

DECISION

Dispute Codes CNC, CNR, OPR, OPC, MNR, MNDC, MNSD, LAT, RR, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied to cancel Notices to End Tenancy for cause and for unpaid rent; for authority to change the locks; for authority to reduce rent; and, other issues. The landlord made an amended application for an Order of Possession for cause and unpaid rent; for a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the tenant's security deposit and pet deposit. Both parties requested recovery of the filing fee paid for their respective applications.

Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of documents upon them. It was determined that the landlord served black and white photographs upon the tenant and colour photographs upon the Residential Tenancy Branch. The landlord was of the position the tenant knew the colours of the rental unit walls. I accepted the landlord's photographic evidence as I did not find the tenant was prejudiced by the evidence.

It was determined that the tenant vacated the rental unit before the date of this hearing. Therefore, I found the tenant's requests to cancel Notices to End Tenancy and authority to change locks were no longer issues to resolve and I dismissed those portions of the tenant's application. I also determined the landlord's request for an Order of Possession is no longer required and I dismissed that portion of the landlord's request.

Issues(s) to be Decided

1. Is the tenant entitled to compensation for services or facilities or repairs not provided and garbage removal?

2. Did the landlord establish entitlement to compensation from the tenant for unpaid rent and damage or loss under the Act, regulations or tenancy agreement, and if so, the amount?
3. Is the landlord authorized to retain the security deposit and pet deposit?

Background and Evidence

The parties provided undisputed testimony as follows. The one-year fixed term tenancy commenced February 1, 2010 and the tenant paid a \$500.00 security deposit and \$500.00 pet deposit at the commencement of the tenancy. The tenant was required to pay rent of \$1,050.00 on the 1st day of every month. On April 19, 2010 the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* and a *1 Month Notice to End Tenancy for Cause*. The tenant placed stop payments on the rent cheques for April and May 2010. The tenant vacated the rental unit May 7, 2010.

Tenant's application

The remaining issues under the tenant's application is whether the tenant is entitled to reduce rent payable for inadequate water flow in the bathroom, a washing machine that was broken for approximately three weeks and costs to dispose of garbage on the property. The tenant claimed she verbally complained to the landlord about a low flow of water in the bathroom and was told there was nothing that could be done. The tenant also submitted that the washing machine broke down when she washed four towels and that the landlord would not repair it. Finally, the tenant claimed that she improved the property by getting rid of garbage at her own expense.

The landlord acknowledged the water flow was low but denied it was inadequate. The landlord pointed to one of the tenant's photographs that show water running from the bathroom faucet.

The landlord acknowledged the tenant complained about the broken washing machine but explained that the belt comes off if the machine overloaded. The landlord submitted that the tenant should be responsible for putting the belt back on and that the landlord informed the tenant to do this. The tenant responded by stating she did not know how to put the belt on and she did not feel she should do this on a machine that was not hers.

The landlord was of the position much of what the tenant threw away was not garbage.

The tenant provided numerous photographs as evidence for the hearing as well as documents related to behaviour of her pet dog and character reference letters.

Landlord's application

The landlord amended her application to request compensation of \$6,777.87 from the tenant for the following amounts. The landlords reasons for the amount claimed and the tenant's responses are also provided in brief form.

<u>Description</u>	<u>Landlord's reason for claim</u>	<u>Amount (\$)</u>	<u>Tenant's response</u>
Hydro bill to May 8 - 31	Tenant responsibility	50.00	Disagreed. Tenant not residing in rental unit.
Unpaid rent April & May 2010	Rent unpaid as tenant put stop payment on cheques	2,100.00	Agreed stop payment put on rent cheques and did not replace with other cheques or pay cash. Though April's cheque had been stolen.
Cost of returned cheques	Bank charged landlord \$7.00 per returned cheque	14.00	Undisputed.
Paint living room, bedroom, hall & two	Tenant painted unit without permission and	1,100.00	Given permission to paint unit except colour purple.

closets	did a poor job. Landlord and repainted entire unit. Last repainted two years ago.		Took care in painting. Painted living room and hall off white.
Additional labour to prep walls for painting in bedroom	Tenant painted over faux finish.	240.00	Faux finish was ugly green and yellow sponge paint treatment
Bamboo floors	Damaged by paint. Refinished by landlord. Market rate \$3.00/sq. ft. Landlord spent 3 days refinishing. Last refinished 4 years ago	1,500.00	Covered floors when painted. Only a few minor spots of paint that landlord removed by gently scraping off.
Washing machine repair and deck pressure washing	Installed belt on washing machine. Pressure washed deck to remove stain applied to portion of deck by tenant.	157.50	Did not overload washing machine as alleged by landlord. Under the impression she could paint and stain any part of the house.
Sand stain off back deck to return to natural finish	Cedar deck was to remain unfinished. Landlord spent 2 hours sanding deck.	200.00	Applied product recommended by Rona.
Damage to linoleum floor	Floor punctured during tenancy. Floor approx 8 years old.	200.00	Unaware of causing damage to floor. Estimates floor much older as saw similar flooring circa 1986.
Damaged curtain rods	Tenant got paint on curtain rods. Finish on rods ruined when	250.00	Did not get paint on curtain rods, only brackets. Rods did not require replacement.

