



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution for a monetary order for money owed or compensation for damage or loss and to recover the filing fee.

The Tenant's original application dealt with her request to cancel the landlord's Notice to End Tenancy, which she subsequently amended to include a request for a monetary order. The original dealt only with the request to cancel the landlord's Notice, and the hearing was reconvened to the present date to deal with the tenant's request for a monetary order.

Despite having appeared at the original hearing and submitting evidence for that hearing, the landlord failed to attend the reconvened hearing. The landlord was sent a Notice of the Reconvened Hearing, so therefore the hearing proceeded in the landlord's absence.

This Decision should be read in conjunction with my Decision of July 11, 2011, and the same is incorporated herein by reference.

Issue(s) to be Decided

Has the tenant established an entitlement to a monetary order under section 67 of the Act?

Background and Evidence

The tenant's monetary claim is as follows:

Painting supplies	\$448.90
Painting labour	\$300.00
Laundromat	\$28.50
Dog treatment	\$47.21
Lawnmower battery	\$44.79
Lawncare-16 weeks	\$740.00
Deck repair-16 weeks	\$640.00
Mould	\$750.00
Dishwasher	\$280.00

Washing machine	\$560.00
TOTAL	\$3,839.40

In support of her application, the tenant testified that she incurred costs for painting supplies and labour due to remediating the mould growing in the rental unit, which the landlord failed to address despite numerous requests, beginning in September 2010. Additionally, the tenant is claiming \$750.00 due to the health issues involving her and her children, which the tenant claims resulted in one child getting staph infections and cysts and the other child not being able to breathe properly due to the mould spores aggravating his asthma.

The tenant stated that she told the landlord numerous times that the mould was continuing to grow very quickly throughout the house, including on her children's clothing. The landlord made continuous promises to remediate the mould, but failed to do so. The tenant submitted that the house was creating a bucket of moisture a day, as documented by the person hired by the landlord to provide a temporary solution, and that ultimately she had to hire her friend for a reduced rate to remediate the mould.

As to the tenant's claim for laundromat usage, the tenant claimed that the landlord failed to fix her washing machine, despite promising to do so. The tenant is claiming lack of a washing machine from December 2009 through January 2011, though the actual time she was without a washing machine was 26 months.

As to the tenant's claim for dog care, the tenant stated that she, as the caregiver of the landlord's dog, who has remained on the premises after the landlord moved out, has had to provide daily treatment for the animal. The tenant stated the landlord has promised to reimburse her for his, the landlord's, dog, which has developed a serious skin condition, requiring a bath three times a week.

As to the lawn care and mower battery, the tenant submitted that the residential premises is an acre of property and that she was the first tenant after the landlord moved out. The landlord left a riding lawn mower, but the battery died and had to be replaced. Additionally, even though landscaping was provided for in the tenancy agreement, the landlord has only had someone cut the grass twice this summer. Due to this, the tenant has not been able to enjoy the property for its intended purpose.

The tenant submitted that she has had to repair the deck so that her guests would not be injured. The tenant additionally stated that the lack of a deck repair has caused her to suffer loss of use of the property as she has not been able to entertain as she is accustomed.

The tenant submits she is entitled to compensation for 3 months for having to deal with mould in the rental unit, as the landlord never addressed the problem, causing the tenant to have the problem addressed.

As well, the tenant claims she is entitled to 14 months' compensation for loss of a washing machine.

The tenant's witness testified that he observed the black mould over all the walls and floors and additionally, he saw signs of a rat infestation.

The witness stated that he observed that at least 40 boards were broken on the deck and that due to this, the deck was unusable.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

In the absence of the landlord, I find the tenant's testimony and evidence will be the preferred evidence.

Painting supplies and Painting labour-I find that on a balance of probabilities the landlord was aware of the presence of mould as told to him by the tenant, and failed to address the problem. I further find that the landlord's email of February 13, 2011, to the tenant supports that the landlord promised to reimburse the tenant for the painting costs, but failed to do so. I therefore find the tenant has established a **monetary claim** in the amount of **\$748.90** for painting supplies and labour, as supported by the tenant's invoices.

Laundromat-The tenant supplied a receipt for her Laundromat expenses and I find that she was compelled to use this service due to a lack of a washing machine, as provided for in the tenancy agreement. I therefore find the tenant has established a **monetary claim** in the amount of **\$28.50**.

Dog care-During the original hearing, the landlord confirmed that the tenant was caring for the landlord's dog as the landlord did not wish to remove the dog from his home. The

landlord also confirmed that he promised to reimburse the tenant for the animal's expenses.

