



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 matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's application named three parties as Tenants, namely, P.M., L.B., and A.A. The Landlord said she served all three tenants with her application and Notice of Hearing (the "hearing package") to the residence of A.A. At the beginning of the first day of the hearing, A.A. confirmed that neither P.M. nor L.B. resided with him and he did not know their whereabouts. In the circumstances, I find that P.M. and L.B. have not been served with the Landlord's hearing package as required by s. 89 of the Act and as a result, the style of cause is amended by removing P.M. and L.B. as parties to this proceeding.

At the beginning of the first day of hearing, the Tenant, A.A., argued that he had not been served in a timely manner with the Landlord's hearing package and had not received her documentary evidence. The Landlord admitted that she initially attempted to serve the tenants at their former workplace but discovered that they were no longer working there. The Landlord said she then got a skip tracer to find the Tenant and at that time served him with her hearing package (which included her amended Application filed January 12, 2012). The Landlord claimed that all of her documentary evidence was included in her hearing package which was served on the Tenant. In fairness to both parties, I adjourned the hearing of the Landlord's application and ordered the Landlord to re-serve the Tenant with her evidence package. The Tenant was given an opportunity to provide responding evidence and the hearing was reconvened to a date when the Tenant's advocate was available to assist him.

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?
3. Is the Landlord entitled to other compensation and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This one year fixed term tenancy started on January 21, 2011 and ended on March 31, 2011 pursuant to a One Month Notice to End Tenancy for Cause. [In previous proceedings between these parties held on March 22, 2011, the Tenant's application to cancel that Notice was dismissed]. Rent was \$1,700.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$850.00.

The Parties completed a move in condition inspection report on December 30, 2010. The Parties agree that the Landlord sent the Tenant an e-mail on March 13, 2011 proposing to do a move out inspection on March 31, 2011 at 1:00 p.m. The Landlord said she then posted a note on the Tenant's door on March 23, 2011 proposing to do the move out inspection at 12:00 noon on March 31, 2011. The Landlord said she did not hear from the Tenant so on March 28, 2011 she posted a Final Notice to Schedule a Condition Inspection on the rental unit door which stated that a move out inspection would be conducted at 12:00 noon on March 31, 2011. The Tenant denied that the Landlord posted a note or a Final Notice on the rental unit door proposing to do the move out inspection at 12:00 noon.

The Tenant said that on March 31, 2011 he spoke to the Landlord who asked him if he could attend by 12:30 however he said he told the Landlord he was working and would be at the rental unit by 1:00 p.m. at the latest. The Parties agree that when the Tenant arrived at the rental property, the Landlord had already completed the inspection. The Tenant said he asked the Landlord to do the inspection with him but she was irate, insisted that he sign the report, and when he refused she told him to get off the property so he left. The Landlord said when the Tenant arrived, he became angry and started shouting. The Landlord said it was impossible to complete the report with the Tenant in those circumstances so she left the rental property and he remained to remove some belongings. The Landlord said she could not send the Tenant a copy of the Condition Inspection Report because he did not give her a forwarding address. The Tenant argued that the Landlord had his telephone number but never attempted to contact him.

The Landlord said a month after the tenancy started, she discovered that the Tenant (and his two co-tenants) had moved in 5 other room mates, were operating a bicycle repair business from the property, had numerous unlicensed vehicles parked in unauthorized spots on the property. The Landlord said the Tenant and his roommates were also storing a number of bicycles and a large number of miscellaneous articles in the yard. The Landlord said as a result of these breaches of the tenancy agreement, she gave the Tenant a One Month Notice to End Tenancy for Cause which was upheld in another dispute resolution hearing on March 22, 2011. Consequently, the Landlord claimed that despite the short duration of the tenancy, the Tenant and his roommates left the property in poor condition at the end of the tenancy. The Landlord also claimed that some items belonging to her which she had stored on the property were missing at the end of the tenancy and she alleged they were taken by the Tenant or one of the other people residing in the rental unit during the tenancy.

