



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was originally scheduled for January 11, 2012 to deal with cross applications. The landlord had applied for a Monetary Order for damage to the rental unit; unpaid rent and utilities; and, authorization to retain the security deposit and pet deposit. The tenant applied for a Monetary Order for return of the security deposit and pet deposit; recovery of overpayment of hydro; and, compensation for possessions taken by the landlord.

Preliminary and Procedural Matters

Both parties appeared at the January 11, 2012 hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Despite filing their applications in October and November 2011 both parties failed to submit most of their documentary and photographic evidence within the time limits provided by the Rules of Procedure. In accordance with the Rules of Procedure I did not accept or consider the late evidence submitted by both parties and I informed the parties of such. The only documentary evidence I accepted and considered was that submitted with the landlord's application. The parties were provided the opportunity to provide verbal testimony in support of their respective positions.

All of the issues under dispute could not be addressed during the time allotted for the January 11, 2012 hearing and the proceeding was adjourned. The parties were expressly instructed at the conclusion of the January 11, 2012 hearing to refrain from submitting any further evidence as the adjournment was not an opportunity to gather and submit evidence since the proceeding had already commenced. Prior to the reconvened hearing the landlord served the Residential Tenancy Branch with additional evidence which I have not accepted or considered.

Both parties appeared at the reconvened hearing on February 2, 2012. I informed both parties that I would not accept or consider the landlord's submission that was received

during the period of time the hearing was adjourned as this submission was contrary to my express instructions.

During the initial hearing the landlord indicated she had a witness who would attest to the condition of the rental unit and the furnishings before the tenancy commenced; however, I determined the witness had been sitting in the same room as the landlord during the landlord's testimony and I did not hear from that witness. During the second hearing the tenant requested I call a witness to who allegedly prepared a document provided as evidence by the landlord. I called the witness; however, the witness declined to participate in the proceeding. Near the end of the reconvened hearing both parties indicated they had other witnesses available to testify; however, I did not call upon those witnesses as I was satisfied the witnesses would provide more disputed verbal testimony of which I had already heard approximately four hours. Therefore, I concluded that the testimony of the parties' witnesses would not likely provide any additional probative value.

After approximately four hours of total hearing time the issues under dispute had been heard and I reserved my decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and utilities from the tenant?
2. Has the landlord established an entitlement to compensation for damage to the rental unit or furnishings?
3. Has the tenant established an entitlement to compensation for overpayment of hydro?
4. Has the tenant established an entitlement to compensation for personal property taken by the landlord?
5. Shall the security deposit and pet deposit be retained by the landlord or returned to the tenant?

Background and Evidence

The parties provided consistent evidence as to the following information and facts:

- The tenancy commenced September 15, 2009;
- The tenant paid a \$1,000.00 security deposit and a \$1,000.00 pet deposit;
- The tenancy was for a 10 month fixed term that converted to a month to month basis;
- The rental unit was fully furnished;

- The rental unit was occupied by the tenant, his wife, his son and a dog;
- The tenant was to pay \$2,903.43 to the landlord on the 1st of every month, except the first month was pro-rated;
- The monthly payment to the landlord was comprised of:
 - \$2,000.00 for basic rent
 - \$600.00 for furniture rental
 - \$103.43 for Shaw Cable services
 - \$200.00 as an estimate for monthly hydro consumption
- The addendum to the tenancy agreement provided that the tenant was responsible for 34% of the hydro bill;
- The landlord and tenant would reconcile payments made to the landlord for hydro with the actual hydro billings and any overage or underage would be paid or refunded;
- The addendum provided that the tenant would steam clean the carpets at the end of the tenancy;
- The landlord did not prepare a move-in inspection report at the beginning of the tenancy;
- The landlord did not prepare a move-out inspection report at the end of the tenancy;
- The tenant gave notice to end the tenancy on August 14, 2011 for an effective date of September 15, 2011;
- After receiving the tenant's notice to end tenancy, the landlord found replacement tenants who agreed to move in to the rental unit September 15, 2011; and,
- The tenant did not pay rent on September 1, 2011.

