



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, 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; unpaid rent; 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.

Preliminary Matters

The tenants received the landlord's evidence submission.

The landlord received the tenant's evidence submission 4 days prior to the hearing. The evidence was delivered to the landlord via registered mail and was deemed served on January 14, 2012. The landlord stated she had reviewed the evidence but had not had time to thoroughly go through the 45 pages of evidence, which included photographs. I determined that the evidence would be utilized and considered if specific documents or pages were referenced, as landlord had been served at least 2 days prior to the hearing.

The landlord testified that the tenant's evidence submission contained emails that were not fully disclosed and not in context.

At the reconvened hearing the landlord stated she had not had time to make submissions in relation to the tenant's evidence which she received late; despite having had 4 weeks to do so. The landlord read from 3 written statements she had obtained on January 17, 2011. Those oral submissions were considered. The landlord was given ample opportunity to respond to the tenant's written submission; further, I have considered only the one email that was referenced during the hearing.

At the conclusion of the initial conference call hearing held on January 18, 2012, I confirmed that the parties were entitled to have witnesses attend the reconvened hearing. The parties were told that the witnesses must be available to testify at the time

of the hearing and could provide testimony via telephone from another location; neither party chose to have witnesses testify.

After the initial hearing the tenants stated they are currently of no fixed address. The tenants were informed that the Notice of Adjourned Hearing would be available to them by January 26, 2012, at the Residential Tenancy Branch (RTB) office in Victoria. The tenants also had the option of requesting a copy of the Notice of Adjourned Hearing, from a Service BC office; who could obtain the document from the RTB. The male tenant attended the 2nd hearing.

The landlord's application for dispute resolution had been altered to include a reason for eviction not provided on the form. The tenants have since vacated the rental unit; the landlord did not apply for an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the property in the sum of \$4,333.61?

Is the landlord entitled to compensation for unpaid rent in the sum of \$2,200.00?

Is the landlord entitled to compensation for damage or loss in the sum of \$2,200.00?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord has made the following claims:

BC Hydro August to October, 2011	108.01
Garbage charges	24.00
Dump charges	131.60
Re-key mail box	25.00
House cleaning & repairs – 83 hrs @ \$25/	2,075.00
Investigation firm costs for service	336.00
Unpaid September, 2001 rent	2,200.00
Loss of Rent	2,200.00
TOTAL	7,340.61

The landlord submitted a list of additional estimated repair costs:

Clean-up yard, remove fence, drive clean-up, porch, manure, furniture disposal	400.00
Wood refinishing	304.00
Grout and plaster costs	304.00
Clay paints and supplies	50.00
Clean carpet	60.00
Stove cleaning, replace parts, drier clean-up, vacuum repair, BBQ cleaning, door repair, toilet repair	175.00
Parts	50.00

TOTAL	1,393.00
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The landlord submitted verification as follows:

BC Hydro bill August 3 to October 3, 2011	108.01
October 1, 2011 garbage fee	4.00
October 8, 2011 garbage fee	20.00
Dump fee October 19, 2011	131.60
House cleaning October 5 – 7, 2011; \$25.00/hour	450.00
Property management invoice cleaning, maintenance, rubbish removal – October 7, 2011	325.00
Invoice for landlord's time in labour, cleaning, repair, supervision 52 hours @ 25.00/hour	1,300.00

The parties agreed that the tenancy commenced on March 7, 2011, as a fixed-term ending on November 6, 2011; at which time the tenants were to vacate the rental unit. Rent in the sum of \$2,200.00 was due on the 7th day of each month; a deposit of \$1,100.00 was paid at the start of the tenancy. An addendum attached to the tenancy agreement, signed by the parties, indicated that the tenant's were responsible for gardening and lawn maintenance. Both respondents signed the tenancy agreement; a copy of the agreement and addendum were submitted as evidence.

Neither a move-in or move-out condition inspection report was completed with the tenants.

The tenants did not provide the landlord with a written forwarding address at the end of the tenancy.

At the end of the tenancy the landlord completed both the move-in and move-out sections of the standard inspection report that is available on the RTB web site; the tenants were not provided with a final opportunity to complete an inspection; however, they had vacated without proper notice to the landlord.

The landlord read from a statement prepared by a neighbour who had spent September, 2010, in the house; he indicated that at that time, the home was in a clean and orderly condition. After this individual moved out of the home a prospective purchaser stayed in the home for a 2 week period, at which point the landlord had the home in a spotless condition. The tenants then moved into the home.

A second witness statement indicated that she had been to the house with the landlord immediately after the tenants had vacated. They found the house in worse condition than when the tenants had moved in; she took photographs with the landlord. The doors had been left unlocked, windows were open and the grounds were over-grown. The tenants had left belongings on the porch and by the back door; the remains of the chicken coop could be seen.

The landlord read from a written statement provided by a real estate agent who had viewed the property in July 2011. He had found the home to be in poor condition; it was not clean and there was refuse on the property. The agent stated that the home is now in showing condition.