The Landlord sought compensation for the following expenses or losses:

1. **Cleaning and painting:** The Landlord said she hired her 2 children and 2 of their friends to clean the rental unit. The Landlord said she did not keep a written record of their hours but recalled that it took a total of 23 hours. The Landlord said it was also necessary to re-paint the basement floors that were scratched as well as a number of walls in the main living areas. The Landlord provided a copy of a cheque payable to one of her children in the amount of \$1,005.00. The Tenant claimed that the rental unit was cleaner at the end of the tenancy than it was at the beginning of the tenancy. The Tenant also argued that any condition issues were the result of the Landlord's failure to properly maintain the rental property.
2. **Carpet Cleaning:** The Landlord said the carpets had been cleaned at the beginning of the tenancy but that they were dirty at the end of the tenancy because the Tenant and his roommates never removed their shoes. The Landlord said she incurred expenses of \$151.20 to have the carpets professionally cleaned. The Tenant said that he steam cleaned the carpets at the end of the tenancy so that they were clean and that the Landlord recorded this on the move out inspection report. The Tenant argued that the Landlord told him on March 31, 2011 that she wanted them to be "professionally cleaned."
3. **Garbage Disposal:** The Landlord said there were a number of broken items, scrap metal, propane tanks and miscellaneous items of garbage left in the yard of the rental property at the end of the tenancy. The Landlord said she incurred expenses of \$120.00 to remove and dispose of these items on April 15, 2011. The Tenant questioned whether the Landlord actually incurred an expense for this as he claimed she did not provide any corroborating evidence that she had.
4. **Furniture Removal and disposal:** The Landlord said the Tenant left 2 love seats, a sofa bed, a shelf, a mattress and a computer monitor on the property when he vacated. The Landlord said she stored these items for 60 days (or longer) and when the Tenant did not call her about them, she had them removed and disposed of at a cost to her of \$155.06. The Tenant did not argue that these items were abandoned at the rental unit but instead questioned the reliability of the Landlord's receipts for this expense. In particular, the Tenant argued that the date on the landfill depot receipt was illegible and the date of the service (in June) did not stand to reason.
5. **Gravel and Top Soil:** The Landlord said prior to the tenancy, a garage on the rental property was demolished and fill was brought in to cover it. The Landlord said a month prior to the tenancy, she also had gravel spread on the property to make a parking area. The Landlord claimed that due to the high volume of traffic coming and going from the rental property, the parking area was damaged and she had to purchase more gravel to fix it. The Landlord also claimed that due to the Tenants driving over the yard and parking vehicles in it, the area where the

garage had been had to be covered with more soil. The Landlord said it cost her \$424.20 for gravel and soil and she paid her son \$100.00 for his labour. The Tenant claimed that there was insufficient gravel in the parking area at the beginning of the tenancy and that it was often a "mud hole." The Tenant denied that any damage was done to the yard beyond reasonable wear and tear.

6. **Hydroponic Tables and Lumber:** The Landlord said she had 22 hydroponic tables stored under a balcony at the rental property that were covered with a tarp and some lumber. The Landlord said she noticed in early February 2011 that the tables had been moved further along the house so she asked the Tenant to put them back. The Landlord said the tables and lumber were missing when she arrived at the property on March 31, 2011. The Landlord said the tables were new or nearly new and she sought \$125.00 for each of them or a total of \$2,750.00. The Landlord also sought compensation of \$142.50 for the missing lumber. The Tenant said he had no idea what had happened to the Landlord's hydroponic tables or lumber and argued that he was not responsible for looking after them for her.
7. **Garage Door Panel:** The Landlord said she also stored 2 panels from the door of the demolished garage on the rental property. The Landlord said at the end of the tenancy one of these panels was missing and she sought compensation of \$100.00 for it. The Tenant said he had no idea if there were garage panels stored on the property and if there were what had happened to one of them. The Tenant also argued that he was not responsible for looking after items stored in the yard by Landlord.
8. **Fish Tank:** The Landlord said she also stored a fish tank on the rental property. The Landlord claimed it was in the yard on March 31, 2011 but disappeared on April 7, 2011 when someone removed a trailer belonging to one of the Tenant's roommates. Consequently, the Landlord sought compensation of \$60.00 for the fish tank. The Tenant said he did not return to the rental property after March 31, 2011 and therefore had no idea what happened to the Landlord's fish tank.
9. **Fire Extinguishers:** The Landlord said there were two fire extinguishers in the rental unit at the beginning of the tenancy (one in the kitchen and one in the basement). The Landlord said both extinguishers were missing at the end of the tenancy. The Landlord admitted that only one of the extinguishers was recorded on the move in condition inspection report and therefore she sought \$41.20 to replace one fire extinguisher. The Tenant said he did not use the fire extinguishers during the tenancy and had no knowledge of their whereabouts.
10. **Miscellaneous items:** The Landlord said there were a number of articles that were either missing or damaged at the end of the tenancy and that these included various light bulbs, a smoke alarm, a kitchen sink strainer, door mats, a countertop end cap, a recycle bin, an outdoor electrical cord, 2 window blinds, an electric heater, an outdoor sensor light and a door bell. The Landlord also

claimed that she had to purchase a new lock for the main entrance door because the Tenant installed a deadbolt lock during the tenancy but did not leave keys for it at the end of the tenancy. The Landlord also sought compensation for the cost of cleaners and grass seed. The Landlord sought a total of \$402.37 for these items.