Landlord's application

Below I have summarized the landlord's claims against the tenant and the tenant's responses:

<u><i>Item</i></u>	<u><i>Amount claimed</i></u>	<u><i>Landlord's reason</i></u>	<u><i>Tenant's response</i></u>
Kitchen area rug	169.00	Cost to replace. Only 2 months old at beginning of tenancy. Tenant damaged carpet beyond repair or cleaning.	Area rug was ratty and old at beginning of tenancy. Also of cheap quality. Put outside and informed landlord of such.
Kitchen pots & pans	269.99	Bought new ones at beginning of tenancy for	Pots and pans supplied by landlord were in poor

		\$399.99. Scratched and damaged at end of tenancy. Replaced for \$269.99.	condition at beginning of tenancy. Tenant put landlord's pots and pans in pantry and purchased his own. The landlord took the tenant's pots and pans at the end of tenancy and returned her old ones to the tenant.
Toaster oven	49.99	Cost to replace. 3 months old at beginning of tenancy. Not working and knobs won't turn at end of tenancy.	Toaster oven was old and well used at beginning of tenancy. Used normally by tenant. It likely stopped working due to its age.
Glass vase	39.99	Cost to replace. There were two vases at beginning of tenancy and only one at end of tenancy.	Tenant cannot recall whether there were two vases a beginning of tenancy. Has no knowledge of a broken vase.
5 broken blinds	996.00	Cost to replace six blinds. The large blind in the living room will to roll up despite it being new in 2009. The blind in the master bedroom won't stay up although it is an older blind. The older blind the tenant's son's bedroom was ripped and no longer functions. The blinds were not of cheap quality.	The blinds were of cheap quality and they were subject to normal use with the exception of the blind in the son's bedroom which the tenant agreed he is responsible for. The tenant explained the living room blind was approx. 8' wide and there was a lot of pressure on the string and mechanism. The gear likely striped from normal daily use.
Suite cleaning	200.00	Paid cash to cleaning person Sept 17, 2012.	Unit left absolutely clean. Tenant's wife and friend

		Floors, kitchen and bathroom required additional cleaning.	cleaned for days and left the unit cleaner at the end of the tenancy than it was at the beginning.
Carpet cleaning	245.28	Cost to vacuum and clean carpets professionally. Tenant left carpets dirty despite requirement to steam clean carpets in addendum. Landlord did not discuss carpet cleaning with tenant because she was waiting for her home stager to come see the carpets.	Carpet cleaners were there on same day tenancy ended suggesting this was a pre-conceived cost; however, tenant's wife had borrowed friend's carpet cleaner and cleaned the carpets twice. Carpets were white and marked very easily. Landlord did not mention dirty carpets during move out inspection.
Painting and wall repairs	1,260.00	Damaged walls painted Sept 17 after obtaining various quotes. Hole in wall and crayon marker damage in son's room. Plus, a wine stain on the wall behind the piano. Unit had been painted (touched up) right before tenancy began.	There was a hole in the wall behind the door of his son's bedroom because there was no door stopper. There may have been a few crayon marks on the wall as well. Unaware of a wine spill behind the piano. Walls were not freshly painted before tenancy as they were already scuffed up when he moved in, in addition to the presence of cobwebs.
Damaged wood floors from dog	275.00	Estimate to sand/polish damaged boards. Floors damaged from dog feed and scratching floor. Dog	There is water damage to the floors from water coming in vents which the tenant told the