	attempted to remove paint.		
Damaged door jam	Weather stripping damaged.	50.00	No damage to weather stripping. Took photos upon moving out.
Electrical covers	Painted over by tenant.	13.47	Covers were previously painted over.
Three stools	Taken by tenant	36.00	Agreed taken by mistake. Will return to landlord.
Repair wooden bench	Damaged and burned by tenant.	25.00	Denied damaging wooden bench.
Door mat, mesh swing, 4 plastic chairs, wind chime, 2 wreaths, glass jug, big tall cooler, heavy rope	Stored on property. Thrown away by tenant.	65.00 45.00 80.00 95.00 30.00 40.00 225.00 67.50	Landlord left "garbage" on property. Cleaned up yard by throwing away garbage. Swing was rotten; chairs were wobbly and covered in paint; cooler was broken; saw only 1 wreath; did not see wind chime.
Cost of photocopies registered mail x 2	Preparation for dispute	50.00 15.90	Not required.
Filing fee	Paid for dispute	50.00	Not required.
TOTAL CLAIM		6,777.87	

As evidence for the landlord's monetary claims, the landlord provided copies of the tenancy agreement, condition inspection report, water account statement, returned cheques and returned cheque notices, letters from tenant in adjacent unit, letter from city regarding outdoor fire on property; statement from individual paid to power wash deck and fix washing machine; and, numerous photographs.

The landlord did not provide receipts or invoices or estimates for the majority of her claims. Initially the landlord stated she had paid a painter and when asked why she did not provide a receipt or invoice, the landlord changed her testimony to state that the painting was done by a friend and that she would pay him when she could. Upon enquiry, the landlord stated that the landlord used estimated replacement costs for the majority of the items claimed.

With respect to the unpaid rent, the tenant had submitted in her Application for Dispute Resolution that she did not know the rent was late. However, during the hearing the tenant acknowledged putting a stop payment on the cheques and not replacing the cheques with other cheques. The tenant explained she put a stop payment on the April cheque because the landlord told her the cheques may have been stolen. The tenant did not explain why she did not replace the cheque with a different one. The tenant then indicated she put a stop payment on the May cheque because the tenancy was about to end. The tenant acknowledged that when she filed the Application for Dispute Resolution she had already made arrangements to vacate and was only trying to gain more time to vacate the rental unit. The tenant further indicated that in her experience tenants often do not pay rent.

Analysis

Upon hearing from both parties, I find there are credibility issues with both parties. For example, with respect to the cost of repainting the unit the landlord was not forthcoming about the actual amount she paid and the landlord provided changing testimony only

after I made further enquiries of the landlord. With respect to the tenant's submissions, I found the tenant made a false statement in her application when she stated she did not know rent was late.

I also found the landlord overstated damages and the tenant understated most issues. For example, upon review of the photographs, it is evident many of the items claimed by

the landlord are used and deteriorated yet the landlord is claiming replacement cost of new items and market rates for repairs by professionals when she did many of the repairs herself. In contrast, the tenant's response to most of the landlord's claims were that the items were garbage or ugly and the tenant was of the view she improved the property when pictures of the tenant's paint job clearly show poor workmanship.

In light of the above considerations, in making my determinations I have placed most weight upon the undisputed testimony, the most likely testimony, the tenancy agreement, and the photographic evidence.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of the evidence before me, I make the following findings.

Tenant's application

A photograph provided by the tenant shows water flow in the bathroom. While the water flow in the photograph appears low the picture does not show the faucet handle and I cannot determine the extent to which the faucet is open. However, the landlord

did indicate that the bathroom does have low water flow. The tenant did not satisfy me that the water flow in the bathroom was so low that she could not effectively use the bathroom or that she incurred damages or loss or a devaluation of the tenancy as a result. Therefore, I do not award the tenant any compensation for low water flow in the bathroom.

I am satisfied the tenant went without a washing machine for a few weeks due to a dislocated belt on the washing machine. While the landlord was of the position the tenant overloaded the machine and caused the belt to dislocate, I find the landlord did not fulfill her duties as a landlord. Where an item or fixture comes into disrepair and this is reported to the landlord by the tenant I find it reasonable to expect the landlord would make arrangements for a repair or at least attend the property to inspect the problem. Since the landlord appeared to be familiar with re-installing the washing machine belt I find the landlord's excuse that she was too busy to attend the property to show the tenant how to re-install the belt to be an unreasonable response of a landlord. Nor do I find sufficient evidence that the landlord had advised the tenant that the washing machine had a limited capacity prior to the belt dislocating.

