



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested 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 tenant 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.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$4,198.06?

Is the landlord entitled to compensation in the sum of \$800.00 for loss of rent revenue?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2009 as a fixed term tenancy; a second tenancy was created effective November 2009 and that tenancy converted to a month-to-month tenancy. Copies of the tenancy agreements were supplied as evidence.

A move-in condition inspection report was completed, a copy submitted as evidence indicated that everything in the home was satisfactory; no detailed explanations were included on the report.

A move-out condition inspection was not completed; the tenant was not given a written notice of dates for an inspection. The parties agreed that they did meet on August 31, 2011; however, the police were called and neither party agrees as to what occurred at that time.

The landlord has made the following claim which differs slightly from the amount included on the application:

Countertop	254.50
Painting, door repair	560.00
Freezer door	409.92
Auto body costs	1,061.96
Cleaning, hardware items	114.75
Loss of September, 2011 rent revenue	800.00
TOTAL	5,056.72

The landlord stated that the tenant did not give written notice ending the tenancy, that it was not until August 26, 2011, that she was verbally informed the tenant would be moving. The tenant stated she verbally gave the landlord's spouse notice on July 29 and that on July 29, 2011; she placed a written note in the landlord's mail box, giving notice effective August 31, 2011.

The landlord stated he was away from the home for a weekend prior to the tenant vacating; the tenant stated that the landlord was away in California for the month of August, returning sometime around August 23, 2011. The landlord did not dispute this testimony.

The tenant testified that she gave the landlord her forwarding address in writing, sent via registered mail on October 7, 2011. The landlord confirmed receipt of the mail on October 13, 2011, and applied claiming against the deposit within the next week.

The landlord provided a number of photographs; some taken in July or August of 2009, before the tenant moved in, and others taken at the end of the tenancy. The tenant supplied copies of photographs she took on the last day of her tenancy. The tenant stated that by August 25, 2011, she had moved most of her belongings out of the unit; and that the landlord's photographs appear to have been taken during the 5 day period during which she was not living in the unit and returning to clean. The tenant paid rent owed to September 30, 2011.

The landlord stated the tenant caused damage to the 5 year old counter in the kitchen, that she told him a cleaning solution had turned the counter yellow. The tenant stated that the counter was a bit yellowed in one corner and that she had managed to get most of the yellow marks out of the counter; that it was marked by dish soap.

A photograph of the counter-top was supplied, which showed marks made to the right of the sink. The landlord supplied a copy of an August 31, 2011, invoice for counter costs in the sum of \$254.50.

The landlord stated the unit was renovated approximately 5 years ago, that the carpets are 8 years old. The landlord supplied copies of photographs that showed the carpets were dirty. A copy of an upholstery company invoice dated September 6, 2011, was supplied which indicated the carpets had been cleaned on July 20, 2009 and that they were now badly damaged and that cleaning would not be sufficient; it recommended the carpets be replaced. The landlord has provided a September 7, 2011, invoice in the sum of \$1,855.59 for carpet and installation costs.

The tenant testified that at the start of her tenancy the carpets appeared to have been 8 or 9 years old. The landlord had told the tenant he would replace the carpets, but did not do so. The tenant did not clean the carpets at the end of the tenancy; clause 23 of the tenancy agreement required the tenant to pay the cost of carpet cleaning at the end of the tenancy, if they had been professionally cleaned at the start.

The landlord supplied 2 photographs showing a hole in the wall and an area patched. The landlord provided an invoice dated September 15, 2011, for 6 hours of wall repair and paint costs plus 1 hour for front door repair and painting. A photograph of the front door was supplied, which showed it had been damaged. The unit was last painted on early or mid-2009.

The tenant testified that when she vacated the home there were no holes in the walls outside of some damage under one window that was caused when her ex-boyfriend had entered the unit through a window. When this occurred the tenant had called the police and the landlord to report the event. The tenant denied causing any damage to the walls.

The landlord provided a photograph of the freezer door, which showed a small dent. The tenant denied she caused this damage and stated the door was in this condition at the start of the tenancy. The landlord testified that tenant had told him her friend had punched the door. The landlord submitted a photograph taken of the freezer at the start of the tenancy; the dent is not visible. The landlord submitted a copy of an October 14, 2011, invoice for the cost of replacing the entire outer portion of the freezer door.

Throughout the tenancy the landlord had parked a vehicle outside of the home; vintage 1947. The landlord supplied a photograph of the top of the cab of the vehicle and a copy of October 19, 2011, estimate for repair to the hood for sheet metal work, labour for repair and refinishing. The landlord stated that the tenant walked on the top of the vehicle to enter the home through the window. The tenant stated that her ex-boyfriend many have stepped on the hood when he had illegally entered the home. The photograph showed an older model vehicle that had not been fully primed or refinished.

The landlord submitted several receipts from a lumber yard; September 7, 2011, for cleaning supplies; September 8, 2011 for a kitchen faucet; screws and a shower rod and an October 17, 2011 invoice for a window part. The landlord stated that the faucet was broken and had been replaced no more than 2 years before. The landlord supplied a picture of a bent shower rod and broken shower head fixture. The tenant stated that some of the costs do not appear to have been the result of any damage she may have caused as the invoice is dated well beyond the end date of the tenancy.

The landlord stated the unit required so many repairs that he lost 1 month's rent revenue. The landlord stated they began advertising in late August 2011, but ceased as people would come to the unit and see that it required repair and cleaning. The tenant stated that the landlord never asked for entry to show the unit; that they knew she had given notice in July and that she left the unit clean at the end of the tenancy. The landlord did not respond to the photographs submitted by the tenant; that she took at the end of the tenancy.

