

DECISION

Dispute Codes MND, MNSD, MNDC, FF
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Introduction

This hearing dealt with cross application by the landlord and tenant. The application by the landlord is for a monetary order for damages, to keep all or part of the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee. The application by the tenant is for return of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 2010 and ended September 2011 with monthly rent of \$1700.00 and the tenants paid a security deposit of \$1000.00.

The landlord testified that during the move out inspection which was completed September 30, 2011 with the tenant and that she found the rental unit to be in a state of un-cleanliness and disrepair. The landlord stated that there were 2 large holes in a pony wall in the master bathroom and stains on the carpet. The landlord stated that the windows were not cleaned, the fridge door was dirty, the stove top, kitchen cabinets and microwave had oily residue on their surfaces and the kitchen sink stained. The landlord maintains that the condition of the rental unit is not that of 'reasonable wear and tear'.

The landlord stated that the tenant had patched and repaired holes in the walls throughout the rental unit but had used a different colour of paint resulting in the entire unit needing repainting. The landlord stated that the rental unit is only 4 years old and had been freshly painted prior to the start of this tenancy. The tenants maintained that they used the paint provided by the landlord and that they had done the best they could. The tenants did notice that the paint seemed to be a different colour but thought that it would match after it had dried.

The landlord submitted into evidence, the paint cans that had been under the kitchen sink and a list of paints used in the rental unit and the wall paint is not noted in either. The tenants then maintained that there had been another larger can of paint which was what they used on the walls and the landlord stated that was not the case. The landlord also maintained that they never advised the tenants to use the small cans of paint samples but only that there was wall patching material under the sink.

The landlord stated that she had to thoroughly clean the kitchen due to grease still being on many of the surfaces, wash the windows and wipe dust from the kitchen ceiling. The tenant did acknowledge that there had been some grease residue on the stove top grill and maintained that she had cleaned the entire rental unit *'to the best of her abilities'* and believed that it had been left in acceptable condition.

The landlord stated that the carpet was stained in a number of areas and the tenant acknowledged that after the carpet was professionally cleaned some stains remained.

The landlord stated that she attempted to rent the unit in its current condition but that a prospective tenant had been appalled when they saw the rental unit and declined to enter into a tenancy agreement for October 1, 2011. The landlord stated that all of the repairs were completed in the rental unit by October 3, 2011 and that additional cleaning was completed on November 13, 2011 when a new tenant was secured. The tenant commented that they should not be responsible for all of October's rent or any portion of the November rent or the hydro bill as they gave the landlord proper notice and all repairs were completed by October 3, 2011. The tenant stated that during the month of September the landlord only had 3 prospective tenants view the suite and the tenant believed that the landlord had not been proactive on renting the unit in a timely manner.

The landlord is claiming the cost of replacing a light bulb in the kitchen because it did not match the old light in appearance. The tenants disagreed with this portion of the claim as they had replaced the light bulb as required.

The landlord stated that the kitchen sink finish has been permanently stained and the sink must be replaced. The landlord is also claiming the cost of a missing blind which the tenants maintain is in a cupboard in the rental unit. As the landlord has not yet suffered a financial loss in regards to replacement of the kitchen sink and has agreed to verify if the blinds are in fact in the suite, the landlord in this hearing agreed to withdraw these portions of their claim with liberty to reapply.

The landlord stated that the tenant did not meet her 'statutory obligation' to leave the rental unit reasonably clean and undamaged, that the tenant be responsible for paying all losses the landlord has incurred in addition to a 'discretionary award'.

The landlord in this application is seeking the following:

Gas	\$60.93
Landlord's labour 14 hours @ \$20.00 per hour	\$280.00

October rent	\$1650.00
November ½ month rent	\$825.00
BC Hydro September 30 to November 14	\$23.67
Kitchen light bulb	\$10.00
Registered mail	\$35.00
Kitchen sink	\$330.62
Carpet damage: pen & furniture marks	\$200.00
Blind replacement	\$36.82
Landlord's time to bring dispute forward	\$2000.00
Total Claim	\$6936.04

The tenant testified that they provided the landlord with their forwarding address in writing on September 30, 2011 during the move out inspection and the tenants in this application are seeking return of double the security deposit. The landlords stated that they attended the Residential Tenancy Branch on October 17, 2011 to file their application but that it had been too late in the day to have the application processed and paid for. The landlords maintained that they were told by staff to return on October 18, 2011 to pay for the application and it would be processed as having been received on October 17, 2011; the landlords did retain the application date stamped October 17, 2011. The landlords stated that there was then a tragic family loss on October 18, 2011 which precluded them from coming to this office to complete the application until October 19, 2011.

The tenant's stated that approximately 8 months into the tenancy the washing machine became plugged and a repair man had to be called. The repair man removed a black sock and a large amount of lint that had clogged the washing machine and the tenants claimed that the repair man advised them that the sock and lint could have been there for a long time. The tenant also stated that the black sock did not belong to them and that they washed small items in sacks. The landlord countered the tenant's testimony and referred to emails from the tenant regarding the washing machine where the tenant states '*after giving this matter some thought*', took full responsibility for the cost of the repair.