The Tenant denied that he was responsible for compensating the Landlord for these items. The Tenant said there was no recycle bin, door mats or outdoor extension cord on the rental property. The Tenant denied changing a lock and said he left his keys in the rental unit at the end of the tenancy. The Tenant also denied removing a smoke alarm, sink strainer or portable heater. The Tenant further denied damaging window blinds, a kitchen counter or a door bell. The Tenant argued that it was unlikely that all of the light bulbs in the rental unit were burned out, missing or broken as alleged by the Landlord.

11. **Loss of Rental Income:** The Landlord said she started advertising the rental unit and showing it in March 2011 however, it was not in a suitable condition to re-rent at that time. The Landlord claimed that after the Tenant vacated it took two weeks to clean and repair the rental unit before it was in suitable condition to re-rent but by that time there were no prospective tenants willing to rent it mid-way through April. The Landlord said she lowered the rent and was able to find a new tenant effective May 26, 2011. The Landlord said although she lost rental income for two months, she is claiming a loss of rental income for April 2011 only.

The Tenant argued that the rental unit had a lot of issues that had nothing to do with the tenancy. In particular, the Tenant said the Landlord did not advise him until approximately a month after the tenancy started that it had formerly been used as a grow op. The Tenant said the Landlord only admitted this after he and his roommates began to discover massive amounts of mould coming through the walls in some of the rooms. The Tenant said the Landlord did not take adequate steps to deal with the mould but instead painted over it and sealed off the entrance to the attic area. The Tenant claimed there were also issues with the electrical system, drainage, leaks in the roof and foundation and the furnace not venting properly all of which he claimed contributed to the mould. The Tenant argued that despite these issues, there was such a low vacancy rate in Victoria at that time that the Landlord should have been able to re-rent it much sooner.

12. **Unpaid Utilities:** The Landlord said the Tenant was responsible for paying all utilities and that the water bill in the amount of \$85.50 remained unpaid at the end of the tenancy. The Tenant did not dispute this part of the Landlord's claim.
13. **Late Payment Fee:** The Landlord said it was a term of the tenancy agreement that a fee of \$25.00 would be charged for a late rent payment. The Landlord said the Tenant did not pay rent for March 2011 when it was due and as a result, she served the Tenant with a 10 Day Notice to End Tenancy.

Analysis

Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines *“reasonable wear and tear” as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion.* Section 32(1) of the Act says that a Landlord is responsible for providing and maintaining residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for the damages she has alleged (that were not the result of reasonable wear and tear). This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 20 of the Regulations to the Act says that a condition inspection report completed in accordance with the Act and Regulations is evidence of the condition of the property on the date of inspection unless one of the parties has a preponderance of evidence to the contrary. The Parties completed a move in condition inspection report on December 30, 2010 which I find complies with the Act and Regulations. The Landlord also relied on 4 photographs of the rental unit that she said were taken by another person on December 7, 2010.

However, I find that the move out condition inspection report was not completed in accordance with the Act and Regulations. Given the contradictory evidence of the Parties, I find that there is insufficient evidence to conclude that the Landlord gave the Tenant a note on March 23, 2011 and a Notice on March 28, 2011 advising him that a move out inspection would be conducted on March 31, 2011 at 12:00 noon. I also find on a balance of probabilities that the Landlord did not give the Tenant an opportunity to participate in the move out inspection when he arrived at the rental property at 1:00 p.m. In particular, I find that the Landlord had already completed the inspection report when the Tenant showed up and did not want to delay any further and simply asked the Tenant to sign the report and when he refused, she left. Given that the Act requires the Landlord to complete the condition inspection report with the Tenant (unless he refuses to participate), I find that the Landlord had a duty under the Act to either go through the property with the Tenant while he was in attendance or to re-schedule the inspection. The Landlord also claimed that she was unable to send a copy of the report to the Tenant because she did not have his forwarding address. However, I find that part of the reason the Landlord did not have a forwarding address was because she did not complete the report with the Tenant. Furthermore, I find that the Landlord took no steps to contact the Tenant by telephone to find out where she could send him a copy. For all of these reasons, I give the move out condition inspection report very little weight.