		bowls were not by vents.	landlord about. Dog's water bowl was usually outside.
Damaged wood floor behind kitchen sink.	200.00	Estimate to sand/polish damaged boards. Tenant negligent in not wiping up water that spilled from sink area.	Water damage was due to the plumbing issues with the sink and dishwasher. There was one significant flood during the tenancy that the tenant fixed and reported to the landlord.
Damaged night table and dresser	100.00	Estimate to repair damage. Drawers pulled apart and top marked. Not stage furniture.	The drawers fell apart right away because furniture was stage furniture. The drawers did not have sides, the bottom was cardboard and the handles pulled out easily.
Broken patio recliner	100.00	Estimate to repair damage. Chair no longer reclines. The chair was a gift to the landlord from the filming of a TV series.	Tenant sat on chair and the screws pulled out. This was stage furniture.
BBQ	349.00	Cost to replace. New at beginning of tenancy and left for the tenant to use. New tenants refused to use and threw it away as it was filthy and one of the trays was missing.	It was in like new condition at beginning of tenancy. The side tray went missing in the wind. The grill was cleaned but the filaments were not as cleaning these will break them.
BBQ tank	45.00	Cost of new tank. A new tank was purchased with the BBQ and it was missing at the end of the tenancy.	It is possible the tenant has the landlord's tank. He used his own and the landlord's during the tenancy and one of the tanks had expired when he went to fill it.

Piano stand drawer	80.00	Cost to replace. Bottom of drawer and knobs fell apart. Approx. 2 years old.	Tenant has no knowledge as to the damage landlord is referring to.
Piano tuning and pad replacement	168.00	Cost to tune piano and replace damaged pad on piano. Pianos are tuned every 1 – 2 years. Tenant used so he should pay for tuning.	Tenant and his family used piano normally. Pianos require tuning and maintenance every year.
Coffee table	50.00	Estimate to repair scratches caused during tenancy.	The table was used with some scratches at beginning of tenancy. It is possible there were more scratches during the tenancy from normal use.
Patio door latch	40.00	Estimate to repair latch that came out of door. 3-way door. Does not close properly.	There was something wrong with the handle. Used door normally.
TOTAL CLAIM	\$6,137.25		

With respect to the last day of the tenancy I enquired about the move-out inspection. The landlord initially testified that the move-out inspection was scheduled to take place at 12:00 noon as that is when the landlord's home stager was scheduled to arrive. However, the landlord had complained the tenant did not want to wait until noon for the home stager. Upon further enquiry, the landlord acknowledged that she was in the rental unit at 10:00 or 10:30 a.m. on September 15, 2011 when the tenant arrived at the rental unit. When I pointed out that, by law, the tenant was still in legal possession of the unit until 1:00 p.m., or another mutually agreed upon time, the landlord changed her testimony to say that the move-out inspection was scheduled for 10:00 a.m. The landlord subsequently acknowledged that she had not made the first proposal for a move-out inspection date and time and that it was the tenant that made the first proposal for a move-out inspection.

In support of the landlord's claims for various damages to the property and furnishings, the landlord submitted a document that she claimed was prepared by the home stager on September 15, 2011.

The tenant stated when he met the landlord at the property on September 15, 2011 she indicated she wanted him to wait around until noon when her home stager was available. The tenant responded that he was not prepared to wait around before an inspection commenced. The landlord and tenant proceeded to walk through the property during which time the tenant agreed with the landlord that he was responsible for the broken blind in his son's bedroom. Many of the items claimed by the landlord in her application were not pointed out by the landlord during the inspection with him. Rather, it was the tenant's position that the landlord later prepared a list of alleged "damages" and fraudulently made the document appear as though it had been signed by the home stager because she does not want to refund the deposits. The tenant submitted that he spoke to the home stager after the tenancy ended and the tenant requested that I call the home stager to confirm whether she ever attended the property and prepared the list of "damages" at the end of his tenancy.

I called and was able to reach the home stager during the hearing; however, the home stager refused to participate in the hearing.

The tenant was of the position the landlord steals furniture or acquires furniture from film sets. To illustrate, the tenant submitted that later in the day on September 15, 2011 the tenant returned to the property to retrieve the remainder of his belongings from the garage. He noticed the vacuum was not in the garage where he left it. He found it in the rental unit, moved there by the landlord and when he retrieved it the landlord accused him of taking her vacuum. Only after he informed her that he had the receipt for the vacuum did she let it go.

