



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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, 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 initial hearing held on January 25, 2012; at which point the hearing was adjourned to allow service of the landlord's evidence package to the tenant. The evidence had been mailed but not retrieved by the tenant. At the reconvened hearing held on March 05, 2012, the tenant confirmed receipt of the landlord's original submission and an additional 9 page submission. No other evidence submissions were before me.

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 in the sum of \$3,369.75 for damage to the rental unit?

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 June 1, 2009 and terminated on October 1, 2011, when the tenant vacated the unit after giving written notice on August 23, 2011. The landlord stated a move-in condition inspection report and move-out inspection report was not

completed; the tenant stated a report was completed at the start of the tenancy, but she was not given a copy of the report.

A deposit in the sum of \$550.00 was paid at the start of the tenancy. The landlord confirmed receipt of the tenant's letter given on October 26, 2011, requesting return of the deposit to her forwarding address. The deposit was not returned and on November 7, 2011, the landlord applied, claiming against the deposit.

The landlord has made the following claim:

Door replacement	133.28
Patio blind	230.84
Washer repair	89.60
Water access panel and light bulbs	49.55
Replace kitchen cabinets	1,750.00
Dishwasher parts	35.41
Cleaning	150.00
Wash windows	80.00
Blind installation and cleaning blinds	145.60
New dishwasher	558.88
Living room blind	70.46
TOTAL	3,369.75

The landlord supplied 15 photographs taken of the unit after the tenant had vacated. Invoices were supplied for the items claimed, with the exception of the dishwasher.

The unit was purchased by the landlord 5 years ago; it is 15 years old.

The landlord made the following submission in relation to her claim:

The bathroom door was broken at the bottom corner; the landlord stated that the tenant's grandchild had hit the door with a toy.

The master room blind was damaged and required replacement; the age of the blinds is unknown. The blind had been in perfect condition at the start of the tenancy; a photograph showed that the many of the slats of the blind were bent.

The landlord does not know the age of the patio vertical blind, it had been in good shape but at the end of the tenancy was missing a number of the slats and the cheapest method of repair was replacement of the entire blind.

The washing machine was purchased 1 year prior to the tenancy; the repair invoice supplied as evidence appears to have a date of October 10, 2010, and indicated that the pump failed due to the washing of rubber-backed carpets. The landlord stated that

the tenant had washed rubber carpets in the machine, resulting in repair costs which the tenant should pay.

The landlord provided a photograph of missing bulbs in the bathroom; halogen lights were also burnt out in the kitchen.

In a bedroom there is an access panel to the outdoor water supply; this panel was missing and replaced by the landlord.

The kitchen cabinets were original and had a plastic coating that was failing. The landlord acknowledged this was a general problem in all of the suites in the complex. The landlord stated the tenant pulled all of the plastic coating off of the cabinet doors. A letter was submitted that served as an invoice, dated September 29, 2011, charging for cabinet replacement costs. The person who replaced the cabinets also wrote an undated letter in which he stated the cabinets were made of PCV with vinyl covering. The covering had been ripped off and some doors were off the hinges. The cupboards were determined to have been in extremely bad condition. The repair person indicated with proper care the cupboards should not have ended up looking as they did.

The dishwasher was purchased in March 2009. At the end of the tenancy a burn mark was found inside of the unit, some tray rollers were missing, as was the jet dry cap. The landlord has claimed the costs of parts and a new dishwasher. The dishwasher was 3 years old and the landlord believes the tenant should replace the unit.

Photographs showed the need for some cleaning in front of the fridge and in the stove warmer drawer. A photo of the area outside of the shower was supplied, which showed some sort of marks around the base. The landlord supplied an October 1, 2010, typed "agreement to pay" document for cleaning costs completed by the new occupant; as the unit required clearing at the start of the next tenancy. The typed note indicated \$150.00 was to be paid; however, no evidence of that cash payment was provided.

A receipt for payment made on November 4, 2011 in the sum of \$80.00 was supplied for window washing costs. The inside of the windows and both sides of the patio door required washing.

The landlord paid to have the remaining blinds cleaned and to install the replaced blinds that could not be repaired.