During the hearing I dismissed the landlord's claim for photograph developing; costs are considered as part of the filing fee.

Analysis

The parties disagreed that the tenant had given notice ending her tenancy effective August 31, 2011. I have considered the testimony of the parties in an effort to establish credibility in relation to this disputed testimony. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time.

Therefore, I find that the tenancy ended as the result of the tenant giving notice effective August 31, 2011. The landlord initially testified he was away for only 1 weekend in August, 2011, and he did not dispute the tenant's submission that he was away for a number of weeks, during August.

The landlord applied claiming against the deposit within 15 days of receipt of the forwarding address.

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.

I find the tenant's submission that the landlord's photographs were taken during the time she had legal possession of the unit, prior to her completing cleaning, highly believable. The tenant's photographs indicated the unit had been in a reasonably clean state at the end of the tenancy; September 30, 2011. Any photographs taken of the unit before September 30, 2011, have had little value in my assessment of damages.

In considering costs to the landlord I have taken into account Residential Tenancy Branch policy which suggests reasonable life spans of items within a home.

In relation to the counter, the tenant has agreed she caused some damage. The counter was in satisfactory condition at the start of the tenancy and, as a result of the damage which caused discoloration, the landlord decided to replace the counter. Therefore, I find that the landlord is entitled to a portion of the cost of replacing the counter in the sum of \$203.60 taking into account a 25 year life expectancy.

There was no evidence before me that the landlord intended to replace the carpets at the start of the tenancy; the move-in condition inspection report made no reference to carpet damage. The parties differed in their assessment of the age of the carpets; the tenant believed they would be 10 years old; the landlord stated they would now be 8 years old. The advice received from the carpet cleaning company indicated cleaning would not rehabilitate the carpets and that new carpets were required.

Policy suggests a lifespan of 10 years for carpets. As the landlord has not proven the age of the carpets, I find, on the balance of probabilities that the carpets had reached the point where replacement was imminent. I have also taken into account the assessment made that cleaning would not have been sufficient to rehabilitate the condition of the carpets. In the absence of any attempt to clean the carpets, I find it is unreasonable to accept the submission that the tenant must assume the cost of carpet replacement, given the age of the carpets and normal wear and tear.

There was evidence before me that the carpets had been cleaned at the start of the tenancy. Therefore, in the absence of evidence that the tenant had the carpets cleaned at the end of the tenancy, as required by the tenancy agreement, I find that the landlord is entitled to compensation in the nominal sum of \$200.00.

In relation to the wall repair costs; even if the photograph of the 2 areas of damage were taken prior to the tenancy ending, I find that there is sufficient evidence that damage was caused by the tenant or her guests. The photographic evidence showed the front door had been damaged and required repair. The unit was last painted in June 2009; therefore, as suggested by policy, the unit was 1 year away from requiring repainting. In the absence of a breakdown of costs detailing repair work vs. time spent painting, I find that the landlord is entitled to a nominal compensation for painting, wall and door repair in the sum of \$200.00.

In relation to the dent on the freezer door, I find that this damage occurred as the result of neglect on the part of the tenant or a guest. I have considered the cost claimed and,

taking into account depreciation, find the landlord is entitled to compensation in the sum of \$136.00.

I dismiss the portion of the claim requesting auto body repair. There is no evidence before me as to who may have climbed on the vehicle, but even if someone had, from the evidence before me the vehicle is approximately 55 years old and has not been fully primed or refinished in recent years. To charge the tenant with costs that would bring the vehicle into better repair that it was previously is unreasonable.

I dismiss the costs claimed for window repair, as the tenant did not invite her ex-boyfriend to the property. This is an item that could be covered by household insurance.

As the photographs submitted by the tenant showed the unit in a reasonably clean state; with the exception of the carpets, I dismiss the claim for cleaning materials. There was no evidence before me that the faucet required replacement as the result of negligence by the tenant; therefore, this portion of the claim is dismissed.

I find that the tenant is responsible for the cost of a new shower rod and installation screws in the sum of \$27.57, as supported by the invoice and photograph of the bent rod and broken fixture.

I dismiss the claim for loss of September rent revenue. I have determined that the landlord has failed to prove the tenant did not give notice ending the tenancy, as required by the Act. Further, I find that the unit was not uninhabitable or in such a state as to have resulted in a loss of rent. Carpet cleaning or replacement and counter replacement are not sufficient reasons for the landlord to have ceased seeking new occupants. The landlord is required to mitigate a claim made, and in the absence of effort made to complete any required work within the first few days of September, I find the landlord has failed to show any attempt to minimize the loss he is now claiming. Therefore, this portion of the claim is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Carpet	1,855.59	200.00
Painting, door repair	560.00	200.00
Freezer door	409.92	136.00
Auto body costs	1,061.96	0
Cleaning, hardware items	114.75	27.57
Loss of September, 2011 rent revenue	800.00	0
TOTAL	5,056.72	767.17

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee for the portion of the claim that succeeded; \$50.00.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$400.00 in partial satisfaction of the monetary claim. I have issued a monetary Order for the balance, in the sum of \$367.17 plus the \$50.00 filing fee cost.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$817.17, which is comprised of \$767.17 in damages and \$50.00 in compensation for a portion of the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the landlord's claim is dismissed.

The landlord will be retaining the tenant's security deposit in the amount of \$400.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$417.17. 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: January 11, 2012.

Residential Tenancy Branch