The Landlord also relied on some photographs that said she and her spouse took of the rental property on March 31, 2011 and April 1, 2011. The Tenant argued that he could not be certain if the photographs were taken when the Landlord claimed (and there was no date on the photographs). The Tenant also claimed that his copies of the photographs were black and white, were difficult to see and lacked detail (which the Landlord denied) and that they also had no written description on them. The Landlord admitted that while she had provided the Residential Tenancy Branch with coloured photographs that were numbered and had a written description, the Tenant's copies were black and white. It became clear during the hearing that the Tenant's photographs and those submitted to the Residential Tenancy Branch may also have had different reference numbers.

It is a principle of natural justice and procedural fairness that a party be given a reasonable opportunity to respond to a claim made against him. In this case, I find that the Landlord did not provide the Tenant with clear copies of the photographs on which she relied and therefore I also find that the Tenant was not reasonably able to respond to the photographic evidence submitted to the DRO by the Landlord upon which she relied in support of her claims. For all of these reasons I found the Landlord's photographs to be unreliable and unhelpful and accordingly, I give them very little weight. The only other evidence of the condition of the rental unit at the end of the tenancy is the oral evidence of the Parties (neither of whom provided corroborating witness evidence). Consequently, when considering the condition of the rental unit at the end of the tenancy, it is largely a matter of the Landlord's word against the Tenant's.

1. **Cleaning and painting:** The Landlord claimed that it took 4 people a total of 23 hours to clean the rental unit at the end of the tenancy. The Landlord provided no invoice or time sheets for this expense but rather a cheque *dated May 9, 2011* made out to her daughter in the amount of \$1,005.00. The Tenant claimed that the rental unit was reasonably clean at the end of the tenancy and argued that the Landlord had not provided sufficient evidence to the contrary. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord, I find that there is insufficient evidence to support this part of her claim and it is dismissed without leave to reapply.
2. **Carpet Cleaning:** The Landlord also claimed that the carpets were dirty at the end of the tenancy however the Tenant claimed that he cleaned the carpets and that the Landlord acknowledged this on the move out condition inspection report. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord, I find that there is insufficient evidence to make out this part of her claim and it is dismissed without leave to reapply.
3. **Garbage Disposal:** The Landlord sought \$120.00 to dispose of garbage on April 15, 2011. The Tenant argued that the Landlord provided no receipt in support of this alleged expense. However, the Landlord submitted a carbon copy

of a cheque on which she had written, "garbage disposal, 04/15, \$120.00" and the rental unit address. The Tenant did not deny that there were a number of articles that may have had to be disposed of and I find on a balance of probabilities that there likely were. However, I find that a carbon copy of a cheque is not very reliable evidence (especially when a cheque could have been produced) that the Landlord incurred this expense and in the absence of any other reliable evidence, I find that there is insufficient evidence to support this part of the Landlord's claim and it is dismissed without leave to reapply.

4. **Furniture Removal and disposal:** The Landlord also sought \$155.06 to dispose of larger items she said the Tenant left behind. The Tenant did not dispute that these articles were left on the rental property at the end of the tenancy but argued that the Landlord's receipts were unreliable. The Landlord provided a copy of an invoice for \$100.00 dated June 22, 2011 for hauling away the articles in question. It also includes a \$10.00 amount for "roof." The Landlord also provided a weigh scale slip for \$55.06 however no date is apparent on the receipt. In the circumstances, I find that the Landlord has shown that she incurred expenses of \$90.00 to haul away the larger articles left by the Tenant however, I find that because the weigh scale slip is lacking in significant particulars and for that reason it is unreliable. Consequently, I find that the Landlord is entitled to be compensated **\$90.00** for this part of her claim.
5. **Gravel and Top Soil:** The Landlord sought \$524.20 for gravel and soil to repair a parking area and the yard. In support of this part of her claim, the Landlord provided a receipt for \$475.10 for materials and a hand written receipt for \$100.00 she said she paid to her son for labour to spread the materials. The Landlord also provided a copy of a letter dated March 16, 2011 from the contractor who allegedly demolished the garage and who claimed that he had inspected the site and that it was his opinion that due to misuse of the site (ie. parking vehicles), the soil had compacted and concrete debris was exposed. The Tenant argued that he did not park any vehicles in the yard save a camper that was parked on a cement pad designated by the Landlord. The Tenant also denied causing any damage to the parking area and argued that there was insufficient gravel there at the beginning of the tenancy. Given the contradictory evidence of the Parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord, I find that there is insufficient evidence to make out this part of her claim and it is dismissed without leave to reapply.
6. **Hydroponic Tables and Lumber:** The Landlord sought compensation of \$2,750.00 for 22 hydroponic tables and \$142.50 for lumber she said she had stored at the rental property that were missing at the end of the tenancy. The Tenant did not dispute that those articles were on the rental property during the tenancy but claimed that he did not know what happened to them and argued that he was not responsible for their safekeeping. I find that the Tenant had no duty under the Act or tenancy agreement to safeguard the items stored by the Landlord in the yard on the rental property. I also find that the Landlord has not

provided sufficient evidence to show that the Tenant or one of his roommates took the hydroponic tables and lumber. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

