



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally however both the landlords and the tenants stated that they had covered all the issues in their written submissions.

I therefore took an affirmation from all parties involved that the information provided was accurate to the best of the recollection.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were dealt with together.

The tenant's application is a request for a monetary order for \$2653.39 and recovery of the \$50.00 filing fee

The landlord's application is a request for a monetary order for \$4391.20 and a request for recovery of the filing fee.

Tenant's application

Background and Evidence

The tenants have provided information as follows:

- The landlord altered the tenancy agreement after it was signed, changing page 2 to show the utilities were not included, when the original document included utilities in the rent.
- In support of this claim they have supplied a color copy of their copy of the tenancy agreement which shows that only page two was in black-and-white where as every other page was in color.
- When they first noticed the change they felt that they had no option but to pay the utilities for fear of losing the rental unit, however they subsequently decided to stop paying utilities and are now requesting the return of all utilities paid.
- On November 7, 2011 the skylight in the main living area suddenly shattered and fell and sent glass throughout the living room, dining room, and kitchen.
- When the glass fell the male tenant jumped out of the way knocking over their television from above the fireplace and destroying it.
- The falling glass also destroyed much of their furniture.
- As a result of this incident they had to file an insurance claim and pay a deductible of \$500.00 and they feel that the landlords should be responsible for covering the cost of that deductible, as they believe the landlords were negligent in not doing regular inspections of the skylight.
- They spoke with a skylight manufacture who informed them a skylight needs to be checked yearly by a skylight or roofing professional to make sure the skylight has not been damaged.
- They would also like to be paid for time spent cleaning up the glass, which took approximately 8 hours.
- They also believe that their full security deposit should be returned.

The tenants are therefore requesting an order as follows:

Return of security/pet deposit	\$1000.00
Return of all utilities paid	\$873.39
Insurance deductible	\$500.00
Cleaning up glass 8 X \$35.00	\$280.00
Filing fee	\$50.00
Total	\$2703.39

The landlords have provided information as follows:

- They do not dispute that page two of the tenancy agreement is not the original, because there was an error made when page 2 was filled out, however it was corrected before the tenancy agreement was signed and the original was given to the tenants.
- The tenants were fully aware that utilities were not included at the time that they signed the agreement, even the advertisement (copy attached) for the rental unit states that utilities are not included.
- The document was not altered in any way after signing and the fact that the tenants paid utilities for a period of time supports their claim that utilities were not included.
- As far as the skylight is concerned there was no negligence on their part as they had no way of knowing that the skylight would suddenly and unexpectedly shatter and fall, and therefore they do not believe they should be required to pay the tenant's deductible.
- Also when the tenants originally contacted them about the skylight falling, the tenants inform them that they had called their insurance company and that the insurance company was sending people to clean up the glass.
- The tenants never requested that the landlords come and clean up the glass, or even gave them the opportunity to clean up the glass and yet now the tenants are requesting the costs of cleaning up the glass.

The landlords therefore believe that the tenant's full claim should be dismissed.

Analysis

The tenants paid a combined security/pet deposit of \$1000.00 and therefore that deposit should be returned at the end of the tenancy unless the landlords have a valid claim against it. Since the landlords have also filed a claim against the tenants, the security deposit will be taken into consideration later in this decision.

As far as the claim for return of utilities is concerned, it is my finding that the tenants are liable for the utilities at this rental unit.

The fact that the tenants paid the utilities for a period of time supports the landlords claim that the utilities were not included in the rental agreement, and that the agreement was changed prior to signing. I find it very unlikely that the tenants would have paid utilities at all had they believed a fraud had occurred.

I therefore deny the tenants request for return of utilities paid.

It is also my finding that there was no negligence on the landlords part with regards to the shattered skylight and therefore the landlords are not liable for the tenants insurance deductible costs. The tenants claim that skylights should be inspected yearly, however they provided no evidence in support of that claim.

The landlords in this case had no way of knowing that a skylight in their rental property would break for no apparent reason.

As far as the cleanup costs are concerned is my decision that the landlords are also not liable for the cleanup costs, as they were never given any opportunity to come and clean up the glass.

Landlords application

Background and Evidence

The landlords have provided information as follows:

- The tenants were responsible for the utilities at the rental unit and paid them for the majority of the tenancy however for the months of December 2011 and January 2012 the tenants failed to pay their utilities.
- The tenants also left extensive damage in the rental unit at the end of the tenancy and as a result they had to do significant repairs.
- There also have been numerous trips to the rental unit to deal with the tenant problems, including the eviction, enforcing the Order of Possession, inspecting skylights etc. and therefore they have extensive ferry costs.
- They also lost two days of wages as a result of having to travel to the rental unit to do repairs etc..
- The rental unit was also left extremely dirty at the end of the tenancy and the carpets were left stinking of cat urine and as a result they had to do extensive cleaning and the carpets had to be replaced.
- They feel that the damage to the skylights did not occur as represented by the tenants and believe that the skylight may have been impacted from the inside by either the tenants or a guest of the tenants and therefore they are also requesting the cost of replacing both skylights as they would not have replaced either had this not occurred.