In light of the above, I find the landlord violated the Act by not repairing the washing machine in a timely manner and that this failure caused the tenant to have a loss of use of the machine for an unreasonable period of time. Therefore, I find the tenant entitled to compensation from the landlord for loss of use of a washing machine. The tenant did not request a specific amount as a rent reduction for this issue and I estimate the loss of

the washing machine for three weeks is approximately \$75.00. This amount is to be offset against amounts owed to the landlord.

I deny the tenant's request to recover garbage removal costs from the landlord as the tenant did not have an agreement with the landlord to dispose of the items in exchange for a rent reduction.

Landlord's application

Unpaid rent

Upon review of the tenancy agreement and having heard the tenant vacated the rental unit in May 2010, I find the tenant obligated to pay the landlord for rent for April and May 2010 and I award the landlord \$2,100.00 for unpaid rent.

Bank fees

I find the bank fees incurred by the landlord as a result of the tenant putting a stop payment on the cheques are recoverable by the landlord under the Residential Tenancy Regulation. The landlord is awarded \$14.00 for bank fees.

Utilities

I also find the tenant obligated to pay for utilities under the tenancy agreement. The landlord established the amount of the water bill is \$78.50 and I award this amount to the landlord. I also find the tenant obligated to pay for the hydro until such time the rental unit was re-rented; however, the landlord did not provide sufficient evidence to demonstrate the landlord incurred a loss of \$50.00. Thus, the claim for hydro costs is dismissed.

Painting

Upon review of the photographs, I find the tenant's efforts to paint the unit actually caused more damage than improvement. For example, many areas of the walls are

thinly painted a different colour than the colour underneath, the areas along the baseboards and fixtures are not cut in and paint splatters are evident on the flooring and fixtures. I find it reasonable that the landlord had to repaint the unit to bring the walls to a satisfactory condition. However, I do not find the landlord entitled to the full amount claimed by the landlord for painting for the following reasons.

Residential Tenancy Policy Guideline provides that interior paint has a useful life of four years. The bedroom was painted at least four years ago and the remainder of the unit was painted two years ago. I am satisfied the landlord incurred a loss of her time to repaint the unit but I am not satisfied that the landlord's claim represents an amount paid or payable by the landlord. Taking these factors into account I award the landlord \$400.00 as the tenant's portion of the landlord's time spent repainting.

I do not award the landlord the cost of sanding the bedroom as the faux finish was applied before the tenancy began and additional sanding would be required whenever the landlord repainted the room.

Flooring

I am satisfied the tenant is responsible for paint on the bamboo floors and this caused the landlord to refinish the floors. However, I also find it reasonable to expect the wood floors would be refinished at reasonable intervals of say 10 years and that the landlord had to refinish the floors after only four years. Thus, I find the tenant responsible for 60% of the landlord's loss incurred as a result of refinishing the floors.

I found the landlord did not establish that she incurred a cost of \$1,500.00 to refinish the floors and I award the landlord an amount based on the three days she spent refinishing the floor. I estimate the landlord's time at \$25.00 per hour for a value of \$600.00 over three days. Therefore, the tenant is responsible for compensating the landlord \$360.00 for refinishing the bamboo floor.

Policy guideline 37 provides that vinyl flooring has an average useful life of 10 years. Upon hearing from both parties and upon review of the photographs, I find it reasonably likely the vinyl flooring in the kitchen was approximately 10 years or older. Therefore, even if the tenant caused damage to the vinyl floor, I find there would be very little devaluation to the vinyl flooring. Accordingly, I dismiss the landlord's claim for compensation of \$200.00.

Deck stain

Upon hearing from both parties and upon review of the photographs, I find it more likely than not that the tenant did not apply the correct product, did not apply stain to the entire deck and did not have permission to apply the stain. I am further satisfied the landlord had to power wash and sand the deck to remove the stain applied by the tenant.

The landlord provided a statement related to payment of \$157.50 for power washing and washing machine repair. I approximate \$100.00 is attributable to the power washing and award that amount to the landlord. I further award \$50.00 to the landlord for her time spent sanding the deck. The total award for removing stain from the deck is \$150.00.

Washing machine repair

As I heard the landlord state she knew how to reinstall the washing machine belt and had done so on numerous occasions in the past, I am not satisfied the landlord had to pay somebody to complete this task. Nor am I satisfied the landlord had given sufficient instruction to the tenant with respect to limiting the size of laundry loads given the washing machine's tendency to throw a belt. Therefore, I deny the landlord's claim for fixing the washing machine belt.

