



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, DRI, FF

Introduction

This was a cross-application hearing.

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

The tenant applied to dispute an additional rent increase, requesting compensation for damage or loss under the Act, return of the deposit paid and filing fee costs.

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. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$555.00?

Is the tenant entitled to compensation for damage or loss?

Is the tenant entitled to compensation as the result of an illegal rent increase?

May the landlord retain the deposit in satisfaction of her claim?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy began with a fixed term tenancy which ended on October 31, 2010. The parties agreed that a subsequent fixed-term agreement was then signed, which

included a rent increase from \$3,400.00 to \$3,510.00 per month. Rent was due on the first day of each month.

A deposit in the sum of \$1,700.00 was paid in November 2009 and an additional \$55.00 was paid in 2010.

No condition inspection reports were completed.

The landlord has made the following claim:

Clean floor - tape	60.00
Remove TV cable	100.00
Change locks	150.00
Late move-out 2 days	100.00
Clean oven	30.00
Clean floor	20.00
TOTAL	490.00

The tenant has made the following claim:

Return of deposit	1755.00
Landlord's share of utility bills	70.39
Landlord's share of utility bills	49.71
Furnace filter costs	25.00
Illegal rent increase	440.00
Courier fee	15.00
TOTAL	2,455.10

The tenant confirmed that he did not pay a key deposit and that his claim for return of that deposit was unnecessary.

The tenant indicated that the rent increase claim was the result of the increase given when a new tenancy agreement was signed effective November 1, 2010.

The landlord confirmed that she did owe February 2011, utilities in the sum of \$70.39 which covered 2 charges of \$33.69 and \$36.70. The landlord disputed the tenants claim that she also owed \$49.71. The tenant provided copies of email correspondence sent between the parties in November, 2010, which indicated that the landlord owed the tenants a balance for her share, leading up to October 2010.

The email correspondence indicated that the tenants had paid for furnace filters in the sum of \$25.00; during the hearing the landlord confirmed that the tenants had made this expenditure. One email from the landlord dated November 29, 2010, in response to the tenants request for utilities owed indicated that if the tenants did not pay for the filters the landlord would not change the filters while the tenants remained in the unit.

The landlord provided a photograph of the inside of an oven that had been cleaned but showed some residue. Photographs of a wooden floor that needed some cleaning, some tape on the floor, an older door bell installed on the exterior of the house, TV cable installation, a portion of the stove, the top of the stove and an exterior door were also supplied by the landlord.

The landlord testified that the tenants had Bell TV cable installed and that it will cost \$100.00 to have the cables removed from the house.

The landlord expected the tenants to vacate the rental unit by 1 p.m. on February 28, 2011; she did not receive the keys until 4 p.m. and is requesting compensation for the extra time the tenants were in the home.

The landlord stated the locks needed changing and that the remote door bell does not work.

The landlord submitted that cleaning of the floors was required and that tape had to be removed from the floor.

The landlord stated that the costs will need to be incurred; however, no verification of the costs was supplied as evidence.

The tenant stated that they hired professional cleaners to come into the home at the end of the tenancy and that the landlord never offered to complete an inspection. The landlord stated the tenants had refused to complete an inspection. The tenant submitted that at the end of the tenancy the home was left in a cleaner state than when they moved in at the start of the tenancy. The tenant was not sure the photographs of the oven were of the oven in the rental unit.

The tenants forwarding address was provided to the landlord at the end of the tenancy; the landlord applied against the deposit within 15 days

Analysis

The tenant withdrew the claim for return of a key deposit.

I find that the rent increase given effective November 1, 2010, did not constitute a breach of the Act, as the parties entered into a new tenancy; which had no bearing on the previous agreement and rent payable under that previous agreement. The tenants entered into a new contract with the landlord and at that point accepted the terms of the contract; any increase in rent was not an additional increase but part of a new contract agreement made between the parties. Therefore, the claim for excess rent payments is dismissed.

The claim for the tenant's courier cost is dismissed as compensation is provided only for a direct breach of the Act, not the costs, outside of filing fees, incurred in preparation of a hearing.

The landlord confirmed that the tenants paid for the furnace filters. Residential Tenancy Branch policy suggests the landlord is responsible for replacing the furnace filters; I find this to be a reasonable stance. Therefore, I find that the tenants are entitled to compensation in the sum of \$25.00 for filters they purchased for the landlord's furnace.

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.

A tenant is required to leave a rental unit in a reasonably clean state at the end of the tenancy. In the absence of a condition inspection report at the start and end of the tenancy the landlord forfeits her right to claim against the deposit. There was no evidence before me of a final written Notice to complete a condition inspection at the end of the tenancy or any evidence of a move-in inspection report.

Therefore, in the absence of condition inspections and any verification of the amounts claimed by the landlord, such as receipts, I find that the landlord's claim for compensation is dismissed. I have also based this decision on the disputed testimony and the balance of probabilities that the tenants did leave the rental unit reasonably clean when they vacated. There is no evidence before me of any cost that could be incurred in relation to TV cable, no evidence of cleaning costs incurred, or any other costs. The door bell appeared to be aged and there is no evidence that the landlord did not receive the keys from the tenants. In fact the landlord stated she received the keys on February 28, 200.

The tenant is entitled to the following:

	Claimed	Accepted
Return of key deposit	100.00	Withdrew
Landlord's share of utility bills	70.39	70.39
Landlord's share of utility bills	49.71	49.71
Furnace filter costs	25.00	25.00
Illegal rent increase	440.00	0
Courier fee	15.00	0
TOTAL	2455.10	1,900.10

I found the email communication between the parties convincing and that, on the balance of probabilities, the landlord owed the tenants utility costs.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,950.10, which is comprised of damage or loss, return of the deposit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord's claim is dismissed.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,950.10. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: June 16, 2011.

Residential Tenancy Branch