The landlords are therefore requesting a monetary order as follows:

French door repair	\$91.88
Carpet and underlay costs	\$616.49
Carpet and underlay installation	\$179.20
Cleaning supplies	\$8.48
Rekey mailbox	\$32.48
New house keys and carpet knife	\$13.99
Sink drain/plumbers putty/floodlight	\$42.83
Deadbolt for front door	\$23.20
Dispose of carpet/underlay/screen door	\$10.00
Gyproc to repair walls	\$7.82
Paint and plug plates	\$41.52
Paint supplies	\$13.90
Cleaning entire house	\$450.00
Handyman charges to repair walls, paint and remove carpet	\$360.00
Cost to replace skylights	\$953.90
B.C. Hydro bills for December 2011	\$36.50
Fortis Gas bill for December 2011	\$90.10
B.C. Hydro bill for January 2012	\$36.50
Fortis Gas bill for January 2012	\$78.80
B.C. Ferries costs to travel from Victoria to Surrey to deal with various issues	\$816.35
Registered mail costs	\$54.26
Today's lost wages to deal with issues at the rental property	\$432.00
Filing fee	\$50.00
Total	\$4440.20

The tenants have provided information as follows:

- The skylight in the main living area fell and shattered on its own and was not caused by any impact from the inside, by themselves or a guest.
- Utilities were discussed already in their application.
- They cleaned the rental unit thoroughly before they moved out, other than the mouldy windowsills and they do not believe they should be charged for any further cleaning.
- The Windows got mouldy due to poor caulking and because they were older Windows that allowed moisture in, and therefore they should not be responsible for cleaning them.
- They have no idea how corrosion occurred on the main bathroom drain.
- The damage to the walls in the downstairs living room was properly repaired before they left.
- There were no stains in the carpets and just a light pet smell that can be shampooed out.
- They do not dispute the wall damage in the upstairs living room or the # 1 front bedroom.
- They do not dispute the missing glass panels from the ensuite door.

Analysis

Utilities

As stated previously is my finding that the tenants are responsible for the utilities in the rental unit, and therefore I allow the landlords claim for the outstanding utilities for December 2011 and January 2012.

Total utilities allowed \$241.90

Cleaning

The landlord has provided a few photos that show that some cleaning was required; however the photo evidence provided by the tenants shows that the house, in general, was cleaned to a reasonable standard.

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords

have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

The claim for the cost of cleaning is therefore denied.

Skylights

It is my decision that the applicants have not met the burden of proving that the damage to the skylight was a result of any wilful or negligent actions on the part of the tenants.

The tenants reported that the skylight broke on its own and showered glass down into the rental unit and although the landlords have surmised that it broke due to an impact caused by the tenants or their guest, the landlords have no evidence to support this supposition.

The claim for cost of replacing the skylights is therefore denied.

Damages

It is my decision that the landlord has established the majority of the damage claim. The tenant has admitted to some of the damages and denies some of the damages however the evidence provided by the landlord shows that the damages to the rental unit were significant and although the tenants claim that the carpets were not damaged it is my finding that there was extensive pet urine damage to the carpets that required replacement of those carpets and underlay.

I have therefore allowed the following portion of the landlords damaged claim:

French door repair	\$91.88
Carpet and underlay costs	\$616.49
Carpet and underlay installation	\$179.20
Rekey mailbox	\$32.48
New house keys and carpet knife	\$13.99
Deadbolt for front door	\$23.20
Dispose of carpet/underlay/screen door	\$10.00
Gyproc to repair walls	\$7.82
Paint and plug plates	\$41.52
Paint supplies	\$13.90
Handyman charges to repair walls, paint, and remove carpet	\$360.00
Total	\$1390.48

I will not allow the claim for the sink drain/plumbers buddy/floodlight, because the landlord has not shown that this damage was the result of any negligence or wilful actions on the part of the tenants.

Ferry costs

I deny the landlords claim for ferry costs as this is a cost of doing business for an absentee landlord that cannot be passed on to the tenants.

Registered mail costs

The registered mail costs are a cost of the dispute resolution process and I have no authority to award costs other than the filing fee and therefore I deny the request for registered mail costs.

Lost wages

I deny the claim for lost wages. First of all one claim this for lost wages to confirm the eviction and again this results from being an absentee landlord, and therefore the costs cannot be passed on to the tenant.

The second claim for lost wages is for repairs to the residence; however the landlord has not provided sufficient specifics to show how doing repairs to the residence resulted in lost wages.

Filing fee

Since I have allowed a large portion of the landlords claim I also allow recovery of the \$50.00 filing fee.

Therefore the total amount of the landlord's claim I have allowed is \$1682.30

Conclusion

Landlord's application

I have allowed \$1682.30 of the landlords claim and I therefore order that the landlords may retain the full security/pet deposit of \$1000.00 and have issued a monetary order in the amount of \$682.30.

Tenant's application

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

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: March 26, 2012.

Residential Tenancy Branch