The tenant stated that during the tenancy the plastic housing one of the fobs was broken and the landlord attended the rental unit to attempt to fix the fob by opening it and placing the inner works into a new plastic housing. After this transfer was completed the fob stopped working and the building caretaker advised the tenant that the inner works may have been damaged when they were transferred to the new housing. The landlord refuted the tenant's claim that they changed the housing on the fob and insisted the tenant had completed the transfer therefore the tenant was responsible for the damage and replacement cost of the fob. The landlord also referred to an email from the tenant where the tenant stated that she would bear the cost of replacement of the damaged fob and that this shows 'assumed liability' on the part of the tenant.

The tenants maintained that they '*met their obligation*' as tenants as they had complied with the landlord's direction on repairing and painting the walls and cleaning the rental unit and that they should now not be responsible for additional costs.

The tenants in this application are seeking the following:

Security deposit	\$1000.00
Washer repair	\$128.80
Fob replacement	\$70.00
Tenant's time to bring dispute forward	\$1700.00
Total Claim	\$3898.80

Both parties referred to threats and accusations made by the other which has resulted in police involvement and the parties were advised that criminal matters do not fall under the jurisdiction of the residential tenancy *Act*.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages, cleaning costs and unpaid rent.

Photographic evidence and testimony confirms that the tenants, while attempting to complete the required repairs to the rental unit, used a different colour of paint on the walls which resulted in the entire rental unit having to be repainted. Accordingly I find that the landlord is entitled to a monetary order for \$1484.00.

In regards to the landlord's claim for cleaning costs, I accept the testimony of the landlord and consider the tenants statement of there still being some grease on the stop top grill and stains on the carpet even after it was professionally cleaned. I find that the landlord is entitled to a monetary order for \$480.00 in cleaning costs and carpet damage.

As the tenants did replace the light in the kitchen the landlord may now not claim for replacement of the light bulb as the *Act* does not state that such an item must be identical. This portion of the landlord's application is dismissed without leave to reapply.

In regards to the landlord's claim for loss of rental income, I find that the landlord has established a limited claim in this regard as the tenant's gave the landlord proper notice and the repairs to the rental unit were completed by October 3, 2011. The landlord did acknowledge that the rent was eventually reduced in order to secure a new tenant and to mitigate their loss this is an action the landlord should have considered and

implemented in a more timely fashion. Accordingly I find that the landlord is entitled to a monetary order in the limited amount of \$423.49 for unpaid rent and utilities.

Residential Tenancy Policy Guideline **5. speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord's claim for gas, registered mail and preparation time to bring their application forward is hereby dismissed.

Residential Tenancy Policy Guideline **1 Landlord & Tenant Responsibility for Residential Premises** speaks in part to:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

	Claim	Award
Cost of repairman	\$1484.00	\$1484.00
Landlord's labour 14 hours @ \$20.00 per hour	\$280.00	\$280.00
October rent	\$1650.00	\$412.50

November ½ month rent	\$825.00	\$0.00
BC Hydro September 30 to November 14	\$23.67	\$10.99
Kitchen light bulb	\$10.00	\$0.00
Registered mail	\$35.00	\$0.00
Kitchen sink	\$330.62	withdrawn
Carpet damage: pen & furniture marks	\$200.00	\$200.00
Blind replacement	\$36.82	withdrawn
Landlord's time to bring dispute forward	\$2000.00	\$0.00
Total Claim	\$6936.04	\$2387.49

Accordingly I find that the landlord is entitled to a monetary order for **\$2387.49**.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$100.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

The landlord did attend this office on October 17, 2011 the 15th day to make an application however was turned away by staff and was unable to have the application processed. The landlord's application was date stamped 'October 17, 2011 by Residential Tenancy Branch staff and the landlord advised to return the following day and the application would be processed as being on time. On October 18, 2011 the landlord was unable to attend the Residential Tenancy Branch due to a death in the family. The landlord attended the Residential Tenancy Branch on October 19, 2011 and completed their application. I therefore find that there were exceptional circumstances that prevented the landlord from returning to the Residential Tenancy Branch on October 18, 2011 and I allow the extension of time to October 19, 2011 for the landlord to make their application.

Residential Tenancy Policy Guideline **12 Extending a Time Period** speaks to:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

In regards to the balance of the tenant's claim I find that the tenant has not met the burden of proving that they are entitled to compensation for the cost of repairing the washing machine or replacement cost of the fob. The washing machine required repair during the time of the tenancy and it is reasonable to ascertain that the washing machine became un-useable due to actions of the tenant. As both parties refuted the

others testimony in regards to who 'fixed' the fob, consideration must also be given to the email communication from the tenants to the landlord where the tenants accept responsibility for damage to the washing machine and replacement cost of the fob.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for preparation time to bring their application forward is hereby dismissed.

	Claim	Award
Double of security deposit	\$1000.00	\$0.00
Washer repair	\$128.80	\$0.00
Fob replacement	\$70.00	\$70.00
Tenant's time to bring dispute forward	\$1700.00	\$0.00
Total Claim	\$3898.80	\$0.00

The tenant's application is dismissed without leave to reapply.

As the tenants have not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$2387.49 in unpaid rent, damages and cleaning costs. The landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$1000.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1387.49**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 4, 2012

Residential Tenancy Branch