Curtain rods

Upon review of the photographs, I accept that the tenant was responsible for getting paint on the curtain rods; however, the landlord did not sufficiently establish that removing the paint caused damage to the finish on the rods. Nor did the landlord establish the value of the curtain rods. Therefore, I deny the landlord's claim for replacement curtain rods.

Door jam

I found the landlord's claim that weather stripping was damaged and requires replacement for \$50.00 excessive in the absence of any documentary evidence to support such an amount. Further, weather stripping has a limited useful life and I was not provided sufficient information to determine the age of the weather stripping. Therefore, I deny this portion of the landlord's claim.

Electrical covers

Given the disputed verbal testimony I cannot determine whether the electrical covers were previously painted over. I further find such items to have a very limited useful life given they are comprised of plastic and are inexpensive. Therefore, I deny the landlord's claim for new electrical covers.

Stools

The tenancy agreement indicates the rental unit was provided furnished. The tenant acknowledged she had possession of the stools. I find that the tenant was ultimately responsible for ensuring the stools remained at the rental unit. I award the landlord \$36.00 for the stools in the tenant's possession; however, I order the tenant to return the stools to the landlord in good condition within 7 days of receiving this decision in order to avoid paying this award. If the tenant complies with this order, the landlord must provide the tenant with a receipt equivalent to \$36.00 and \$36.00 is deducted from the Monetary Order.

Wooden bench

The landlord alleged the tenant damaged and burned the bench. The tenant denied this allegation. The landlord did not provide documentary or photographic evidence of a damaged or burned bench. As the landlord did not sufficiently establish damage to the bench caused by the tenant, I dismiss this portion of the landlord's claim.

Missing items

Upon review of the photographs, I am satisfied the landlord had a mesh swing and door mat that were thrown away by the tenant. I am also satisfied there were some other items also thrown away by the tenant. The tenancy agreement indicates the unit was furnished. I find it reasonable that these items were left at the rental unit for use by the tenant. It was not the tenant's right to throw these items away. However, the landlord has claimed compensation equivalent to the approximate replacement cost of items and I find replacement cost does not reflect the actual value of loss. Therefore, I make a nominal award of \$100.00 to the landlord for the loss of certain items from the property as a result of the actions of the tenant.

Photocopies and registered mail

The cost of preparing for a dispute is not an amount recoverable by a party under the Act. I deny this portion of the landlord's claim.

Filing fee

The landlord is awarded \$50.00 towards for the filing fee paid for the landlord's application.

In summary, the landlord has been awarded the following amounts:

<u>Description</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
Hydro bill to May 8 -31	50.00	Nil
Unpaid rent April & May 2010	2,100.00	2,100.00
Cost of returned cheques	14.00	14.00
Paint living room, bedroom, hall & two	1,100.00	400.00

closets		
Additional labour to prep walls for painting in bedroom	240.00	Nil
Bamboo floors	1,500.00	360.00
Washing machine repair and deck pressure washing	157.50	100.00
Sand stain off back deck to return to natural finish	200.00	50.00
Damage to linoleum floor	200.00	Nil
Damaged curtain rods	250.00	Nil
Damaged door jam	50.00	Nil
Electrical covers	13.47	Nil
Three stools	36.00	36.00
Repair wooden bench	25.00	Nil
Door mat, mesh swing, 4 plastic chairs, wind chime, 2 wreaths, glass jug, big tall cooler, heavy rope	65.00 + 45.00 80.00 + 95.00 30.00 + 40.00 225.00 + 67.50	100.00
Cost of photocopies registered mail x 2	50.00 + 15.90	Nil
Filing fee	50.00	50.00
TOTAL CLAIM	\$ 6,777.87	\$ 3,288.50

In partial satisfaction of the amounts owed the landlord, I authorize the landlord to retain the tenant's security deposit and pet deposit of \$1,000.00 leaving a balance owed to the landlord of \$2,288.50.

In accordance with section 72 of the Act, I offset the tenant's award against the amount owed the landlord. The landlord is provided a Monetary Order in the net amount of \$2,213.50 (\$2,288.50 – 75.00) to serve upon the tenant and enforce in Provincial Court (Small Claims). If the tenant returns the landlord's three stools to the landlord in good

condition within seven days of receiving this decision, \$36.00 must be deducted from this Monetary Order.

Conclusion

The tenant was awarded compensation of \$75.00 for loss of use of the washing machine. The remainder of the tenant's claims were dismissed.

The landlord was awarded \$3,288.50 for unpaid rent and damage or loss incurred under the Act, regulations or tenancy agreement. The landlord may retain the tenant's security deposit and pet deposit in partial satisfaction of this award. The landlord has been provided a Monetary Order in the net amount of \$2,213.50 to serve upon the tenant.

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: June 25, 2010.

Dispute Resolution Officer