

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This reconvened hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages to the rental unit, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Preliminary Matters

Matters related to service of evidence to the female tenant and the Residential Tenancy Branch is referenced in the interim decision issued on March 11, 2010.

Each party had been provided with copies of the Notice of Adjourned Hearing issued as a result of the initial hearing held on March 11, 2010, attended by the landlord and male tenant. During that hearing the parties were both informed that the Notice would be sent to them by regular mail and that the landlord would not be required to serve the tenants with the Notice. The male tenant confirmed that the female tenant lives with him at the same address. Therefore, I find that the tenants were each sufficiently served with Notice of this reconvened hearing, pursuant to section 71(2)(b) of the Act.

The landlord provided affirmed testimony that on March 11, 2010, the female tenant was served with the evidence package via registered mail sent to the address on the Application. The landlord provided a copy of the Canada Post receipt and tracking number as evidence of service and stated that the mail had been received by the female tenant.

I find that the female tenant has been served with the evidence package, effective March 16, 2010. The male tenant has been previously served with the evidence, as confirmed during the March 11, 2010, hearing.

During the hearing the landlord adjusted her claim for compensation and withdrew the request for personal expenses, hotel costs, gas costs and those directly related to a dispute over the deck.

Issues 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 filing fee costs?

Background and Evidence

This tenancy commenced on December 1, 2008. The rental unit was a small character home. Rent was \$1,200.00 per month and a deposit in the sum of \$600.00 was paid on November 1, 2008. The tenancy ended on August 31, 2009 based upon Notice given by the tenants on July 31, 2009.

On November 20, 2008 the parties signed a second tenancy agreement for a fixed term ending May 31, 2009, with the option of conversion to a month-to-month tenancy. The agreement addendum initialled by the parties indicated that the tenants were to maintain the yard and that the landlord may hire yard maintenance people as required. The tenants were to inform the landlord of required maintenance.

On November 15, 2008 a move-in condition inspection report was completed and initialled by the tenants. This report indicated the following deficiencies:

- Some scuffs/scratches on entry wall;
- Kitchen floor old, needs sanding;
- TV cable adapter does not work;
- Main bath sink plug broken and door does not close; and
- Exterior stucco is old.

The landlord submitted a copy of a move-out condition inspection report completed in the absence of the tenants. This report listed a number of deficiencies such as:

- broken blinds
- stained hardwood;
- filthy kitchen exhaust hood;
- cracked microwave door;
- missing bulbs;
- broken sink plug;
- garbage container filthy and full of dog waste; piles of dog waste in yard;
- Trees cut down, no grass left, cedars dead;
- Shed doors broken;
- Washer and dryer full of dog hair; and
- Inside of house filthy and smells of dog urine.

The tenants moved out on the weekend of August 15th; the landlord lived a distance away and travelled to the home in order to meet with the tenants to complete the move-

out condition inspection. When the landlord arrived at the house the tenants were outside of the home. When the landlord asked the tenants to complete the inspection, the tenants said it was not necessary, that everything was good. The tenants left the property and when the landlord entered the home she immediately called the tenants on their cell phone as the home was in complete disarray and “stunk.” The tenants did not respond.

The landlord had located new tenants for September 1, 2010, and after viewing the home earlier in August they had told the landlord the home needed some work. However, upon entering the home the landlord was shocked and realized that with new tenants moving in within 2 weeks, she would need to immediately begin rehabilitating the home.

As the new occupants had nowhere else to live they did move-in on September 1, 2009; at which point most of the interior work had been completed by the landlord. The landlord submitted a letter from these occupants, who confirmed the state of the home when they viewed it in August, the 2 weeks spent by the landlord cleaning the interior; that a mutual agreement was made ending the tenancy effective September 30, 2009; the purchase of a new washing machine and dryer and the state of the yard and work that was completed by the landlord up to September 1, 2009. As the landlords could not afford to travel to Kelowna each weekend and stay in hotels, mutual agreement was made that the tenancy would end, so that the landlord's could stay in the home while making the remaining required repairs.

The landlord is claiming compensation in the sum of \$4,885.88 for repair costs related to the interior and exterior damage to the home. Some of these costs were withdrawn by the landlord during the hearing.

The landlord submitted a list of costs claimed, copies of receipts for each item claimed and photographs of the home; some showing the exterior before the tenants left and after the tenants moved out. Some photographs of the interior of the home were provided.

The landlord testified that they had allowed the tenants to build a deck on the back of the house. The deck had to be removed as it was not built to code and, as a result, the landlord incurred costs. During the hearing the landlord accepted my finding that any dispute related to compensation for the deck and removal were not within the jurisdiction of the Residential Tenancy Act.