7. **Garage Door Panel:** The Landlord sought to recover compensation of \$100.00 for a garage door panel she said was missing at the end of the tenancy. However, I find that there is no evidence that there were 2 panels stored on the rental property during the tenancy. Furthermore, even if there were 2 garage door panels as the Landlord claimed, the Landlord provided insufficient evidence to prove that the Tenant or one of his roommates took it. As a result, this part of the Landlord's claim is dismissed without leave to reapply.
8. **Fish Tank:** The Landlord also sought to recover \$60.00 for a fish tank that she had stored on the rental property but that went missing after the tenancy ended. The Landlord claimed that the tank disappeared on the same day (April 7, 2011) as someone removed a trailer from the yard. However the Tenant denied that he or the owner of the trailer returned to the rental property after the tenancy ended and therefore I find that the Landlord's has provided insufficient evidence to show that the Tenant or one of his roommates took the fish tank. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.
9. **Fire Extinguishers:** The Landlord sought to recover \$41.20 for one of two fire extinguishers that she said was missing at the end of the tenancy. The Tenant said he did not know if the fire extinguisher was missing or not. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to make out this part of the Landlord's claim and it is dismissed without leave to reapply.
10. **Miscellaneous items:** The Landlord also sought \$402.37 for a number of articles that she said were missing or damaged at the end of the tenancy as well as the cost of cleaners and grass seed. The Tenant disputed all of these things. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence to make out this part of the Landlord's claim and it is dismissed without leave to reapply. Furthermore, given that the Landlord was unsuccessful on her claim for repairs to the yard and for cleaning expenses, I find that there is no basis to award her for the related expenses of cleaning supplies and grass seed.
11. **Loss of Rental Income:** The Landlord said she lost rental income for April 2011 largely due to the need to do cleaning and repairs which lasted 2 weeks. The Tenant argued that the Landlord should have been able to re-rent the unit sooner. Although I have found that there is insufficient evidence to conclude that the Tenant was responsible for much of the cleaning and repairs alleged by the

Landlord, I find that the Tenant is responsible for a loss of rental income for other reasons.

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that if a Tenant has breached a tenancy agreement, a Landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a Landlord is entitled is an amount sufficient to compensate the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy. Under section 45(2) of the Act, a Tenant of a fixed term tenancy cannot end the tenancy any earlier than the last day of the fixed term.

In this case, I find that the tenancy ended due to the Tenant's breach of a number of terms of the tenancy agreement. Given that the tenancy was a fixed term tenancy that was to expire on December 31, 2011, I find that the Tenant was liable for any loss of rental income the Landlord sustained up to that time provided that she took reasonable steps to re-rent it. In the absence of any reliable evidence to the contrary from the Tenant, I find that the Landlord took reasonable steps to re-rent the rental unit and as a result, I find that the Landlord is entitled to recover a loss of rental income for April 2011 in the amount of **\$1,700.00**.

12. **Unpaid Utilities:** The Tenant did not dispute the Landlord's claim for an unpaid water bill and therefore I find that the Landlord is entitled to recover **\$85.51**.
13. **Late Payment Fee:** I find that the Tenant made a late rent payment for March 2011 and therefore I find pursuant to s. 7 of the Regulations to the Act that the Landlord is entitled to recover a **\$25.00** late fee pursuant to a term in the Parties' tenancy agreement to that effect.
14. **Filing Fee:** As the Landlord has not been successful in recovering over \$5,000.00 in this matter, I find that it would not be appropriate to order the tenant to bear the full cost of the \$100.00 filing fee paid by the Landlord and therefore I award her ½ of that amount or **\$50.00**.
15. **Security Deposit:** I find that the Landlord is entitled to a total monetary award of \$1,950.51. Consequently, I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$850.00 partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$1,100.51.

Conclusion

A Monetary Order in the amount of **\$1,100.51** has been issued to the Landlord and a copy of it must be served on the Tenant, If the amount is not paid by the Tenant, 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: March 19, 2012.

Dispute Resolution Officer