



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has applied for compensation for damage to the rental unit, for unpaid rent, to retain all or part of the security deposit, for compensation for damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the tenant confirmed that the landlord is entitled to compensation for rent owed from December 1, to December 15, 2010, inclusive in the sum of \$782.94.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the landlord entitled to compensation for damage or loss?

Background and Evidence

Since 1999 the tenant had lived in the rental unit as an occupant and on March 2, 2002 she signed a tenancy agreement. The unit is approximately thirty years old. A deposit in the sum of \$737.00 was paid on March 1, 2002; now totalling \$763.10, with accrued interest.

The parties agreed that the rental unit has not been painted in at least ten years.

The tenancy ended on December 15, 2009, as the result of an Order of possession in relation to the landlord's use of the property. The tenant was provided one month's compensation for the month of November, as required by the Act.

The landlord is making the following claim:

December rent	782.94 (settled)
Dishwasher	400.00
Carpet cleaning	136.50
Rental unit cleaning	350.00
Re-keying	199.15
Key for master bedroom	100.00
Legal fees	2,000.00
	4,212.98

The tenant acknowledged receipt of a letter dated December 7, 2009, which scheduled a move-out condition inspection on December 15, 2009 at 1 p.m. The tenant did not attend the inspection scheduled for December 15, 2009, and did not provide the landlord with a forwarding address until early January 2010. The tenant was unable to attend the inspection as she was busy with her move. A move-in condition inspection was not completed.

The landlord submitted a plumbing bill for work completed in the rental unit on August 20, 2009. The plumber ran a twenty foot power auger down the drain and pulled out a hair blockage. The landlord submitted that the tenant should have taken precautions to ensure hair did not go down the drain. The tenant believes that the hair could have come from any of the surrounding units and that accumulation of hair, over a period of ten years, is related to normal wear and tear.

The landlord has claimed replacement costs for a ten year old dishwasher. The element from the dishwasher became dislodged and caused irreparable damage to the interior of the dishwasher. The repair bill dated August 18, 2009 submitted as evidence indicated that the dishwasher was "not worth repair due to age." The tenant had used this dishwasher, installed in June 1999, throughout the tenancy and when it would not start she investigated the cause and placed a call to the landlord. The tenant denied any neglectful use and denied purposely causing the element to fall onto the bottom of the dishwasher.

The parties both acknowledged that the tenancy agreement signed on March 3, 2002 included a term that the carpets must be professionally cleaned at the end of the tenancy. The landlord submitted a receipt dated January 24, 2010 for carpet cleaning costs in the sum of \$136.50. The tenant submitted that the terms of this agreement were no longer valid as the agreement expired at the conclusion of the first year of the tenancy.

The landlord submitted a number of photographs taken at the end of the tenancy of the window sills, some nail holes in the walls, windows and of areas around the sinks. The landlord stated that the area surrounding the kitchen and bathroom sinks was not cleaned and that the basins were chipped. The landlord has submitted a receipt for fourteen hours of cleaning costs for windows, window casings and wall washing.

The tenant submitted a list of items she cleaned, some of which included wiping down window ledges, cupboards, the bathroom and vacuuming. During the tenancy the tenant had routinely washed the window ledges with bleach, but found that the mould would grow back within a short period of time. The tenant questioned the receipt's authenticity, as it lacks a name or any other indication that the cleaning service was legitimate.

The landlord attended at the rental unit on December 15, 2009, expecting to complete the move-out condition inspection. As the tenant did not attend, over the next few days a number of telephone calls were made in an attempt to retrieve the keys and arrange another inspection date. The tenant submits that on the night of December 14 she left the keys on the kitchen counter, with the appliance manuals.

The tenant referenced the landlord's March 24, 2010 affidavit submitted as evidence and the statement that the landlord did find the keys under the manuals.

The landlord had a locksmith attend the rental unit on the weekend following the end of the tenancy and the locks were changed at a cost of \$178.08; which included a notation for a service call for overtime at a rate of \$100.00. The landlord stated that the normal labour cost would have been \$86.00.

The landlord is claiming \$100.00 for replacement of a key to the master bedroom. The landlord's affidavit indicates that the tenant failed to leave a key to the master bedroom door lock.

The tenant did install a lock on the master bedroom door, but replaced it with the landlord's original lock at the time she moved out. The tenant asserted that she never had a key for the landlord's lock.

The landlord has claimed costs in the sum of \$2,000.00 for legal fees incurred related to this Application. The assistant to the landlord's legal counsel submitted that they spent considerable time and effort in relation to the eviction and obtaining the Order of

possession. Costs were incurred as a result of preparing for this hearing and attempts to arrange move-out condition inspections and issues related to cleaning costs.

Analysis

The matter of December 2009 rent in the amount of \$782.94 has been settled and will be deducted from the deposit plus interest held in trust; leaving a balance owed by the tenant in the sum of \$19.84.