The landlord supplied the following list of compensation claimed related to repairs, all with supporting receipts:

Drainage materials	73.59
Landscaping materials to clean up yard	274.01
Front door mat replacement	19.03
Cleaning materials, replace kitchen faucet	126.37
Bulbs, cleaning materials, caulking, furnace	110.19

filter	
Rock board to replace exterior rotted wood	20.91
Landscaping fabric	11.19
Mortar for rock board	50.81
Replace broken blind, general repair supplies	145.01
2 nd furnace filter due to dog hair	56.62
Loader service for backyard – clean up dog waste, take out dead trees, strip yard	771.75
Paint for interior	191.05
Drain open, remove dog hair	19.09
New washer & dryer (withdrew)	1,139.90
Dump fees, yard waste	54.00
Dump fees	12.00
Exterior paint 86.43, 119.98, 143.79. 165.30	515.50
Floor sander & materials, 9 receipts	789.86
	3,887.88

The landlord spent 2 weeks cleaning the interior of the rental unit after the tenants vacated in mid-August, 2009. The inside of the home was a “disaster” and yard was ruined. The home had been renovated 9 months prior to this tenancy starting.

The hardwood floors had been stained by dog urine and the smell was throughout the home. The tenants were allowed to have 2 small dogs.

The floors had been given a top coat 2 years ago and were in good shape at the start of the tenancy. At the end of the tenancy the landlord sanded the floors herself; renting the required equipment. The urine stains could not be removed so the floor had to be finished in a dark stain.

The entire interior of the house had to be repainted. The walls had scraps, nicks and hand prints. The house is approximately 750 sq. and should not have required painting for another 2 years. The landlord purchased the supplies and completed the work herself.

The front door mat was so matted with dog hair that it was thrown out and new mat was purchased.

The living room blind was broken and had to be replaced.

The washer and dryer were 5 years old. The washing machine was so full of dog hair that all of the holes in the drums were plugged. The landlord attempted to remove the hair but felt new machines were the only option for their new tenant.

A drain was plugged with dog hair and drain cleaner was purchased.

When the landlord arrived at the home the water main had been turned off. When the water was turned on it became apparent that the kitchen sink tap had been broken. The faucet was replaced.

Light bulbs had been removed from the home and had to be replaced.

The bathroom caulking had not been cleaned, was yellowed and had to be replaced and the toilet screw caps were missing.

The tenants cut the vent to the microwave resulting in a cost for new aluminum pipe.

The landlord had a new furnace installed and the company hired to maintain the furnace were replacing the filters every 2 months. The landlord purchased 2 additional filters due to the excessive amount of dog hair in the heating system. The heating vents had dog hair in them. The landlord has claimed costs for excessive filters that were required due to the presence of dogs in the home.

The landlord had been at the home in February 2009 and had not noticed any problems with the exterior of the home, outside of the presence of dog waste in the yard. Snow was on the ground and most of the yard was not visible.

A neighbour told the landlord that the tenants seemed to be running a dog care service, that there were a number of large dogs on the property over the summer of 2009. The landlord attributes this to the amount of dog hair inside the home, to the clogged drains, and the piles of dog waste in the yard.

The landlords decided to have the whole yard scraped down to dirt, as the yard was so dirty and all of the grass and shrubs had died. They found a complete removal of the waste and dead grass and shrubs would be the most efficient method of dealing with the problem and have claimed costs for this service. The photographs submitted as evidence showed the yard at the start of the tenancy when the grass was green and the shrubs alive. The photographs taken after the tenants moved out show the yard scraped clean and the shrubs removed.

One pile of dog waste was left against the house, which resulted in damage to the exterior wall of the house and costs to replace rock board and for mortar purchase.

The tenants had initially watered the shrubs, but the landlord believes they failed to do so over the summer of 2009, resulting in a loss of the cedar hedge. The landlord has claimed compensation for landscaping fabric.

The landlord testified that garbage and waste left in the yard had to be hauled to the dump resulting in transfer fees. The landlord stated that receipts submitted as evidence were equally for removal of the deck and refuse.

The landlord submitted that the tenants did not properly care for vines along the side of the house and that vines stuck to the house necessitating paint to the exterior of the home. The landlord painted 2 sides of the exterior of the house.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 37 of the *Act* requires a tenant to leave the rental unit in a reasonably clean and undamaged state at the end of a tenancy. Normal wear and tear is an expected outcome of day-to-day living; however, damage caused by neglect or a failure to clean the rental unit to a reasonably clean state is considered a breach of the *Act*.

Some of the items claimed in the Application have not been included in the table of costs, as either before or during the hearing the landlord withdrew the claim for those costs.

The drainage materials claimed related to a dispute over a deck; a matter I find was not within the jurisdiction of the *Act*.