The tenants acknowledged that a 10 Day Notice Ending Tenancy for Unpaid Rent was received by the female tenant on August 11, 2011. The landlord stated she posted the Notice to the tenant's door on August 8, 2011. The Notice indicated that the tenants had not paid \$2,200.00 rent due on August 7, 2011. The tenants testified that on August 9, 2011, they paid August rent due. The tenants believed that this payment did not constitute rent, but another form of payment to the landlord. By mid-September, the tenants had vacated the rental unit.

The landlord stated that on September 21, 2011, she received an email from the tenants, informing her that they did not require notices of entry to the home, as they had now vacated. The landlord said this was the first notice the tenants had given her that they were moving. The landlord has claimed unpaid rent that was due on September 7, 2011; and for loss of the next month's rent.

The tenants stated they assumed that when they vacated the home the rent paid would cover the hydro costs.

The tenants had been given keys to the home; the landlord did not receive them at the end of the tenancy. The tenants testified they left them on the counter on either September 13 or 14, 2011. The landlord did not find the keys and had to re-key the locks.

The landlord hauled items to the landfill on October 1, 8 and 18, 2011. The invoices issued for house cleaning totaling 19 hours over a three day period from October 5 to 7, 2011, were supplied as evidence of payment for this service. One invoice indicated that the house was in horrible condition. An October 7, 2011, invoice for cleaning, maintenance, rubbish removal completed over 13 hours at the sum of \$25.00 per hours, was supplied as evidence. No breakdown of maintenance costs were given on the invoice. The invoice indicated the property required significant interior/exterior clean-up and rubbish removal.

The landlord submitted a typed invoice for her services for cleaning, damage repair, remediation, equipment repair, extra tools, supplies and supervision time, in the sum of \$1,300.00.

The tenants testified they had to complete a lot of cleaning at the start of the tenancy; that the window sills were dirty, and the lights and cupboard and floors needed cleaning. The tenants also spent time cleaning at the end of the tenancy; and agreed it was not perfect, but that they had cleaned the oven and spent time in attempts to leave the home clean.

The tenants did not remove the chicken coop they erected as they thought they would have access to an ATV, so the coop could be hauled off of the property. The landlord denied them use of the ATV and a trailer. The tenants did not understand what might have filled 6 garbage bags the landlord has claimed as a cost, unless they were items that had belonged to the landlord.

The tenants acknowledged leaving behind the remains of a chicken coop they had constructed. They did not remove the debris from the property as they did not have use of a promised ATV that was to be part of the tenancy arrangement. Otherwise, the parties disagreed on the state of the yard and home at the start and end of the tenancy. The landlord submitted photographs she testified were taken just prior to the start of the

tenancy; the tenants stated it appeared the photographs were taken at different times of the year.

The tenants submitted photographs of the property in order to demonstrate the state of the land at the start of the tenancy, showing growth and the need for yard-work. The landlord provided copies of photographs which showed the collapsed chicken coop; the lane-way; a mower left outside of the home and a pile of grain. The parties did not agree on the terms of the tenancy in relation to care of the yard, or to the state of the yard at the beginning or end of the tenancy. The landlord's photographs also showed some need for yard work on this rural acreage; as did the tenant's photographs.

The landlord claimed costs for an investigator to assist in locating the tenants. The landlord had submitted an invoice for this portion of her claim; however she did not provide a copy to the tenants. The investigator wished to remain anonymous.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

As the landlord failed to complete a move-in condition inspection report with the tenants, she extinguished her right to claim against the deposit for damage to the property. The absence of a condition inspection report at the start of the tenancy resulted in a failure to adequately record the state of the home at the beginning of the tenancy. There was no reliable record of the state of the exterior of the home; a rural property which I find appeared to require yard maintenance when the tenants moved into the home.

I have not placed any weight on the condition inspection report completed by the landlord, as the report was not completed at the time the tenancy commenced; as required by the Act.

I find that the tenancy ended on September 21, 2011, when the tenants sent the landlord the email informing her they had vacated.

I have placed little weight on the real estate agent's statement; he had viewed the unit during the tenancy and there was no evidence before me he had been to the unit in September, 2011; immediately after the tenant's vacated.

I find the statement read by the landlord which indicated she was accompanied to the property immediately after the tenant's vacated, supported the landlord's submission that the tenants failed to leave the rental unit in a reasonable clean state, as required by section 37(2) of the Act. If the unit had not been clean at the start of the tenancy, the tenants had remedies available to them to address those issues. However, at the end of the tenancy the tenants must comply with section 37 of the Act.

I find, on the balance of probabilities that the tenants failed to leave the rental unit in a reasonably clean state at the end of the tenancy. The tenants vacated the home without giving the landlord an opportunity to view the home or to give the tenant's direction on any cleaning that was required. Therefore, I find that the landlord is entitled to compensation in the sum of \$450.00 for costs supported by the 2 invoices issued for cleaning.