A second vertical living room blind had missing slats and slats from the other blinds did not fit; therefore a new blind had to be purchased.

The landlord submitted an October 27, 2011, letter from the tenant's neighbour who stated she walked through the unit with the owner on October 1, 2011; just after the tenant had vacated. She saw puddles of water on the floor, damaged blinds, dirty windows, damage to the bathroom door, dirt in front of the fridge and stove and in the bathroom area, plus missing light bulbs.

The landlord provided a November 3, 2011, note from a previous occupant of the unit who had lived there until May 2009. This individual submitted that she left the unit in pristine condition and that the blinds were not damaged. She thought the kitchen cupboards were lovely.

The tenant responded as follows:

When the tenant moved in the bathroom door had a crack of approximately 2 inches but it was not broken. At the time of move-out the door was not broken further than it had been at the start of the tenancy.

The master bedroom blind was in this condition when the tenant moved in; although the tenant did reach through the blind to operate the window. At the start of the tenancy the blind would not operate properly; the cords malfunctioned. This was mentioned to the landlord at the start of the tenancy.

At the start of the tenancy slats were missing in the patio and living room blinds; some were found in the unit so the tenant tried to put these in to replace the missing slats, but they would fall off the track. The landlord was told about the problem and said she would repair the blinds.

The tenant denied having ever washed rubber mats in the washing machine. The landlord had asked the tenant to pay for one half the cost of repair, as she believed the tenant had caused the damage; the tenant had refused.

The tenant said that on several occasions a strata representative came into the unit to access the water controls; the tenant had not paid any attention to the panel or if it had a cover. She could not recall if there had been a cover at the start of the tenancy.

The tenant did unscrew some light bulbs from the bathroom fixture, as they were too bright. The halogen lights in the kitchen had never worked.

The kitchen cupboards were in poor condition from the start of the tenancy and the landlord had said they would be fixed. There was packing tape on a number of the corners, to hold down the vinyl covering. During the tenancy more of the vinyl lifted and the tenant taped those areas. The cupboards were replaced just prior to the tenant vacating and the landlord never indicated that the tenant should be responsible for the cost.

The tenant used the dishwasher on several occasions at the start of the tenancy; it did not clean the dishes very well and she never used it again. The tenant did not damage the dishwasher or lose any parts.

The tenant cleaned the unit prior to moving out and had also hired someone to help. She agreed that the area in front of the fridge and in the warmer drawer had been

missed and apologized for that. The area outside of the shower shown in the photos does not indicate a lack of cleanliness, but shows the presence of rust along the shower.

In relation to the cleaning and installation of blinds, the tenant believes they required replacement and were damaged at the start of the tenancy.

Analysis

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.

Section 37(2) of the *Act* provides:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The *Act* also requires a landlord to give a tenant at least 2 opportunities to complete a final condition inspection; the final opportunity must be in writing. This did not occur; an inspection was not completed where the parties could agree on the state of the unit at the start of the tenancy. Even if there had been an inspection at the start; a report was not completed and given to the tenant, as required by the *Act*.

The Residential Tenancy Regulation provides:

21 *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

Therefore, the landlord must, on the balance of probabilities, prove that the tenant did not comply with section 37(2) of the *Act* and that she caused damage that did not exist at the start of the tenancy and that was beyond reasonable wear and tear.

I have considered the submissions made by the neighbour and the previous occupant; however, in the absence of a move-in condition inspection report completed with the

tenant, I have given those statements little weight. It is vital that a tenant be given the opportunity at the start of a tenancy to acknowledge the state of the unit and that a copy of the report be given to the tenant. As this did not occur I have focused on the balance of the evidence submitted and the testimony of the parties.

The tenant disputed the landlord's entire claim with the exception of the areas in the kitchen that she had missed cleaning. The tenant disagreed that she was responsible for the repair of items that she submits had been in need of repair at the start of the tenancy. The tenant stated that she was not ever asked by the landlord to pay for the kitchen cupboards, which by the landlord's own testimony, were somewhat sub-standard and replaced prior to the end of the tenancy.