The landlord has made a number of claims that are determined, in part, by section 32 of the Act:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the presence of hair in the drains once every ten years is the result of normal wear and tear. If the landlord was concerned about hair going down the drains, a normal occurrence when people bathe, then the landlord had the ability to mitigate this loss by installing screens on the drains. Therefore, I find that the claim for plumbing costs to remove hair is dismissed.

Residential Tenancy Branch policy suggests that ten years is the useful lifespan of a dishwasher. There is no evidence before me that the tenant's actions caused the element to dislodge or that the damage was due to neglect by the tenant. I base this determination on the testimony of the tenant, who reported the failure of the dishwasher to the landlord. The tenant did not initially understand why the dishwasher would not start, something she should have known had she been aware that she had dislodged the element. It is possible that the element may have been inadvertently dislodged by

the tenant, but there is no evidence before as to how the element became dislodged. Therefore, the claim for a new dishwasher is dismissed.

As the tenancy agreement included a term requiring professional carpet cleaning and the tenant did not adhere to this term of the tenancy, I find that the landlord is entitled to carpet cleaning costs supported by the receipt submitted as evidence. I find that the terms of the tenancy agreement signed in March 2002 continued throughout this tenancy as there is no evidence before me that this was a fixed term tenancy that was replaced by an agreement that contained different terms.

In relation to the claim for cleaning costs I find, based upon the photographic evidence and the testimony of each party that the rental unit window sills were in poor condition. From the evidence before me it appears that the sills have not been maintained and that mould is present. Residential Tenancy Branch Policy suggests that rental unit paint has a useful life span of 4 years. This unit has gone more than twice that period of time since the landlord ensured that the paint, including the window sills, was redone. I find that the tenant's repeated attempts to clean the window sills would have been frustrated by a lack of regular maintenance, such as fresh paint.

In relation to the photographic evidence of the kitchen and bathroom sink condition, I find that the photographs establish that the grouting around these sinks has not been maintained or replaced, resulting in what appears to be mould growing in the grout and rust. The landlord has not made a claim for repair to the basins but referenced this evidence in support of her claim for cleaning costs.

Based on the testimony of the tenant and the photographic evidence submitted by the landlord I find that the window sills were in need of maintenance and painting and that the landlord could expect to have incurred costs to bring these fixtures up to a reasonable standard at the conclusion of this 7 year tenancy

As the rental unit was well beyond the timeframe when painting was required I dismiss the claim for wall washing, as this would be required prior to painting.

The photographic evidence indicates that the inside of the windows required cleaning. Taking into account the testimony of the parties and the evidence submitted, I find, on the balance of probabilities, that the tenant did leave the rental unit in a reasonably clean state, as required by section 37 of the Act, with the exception of the windows, that required cleaning. I have considered the tenant's submission that the receipt for cleaning costs appears to be suspect and find that the landlord is entitled to a nominal amount for window cleaning in the sum of \$30.00. Therefore, I find that the balance of the claim for cleaning costs is dismissed.

In relation to the claim for re-keying of the rental unit, the landlord testified that on December 20, 2010, she attended at the rental unit and found the keys under the manuals. The landlord chose to proceed with rekeying, despite having found the keys.

The landlord testified that the tenant did not return all of the keys to the rental unit, yet the landlord's affidavit indicates that more than one key was returned.

There is no evidence before me as to how many keys the landlord had provided to the tenant. Therefore, in the absence of evidence of the number of keys given to the tenant at the start of the tenancy and based upon the testimony that the keys were found in the rental unit on December 20, 2010, I find that the landlord's claim for re-keying costs incurred on December 20, 2010, is dismissed. It is not unreasonable that the landlord would wish to rekey her unit after a period of ten years and at least two different tenants, however, I find that the rekeying was not the responsibility of the tenant.

In relation to the claim for costs to replace the master bedroom key, I find that this portion of the claim is dismissed. I base this upon the tenant's testimony that she never had a key to that lock and that she replaced her lock with the landlord's original. Further, there is no evidence before me verifying this expenditure.

In relation to legal fees, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

A pecuniary allowance....Generally "costs" do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.

Therefore, I find that the landlord may not claim legal fees, as they are costs which are not denominated, or named, by the Act. Further, the landlord's legal counsel referenced costs that are not related to this Application.

As the landlord's Application has merit I find that the landlord is entitled to compensation for the filing fee costs, as the filing fee is a charge, generally required to be paid to the Residential Tenancy Branch when an Application is submitted.

Therefore, I find that the landlord is entitled to the following compensation:

	Claimed	Accepted/Agreed
Plumbing	244.39	0
Dishwasher	400.00	0
Carpet cleaning	136.50	136.50
Rental unit cleaning	350.00	30.00
Re-keying	199.15	
Key for master bedroom	100.00	0
Legal fees	2,000.00	0
	4,212.98	949.44

As the landlord will retain the deposit plus interest in the sum of \$763.10, I find that the landlord is entitled to compensation for the balance of compensation owed in the sum of \$186.34 plus the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$949.44, which is comprised of \$782.94 December 2009, rent owed, \$136.50 cleaning costs and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$763.10, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$236.34. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim for compensation is dismissed.

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: April 26, 2010.

Dispute Resolution Officer