (for example, a copy of the actual invoice or receipt). The handwriting on the receipt for the second junk removal appears to be similar to one of the Landlords'; however, the receipt is a generic receipt which is commonly used, and the signature appears to have been penned by a different person. I allow this portion of the Landlords' claim in the amount of **\$380.00** for rubbish removal.

I find that the Landlords provided insufficient evidence that the Tenants broke the outdoor planter and this portion of their claim is dismissed.

With respect to their claim for the cost of replacing the lock and key, I find that the Landlords provided documentary evidence to support only a claim in the amount of **\$51.50** (\$45.98 + \$2.30 GST + \$3.22 PST) for a new deadbolt.

Based on the photographs provided by the Landlords, I accept that the Tenants did not clean the rental unit at the end of the tenancy.

Section 37(2) of the Act provides:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[reproduced as written]

If a rental unit is not reasonably clean at the beginning of the tenancy, the tenant should address the issue with the landlord when the tenant takes possession of the rental unit. The Landlords seek compensation for their labour in the amount of \$40.00 per hour for 10 hours; however, I find that \$40.00 per hour is high. I award the Landlords \$25.00 per hour in compensation, for a total of **\$250.00**.

The Landlords have been successful in their Application, and I find that they are entitled to recover the **\$100.00** filing fee.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards their monetary award.

The Landlords have established a Monetary Award, calculated as follows:

Unpaid rent for September, 2016	\$1,600.00
Unpaid utilities (\$100.80 + \$194.86 + \$129.57)	\$425.23
Late fees	\$50.00
Replace broken blinds	\$63.81
Junk removal (\$854.00 + \$380.00)	\$380.00
Replace broken shelf in fridge	\$25.00
Replace burnt-out light bulbs	\$67.14
Replace broken closet organizer	\$25.00
Change lock and key	\$51.50
Replace broken mirror	\$25.00
Cleaning (Landlords' labour @\$40.00 per hour)	<u>\$250.00</u>
	\$2,962.68
Plus recovery of filing fee	\$100.00
Less set-off of security deposit	<u>- \$800.00</u>
TOTAL	\$2,262.68

Conclusion

The Landlords' claim against the Tenant KW is dismissed.

I hereby provided the Landlords with a Monetary Order in the amount of **\$2,262.68** for service on the Tenants AG, BB and PS. 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: December 07, 2016

Residential Tenancy Branch