I find that the landlord is entitled to the wheelbarrow rental costs, as part of the work completed to clean up the yard.

In relation to the landscaping materials claimed in the sum of \$274.01, I find that the items claimed relate to the deck or are items that can be reused by the landlord; therefore, this portion of the claim is dismissed.

I find that the tenants failed to ensure the mat was left in a reasonably clean condition and that the landlord is entitled to this cost.

I find, from the evidence before me, the testimony of the landlord and, in the absence of the tenants that the rental unit was not left in a reasonably clean state when the tenants vacated the home. The tenants failed to remain at the rental unit to complete the inspection and failed to respond to the landlord's attempts to reach them in order to complete the inspection.

Therefore, I find, on the balance of probabilities, that the costs incurred for cleaning and repairs to the interior of the home were the result of a breach of the *Act* by the tenants and that the landlord is entitled to costs which are supported by verification. I have also based this decision on the move-in condition inspection, relative to the move-out

condition inspection and the letter written by the occupants who viewed the home in August 2009.

I find that the kitchen faucet and blind were damaged and that the landlord is entitled to compensation.

The landlord withdrew the portion of the claim related to the washing machine and dryer.

I find that the landlord is entitled to costs for light bulbs, additional cleaning materials, caulking and one furnace filter. Normally a landlord is responsible for maintenance of the furnace; however, I find that the landlord experienced an additional cost due to the excessive amount of dog hair that was present in the rental unit vents and furnace.

The landlord's claim for landscaping fabric is dismissed as I find that this item was an optional cost to the landlord.

In the absence of the tenants, I find that a pile of dog waste left against the house caused damage to the exterior and resulted in costs for rock board and mortar and that the landlord is entitled to compensation; less the amount paid for a trowel.

I find that the landlord is entitled to costs for a new window blind and have deducted the sums from this receipt that include items which may be reused by the landlord.

In relation to the decision of the landlord to have the complete yard scrapped clean, I find that the tenants are partially responsible for this cost. I have considered the state of the backyard, where the dogs were present and find that the landlord is entitled to compensation for a portion of the costs in the sum of \$463.05. This represents the cost for scraping the backyard clean of dog waste and grass that had died.

Based on the testimony of the landlord I find that the interior walls were left in a state that required repainting and that the landlord is entitled to compensation as claimed.

I find that the landlord is entitled to compensation for drain opener, as a result of the presence of dog hair in the drain.

Based on the testimony of the landlord I find that the landlord is entitled to dump fees in the sum of 50% of the costs supported by receipts. The landlord claimed for items hauled away as a result of the deck removal, with the remaining 50% related to refuse left by the tenants.

I find, in the absence of evidence that the tenants were responsible for care of the vines along the side of the house that the maintenance of the vines and regular removal was the responsibility of the landlord and I dismiss this cost. Residential Tenancy Branch policy suggests that a landlord is responsible for pruning and I find this a reasonable expectation.

I find that the tenants caused damage to the hardwood floors and that the dog urine stains resulted in costs to the landlord that was the result of negligence on the part of the tenants. Therefore, I find that the landlord is entitled to the costs related to floor sanding and finishing.

	Claimed	Accepted
Wheelbarrow rental	16.80	16.90
Landscaping materials to clean up yard	274.01	0
Front door mat replacement	19.03	19.03
Cleaning materials, replace kitchen faucet	126.37	126.37
Bulbs, cleaning materials, caulking, furnace filter	110.19	110.19
Rock board to replace exterior rotted wood	20.91	20.91
Landscaping fabric	11.19	0
Mortar for rock board	50.81	20.12
Replace broken blind, general repair supplies	145.01	59.78
2 nd furnace filter due to dog hair	56.62	0
Loader service for backyard – clean up dog waste, take out dead trees, strip yard	771.75	463.05
Paint for interior	191.05	191.05
Drain open, remove dog hair	19.09	19.09
New washer & dryer (withdrew)	1,139.90	0
Dump fees, yard waste	54.00	27.00
Dump fees	12.00	6.00
Exterior paint 86.43, 119.98, 143.79. 165.30	515.50	0
Floor sander & materials, 9 receipts	789.86	789.86
	3,887.88	1,869.35

The landlord is holding a deposit plus interest in the sum of \$601.50 and I find that the landlord may retain the deposit in partial satisfaction of the claim for compensation.

As the landlord's Application has merit I find that the landlord is entitled to filing fee costs.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$1,969.35, which is comprised of damage and loss and \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposit held in trust in the sum of \$601.50.

Based on these determinations I grant the landlord a monetary Order for the balance in the amount of \$1,367.85. In the event that the tenants do not comply with this Order, it

may be served on the tenants, filed with the Province of British Columbia 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: May 4, 2010.

Dispute Resolution Officer