



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, damage or loss under the Act, 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.

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.

Preliminary Matters

Each party had a copy of the move-out condition inspection report; a copy was not submitted as evidence. During the hearing the parties did not disagree on the content of the report. I requested each party to submit a copy of their report to me no later than June 28, at 12 noon. The parties understood that I would consider any 1 copy; however each party submitted a copy.

The landlord's claim was amended to reflect the total claim for compensation indicated in the detailed calculation. The landlord had deducted the deposit from the total amount claimed in the application.

Issue(s) to be Decided

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

May the landlord retain the deposit paid?

Is the landlord entitled to compensation for damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 1, 2003; and ended on February 28, 2011. A deposit in the sum of \$550.00 was paid on March 1, 2003. The parties agreed the unit is over 40 years in age.

The current property manager assumed responsibility for the unit in September 2010.

The landlord received the written forwarding address on February 27, 2011 and claimed against the deposit within 14 days of the end of the tenancy.

The tenants agreed they signed the condition inspection report completed on February 27 and 28, 2011, agreeing to the report. The parties did not agree on costs.

The landlord has made the following claim for compensation:

Repair multiple nail holes	425.00
Repair broken closet doors	100.00
Replace kitchen and bathroom counters	420.00
TOTAL	1385.00

The landlord stated that the tenants placed a large number of nail holes in the walls; the condition inspection report indicated “holes+++” in the entry, kitchen, living room dining room ceiling and master bedroom. The landlord supplied a copy of a March 3, 2011, receipt in the sum of \$446.25 for sanding, wall repair, primer on the spots and labour.

The tenants denied having placed an excessive number of holes in the walls.

The landlord provided 3 sets of photographs of the unit; some of which showed the need for cleaning; the stove, fridge, washing machine, dryer, floors all required cleaning. The landlord completed the cleaning herself at a rate of \$40.00 per hour, for 10 hours.

At the start of the hearing the tenants offered the landlord \$100.00 for cleaning costs.

The tenant stated that on February 28, 2011, a male attended at the house; she had been expecting some workers to arrive later in the day. This individual made her uncomfortable, so she left and emailed the landlord. The tenant stated that she was unable to complete further cleaning. The landlord stated that the male was in the home for no more than 15 minutes.

The move-out condition inspection report referenced cleaning required to the oven, flooring, windows and screens and bathroom cabinets. The list of items cleaned provided by the landlord included cleaning of the windows, fan filters in the kitchen and bathroom, the stove and oven stove hood, behind the stove, the washer and dryer plus the kitchen and bathroom cabinets. Photographs of all these areas were supplied by the landlord.

The landlord supplied a receipt dated March 5, 2011, in the sum of \$11.34 for door hardware. The bi-fold closet door had broken. The tenant stated it had never worked properly and that the doors were old.

The landlord supplied a photograph of a bathroom counter that showed the need for sink grout replacement; no photograph of the kitchen counter was supplied. The condition inspection report indicated that the kitchen counter was "marked." The bathroom assessment indicated the cabinet was damaged. The landlord believed the counters were 15 years old. The tenant suggested the counters were original; approximately 40 years old.

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.

In relation to the excessive number of holes in the walls, the tenants are allowed to create a reasonable number of holes for hanging art. The condition inspection signed by both parties at the end of the tenancy indicated that the tenants acknowledged the references to excessive holes in the walls. The landlord's claim has been supported by a receipt and I find, on the balance of probabilities, that the landlord is entitled to wall repair costs.

Based on the condition inspection report, I find that the tenants failed to leave the rental unit in a reasonable clean state, as required by the Act. I have also based this decision on the photographs supplied as evidence. It appears that the appliances were not pulled from the walls at the end of the tenancy and I find, after an 8 year tenancy the tenants could be expected to clean beneath the appliances. There is no evidence before me that the appliance fans were maintained during the tenancy and after 8 years it is not unreasonable to expect the filters should be replaced.

Therefore, I find that the landlord is entitled to cleaning costs in the sum of \$300.00, for those items indicated on the condition inspection report as needing cleaning. I have relied upon the photographs to assess the state of the unit at the end of the tenancy. I have reduced the amount claimed to reflect those items that I find were beyond their useful life. I have rejected the tenant's claim that she could not return to the unit due to the presence of a male worker; there is no evidence before me that she made any effort to return to the unit.

In relation to the bi-fold doors, I find that the cost claimed is related to normal wear and tear for doors of this design and apparent age; the claim for repair is dismissed.

Residential Tenancy Branch policy suggests that the useful life of counter tops is 25 years; I find this a reasonable stance. In the absence of any evidence of the age of the counters and, given the age of the home and the appearance of the other fixtures as dated and what I find are likely original, I dismiss the claim for counter replacement, as a cost that was likely to be incurred due to the age of these items.

Therefore the landlord is entitled to the following:

	Claimed	Accepted
Cleaning	440.00	300.00

Repair broken closet doors	100.00	0
Replace kitchen and bathroom counters	420.00	0
TOTAL	1385.00	725.00

The balance of the landlord's claim is dismissed.

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

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$569.46, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$775.00, which is comprised of damages 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 \$569.46, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$205.54. 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.

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 28, 2011.

Residential Tenancy Branch