During the interim of the original hearing and the reconvened hearing, the landlord did reimburse the tenant for a veterinarian bill, but has failed to pay for the ongoing treatment. I therefore find the tenant has established a **monetary claim** in the amount of **\$47.21**, as established by the tenant's receipt.

Lawn care- I find the testimony and evidence of the tenant is less compelling regarding lawn care. I find the landlord provided receipts for landscaping and lawn care for the preceding years of the tenancy, but not for the summer of 2011. However, I can find no substantiation from the tenant that the lack of lawn care has caused her to suffer a diminished value of the tenancy. I therefore **dismiss** her claim for **\$740.00**.

However, I find that the testimony and photographic evidence substantiate that the tenant was compelled to purchase a **lawnmower battery** to provide for some grass cutting and I approve her claim for **\$44.79** as shown by her receipt.

Deck Repair- I find the photographic evidence and testimony of the tenant and her witness substantiate that the tenant has lost the use of the deck. I find the tenant addressed the issue of deck repair with the landlord since at least as early as November 6, 2010. However, it is unclear from the evidence if the deck has been repaired as yet. I also find, pursuant to Residential Tenancy Branch Policy Guideline 1 that the landlord is responsible for the maintenance and upkeep for the deck.

In the absence of contradiction from the landlord, I therefore find the tenant has substantiated her loss of use of the deck for 16 weeks, causing a diminished value of the tenancy in the amount of **\$25.00 per week**, in the amount of **\$400.00**.

Mould- The landlord is required under section 32 of the Act to provide and maintain the residential property in a state of decoration and repair which complies with health, safety and housing standards required by law.

Having heard from the tenant and reviewing the email evidence between the landlord and tenant, I found the tenant's testimony and evidence to be both credible and compelling. I accept that the tenant has been requesting the landlord to deal with the causes of the mould since earlier in the tenancy, but confirmed from November 6, 2010 through March 10, 2011.

I find the landlord failed to respond to the tenant's request in a timely manner, breaching section 32 of the Act, and the photographic evidence submitted by the tenant demonstrated that she and her family endured a strong presence of mould.

I find the landlord's insufficient response to the mould remediation has caused the tenant to suffer a loss of use and enjoyment of their rental unit has diminished the value of the tenancy by \$200.00 per month. I award the tenant compensation of \$200.00 per

month and therefore, I award the tenant **\$800.00** for loss of enjoyment of the rental unit for the months of November 2010 through the end of February 2011.

Loss of dishwasher- I find on a balance of probabilities that the email and invoice evidence supports that the tenant notified the landlord of the broken dishwasher and that the landlord did not address the problem by replacing the dishwasher for a period of 7 weeks. I find the amount of \$15.00 per week to be a fair amount for compensation and I therefore find the tenant has established a **monetary claim** in the amount of **\$105.00** for loss of a washing machine.

Loss of washing machine- I find on a balance of probabilities that the email and invoice evidence supports that the tenant suffered a loss of a washing machine for 14 months, as alleged by the tenant and as provided for in the tenancy agreement. I find the amount of \$30.00 per month to be a fair amount for compensation and I therefore find the tenant has established a **monetary claim** in the amount of **\$420.00** for loss of use of a washing machine.

Conclusion:

I find the tenant has established a total **monetary claim**.

Claim	Amount claimed	Amount accepted
Painting supplies and labour	\$748.90	\$748.90
Laundromat	\$28.50	\$28.50
Dog Care	\$47.21	\$47.21
Lawnmower battery	\$44.79	\$44.79
Lawn care	\$740.00	\$0.00
Deck Repair	\$640.00	\$400.00
Mould	\$750.00	\$800.00
Dishwasher	\$280.00	\$105.00
Washing machine	\$560.00	\$420.00
TOTAL	\$3,839.40	\$2,594.40

I grant the tenant a **monetary order** in the amount of **\$2,594.40** as stated above and the tenant is authorized to satisfy this monetary order by withholding this amount from subsequent month's rent payments.

For clarity, the tenant may withhold the rent payment of \$1,350.00 for October 2011, leaving a balance owing on the monetary order in the amount of \$1,244.40. The tenant may pay the amount of \$105.60 in rent for the month of November 2011, in satisfaction of the monetary order (\$1,350.00 for November rent less \$1,244.40 balance owing).

In the alternative should the tenant not elect to satisfy this monetary order as authorized above, I also issue the tenant a monetary order in the amount of \$2,594.40.

I am enclosing a monetary order for \$2,594.40 with the tenant's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: September 07, 2011.

Residential Tenancy Branch