Residential Tenancy Branch policy suggests average life spans for household items and fixtures. With the exception of the cabinets, washing machine and dishwasher, the items the landlord claims were damaged appear to have been original fixtures that would have been installed fifteen years ago; placing them outside of their useful life span.

The door was damaged, but in the absence of evidence that the door and blinds were not damaged at the start of the tenancy, I find that this portion of the claim is dismissed.

The parties disputed the washing machine repair; the tenant denied washing rubber-backed carpets, the invoice indicated this caused the damage. There was no evidence before me of the type of items that had been washed in the unit prior to the start of this tenancy. Therefore, in the absence of evidence that the tenant did wash rubber-backed items in the machine I dismiss this portion of the claim. Even if the tenant had washed these items, there was no evidence before me that the landlord had instructed her not to do so.

The photographs indicated that some bulbs were missing from the bathroom; however, the tenant testified that she had only removed the bulbs. In the absence of evidence that the bulbs had burned out during the tenancy, I find that this portion of the claim is dismissed.

There was no evidence before me that the water panel cover was present at the start of the tenancy; further, strata members had accessed the panel during the tenancy, which removed the tenant's control over this item. Therefore, I find that this portion of the claim is dismissed.

Cabinets would have a normal lifespan of 25 years; the cabinets in the rental unit were, by the landlord's own testimony; somewhat sub-standard, with all units having problems with the vinyl coating lifting. The cabinets were replaced prior to the end of the tenancy in the absence of any indication the tenant was expected to pay this cost. Therefore; I find that the tenant was not responsible for the state of the cabinets and the peeling of vinyl which was present at the start of the tenancy, and that the claim for cabinets is dismissed.

On the balance of probabilities, I find it is just as likely that the tenant chose not to use the dishwasher. I found her testimony convincing, that the dishwasher did not work well and she chose to hand-wash her dishes. Therefore, in the absence of a record of the state of the machine at the start of the tenancy, I find this portion of the claim requesting parts and a new dishwasher is dismissed.

The tenant acknowledged leaving the area in front of the fridge in a state that required cleaning; however, on the balance, I find that the tenant did comply with section 37 of the Act and that the unit was left reasonably clean with the exception of this area. Therefore, I find that the landlord is entitled to a nominal amount for cleaning in the kitchen in the sum of \$50.00. I have accepted the tenant's submission that the area in front of the shower showed rust had occurred and that it was reasonably clean. Therefore, I find that the balance of the claim for cleaning is dismissed.

The tenant stated that she cleaned the windows prior to leaving the unit and in the absence of a condition inspections showing that the windows were not reasonably clean, I find this portion of the claim is dismissed.

As the landlord's application is dismissed, as suggested by Residential Tenancy Branch policy, I Order the landlord to return the tenant's deposit; forthwith.

The Act also requires a landlord complete a move-in condition inspection report, a copy of which must be given to the tenant. By the landlord's admission, despite the tenant's testimony, I find that there was no inspection report completed at the start of the tenancy. When a landlord fails to complete an inspection report the landlord extinguishes the right to claim against the security deposit for damage to the unit. Therefore, having accepted the landlord's testimony that a report was not completed, I find that the landlord extinguished her right to claim against the deposit.

As the landlord lost the right to claim against the deposit for damage, once she had the tenant's forwarding address she was required, within fifteen days, to return the deposit to the tenant. When she failed to do so, section 38(6) of the Act, determines that the tenant is entitled to return of double the deposit.

The landlord had a right to submit her claim for damage, but she did not have the right to retain the deposit for more than fifteen days beyond the date the tenant gave her forwarding address; October 26, 2011.

Therefore, I find that the tenant is entitled to return of double the \$550.00 deposit; less \$50.00 for cleaning.

A monetary order has been issued to the tenant.

As the landlord's claim has some merit I find she is entitled to the filing fee cost.

Conclusion

The landlord is entitled to a nominal amount for cleaning in the sum of \$50.00 and the \$50.00 filing fee.

The balance of the landlord's claim is dismissed.

The tenant is entitled to return of double the \$550.00 deposit, in the sum of \$1,100.00; less the amount owed to the landlord.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,000.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: March 09, 2012.

Residential Tenancy Branch