I have considered the portions of the landlord's claim that are supported by verification of costs incurred; therefore, in the absence of verification of professional estimates based on a move-in and move-out condition inspection that reflected the state of the wood supply, outdoor areas, wood finishing, grout and plaster, the carpet and estimated cleaning; that total estimate portion of the claim is dismissed.

Based on verification of the hydro costs supplied I find that the landlord is entitled to hydro costs in the sum of \$1.74 per day for 50 days from August 3 to September 21, 2011, the date the tenancy ended; totaling \$87.00. The balance of the hydro claim is dismissed, as the tenants no longer possessed the unit beyond September 21, 2011.

As the landlord discovered the home open and vacant after receiving the tenant's September 21, 2011, email, I have accepted, on the balance of probabilities, that even if the keys had been left by the tenants, they were not in the home when the landlord became aware of the vacancy and entered the home. The doors had been left unlocked without the landlord's knowledge. Therefore, I find that the landlord is entitled to the cost of re-keying, based on the adjusted invoice, in the sum of \$40.00.

I find, on the balance of probabilities, and based upon the verification of costs supplied, that the landlord removed items left on the property by the tenants and that the landlord is entitled to dump fees and garbage charges. I have accepted this cost based almost entirely on the need to remove the chicken coop left on the property by the tenants. There was no evidence before me of any term providing the tenants with a right to erect and then leave this collapsed structure on the property.

The landlord has claimed costs for obtaining new postal box keys. In the absence of any record of mail keys having been supplied at the start of the tenancy, or verification of the cost as a result of a breach of the Act by the tenants, I dismiss the claim for mail key costs. I find, on the balance of probabilities, it is just as likely that the tenants did obtain their own key at the start of the tenancy, at no cost to the landlord.

I have not accepted the receipt issued on October 7, 2011, as it appears to duplicate the claim for garbage removal and does not provide a specific breakdown for any of the

items claimed; such as maintenance issues. There was no evidence before me of damage caused by the tenants to items such as the toilet. A landlord is required to maintain the home and, in the absence of evidence setting out damage caused by the tenants and a detailed breakdown that establishes costs have not been duplicated, I find the October 7, 2011, invoice is dismissed.

I have dismissed the claim made by the landlord for her own time as those costs appeared to duplicate costs claimed on other invoices; the costs are not detailed and not supported by any verification for items such as supplies. The landlord may wish to consider these costs in relation to a business cost.

The claim for investigative services is dismissed. The landlord failed to serve the tenants with a copy of the invoice verifying this portion of the claim. While the investigator may wish to keep their identity hidden, rules of natural justice require that a respondent be given all evidence upon which the applicant intends to rely.

In relation to the claim for unpaid rent that was due on September 7, 2011, I find that the tenancy was a fixed-term and that in the absence of evidence of a breach of a material term of the tenancy by the landlord, section 45 of the Act prohibited the tenants from giving notice ending the tenancy.

The tenants testified that they received the 10 Day Notice ending tenancy on August 11 and had paid the rent owed on August 7, 2011. If that is the case, then the tenancy continued; rent was paid either prior to receipt of the Notice ending tenancy, or, it was paid within 5 days of having been posted on the door and the deemed received date of August 11, 2011.

The copy of the tenancy agreement supplied as evidence indicated that the tenants were to vacate the unit on November 6, 2011; however, the tenants vacated prior to this date. Therefore, I find that the tenants ended the tenancy in breach of the Act. They paid the rent owed on August 7, 2011, thus rendering the 10 Day Notice invalid; the tenancy continued. I have rejected the tenant's submission that the payment made in August was not rent; it is unreasonable to accept that payment was for anything but rent owed.

Section 45 of the Act sets out the methods of ending a fixed-term tenancy and in the absence of an Order allowing the tenants to end the tenancy as the direct result of a breach of a material term of the tenancy, I find that the landlord is entitled to compensation for unpaid rent that was due September 7, 2011 and loss of rent revenue for the month of October to November 6, 2011.

The landlord became aware of the vacancy in late September and did not need to prove she intended to re-rent the unit after the fixed-term end date. I have accepted, on the balance of probabilities, the landlord's submission that cleaning of the unit, so late in the term, resulted in a loss of the final month's rent revenue, as this was a fixed-term tenancy, which required vacant possession on November 6, 2011. This is supported by invoices for cleaning in early October, 2011. It would have been unreasonable to expect the landlord to locate new occupants for a 1 month period.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
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Re-key house	241.00	40.00
Garbage charges	24.00	24.00
Dump charges	131.60	131.60
Re-key mail box	25.00	0
House cleaning & repairs – 83 hrs @ \$25/	2,075.00	450.00
Investigation firm costs for service	336.00	0
Unpaid September, 2001 rent	2,200.00	2,200.00
Loss of October, 2011 Rent	2,200.00	2,200.00
TOTAL	7,340.61	5,132.60

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,100.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$5,232.60, which is comprised of \$5,132.60 in damage, damage or loss, unpaid rent and \$100.00 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 in the amount of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$5,022.60. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

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: February 29, 2012.

Residential Tenancy Branch