In response to the tenant's statements, the landlord initially testified that she "borrowed" the tenant's vacuum; however, upon further enquiry, the landlord acknowledged she did not ask the tenant for his permission or have his consent to use the vacuum. The landlord explained that if the carpets were not vacuumed the carpet cleaner was going to charge her a vacuuming fee.

Tenant's application

The tenant applied for return of his security deposit and pet deposit. The tenant did not claim for return of double the deposits and was uncertain as to whether he had provided the landlord with his forwarding address in writing prior to making this application.

The tenant applied for recovery of \$2,223.26 in overpaid hydro. The tenant calculated this amount as follows: the tenant paid the landlord \$5,000.00 in hydro payments during the tenancy and then deducted 34% of the sum of the "total revenue" column of the BC Hydro billing spreadsheet.

The landlord calculated the tenant is entitled to a refund of \$1,247.07 for hydro. The landlord calculates the tenant paid her \$4,600.00 for hydro and 34% of the total hydro bills, after including taxes and levies are \$3,352.93.

Both parties agreed the tenant paid \$200.00 for hydro between October 2009 and August 2011 and did not pay for September 2011. The parties were in dispute as to whether the tenant paid for hydro in September 2009.

The tenant submitted that the landlord took a box of his pots and pans that he had packed in preparation for moving out of the rental unit. Although the rental unit was fully furnished the tenant was of the position the pots and pans left for him to use were old and scratched so he purchased his own set and put the landlord's set in the pantry. The tenant noticed the box of his pots and pans was missing in the evening of September 15, 2011 when he and his wife were unpacking in their new accommodation. The tenant contacted the landlord to request return of his pots and pans. In response, the landlord left a set of old, scratched pots and pans at the tenant's new residence shortly thereafter.

The tenant was of the position the landlord took the tenant's pots and pans as the landlord had access to his possessions during the last day of tenancy when the landlord also tried to take the tenant's vacuum. The tenant requested an Order that the landlord return his pots and pans; however, as an alternative he requested \$100.00 in compensation.

The landlord denied taking the tenant's pots and pans. The landlord submitted that when the tenant returned to the property for his vacuum he took all off his remaining possessions.

Analysis

Upon consideration of the evidence before me I provide the following findings and reasons for each application.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. However, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As indicated above, the applicant bears the burden to verify the value of the damages or loss claimed. Estimates, receipts, invoices, and price lists are examples of verification that should accompany a monetary claim unless such documents are not obtainable, in which case another reasonable basis will be considered.

Landlord's application

Unpaid rent

Based upon the verbal testimony of both parties, I find the landlord was successful in finding new tenants for September 15, 2011 and had agreed to end the tenancy effective September 15, 2011 without notification that she reserved the right to sue for loss of rent after the end of the tenancy. It was also undisputed that the tenant did not pay rent for the first half of September 2011. Accordingly, I find the landlord entitled to recover pro-rated paid rent, including furniture rental and Shaw services up until September 15, 2011. The tenant's obligation to pay for Hydro for half of September 2011 has been addressed in the tenant's request for overpayment of hydro below.

The landlord testified that the new tenants could not move in on September 15, 2011 due to the condition of the property. However, the landlord did not amend her application to claim for such loss in accordance with the Rules of Procedure. Nor did she provide any documentary evidence to show how much the incoming tenants paid for the month of September 2011. Therefore, I have not considered compensation for the period after September 15, 2011 further.

In light of the above, the landlord is awarded $(\$2,600.00 + 103.43) \times 15/30 \text{ days} = \$1,351.71$ for unpaid rent and utilities.

Damages to rental unit and furnishings

Although the landlord claimed she had invoices, receipts, quotes or estimates for much of the damage allegedly caused by the tenant she did not provide much of that evidence for this proceeding. Rather, the only admissible receipts, invoices or estimates submitted by the landlord related to the following damages: carpet cleaning and pre-vacuum invoice; quote for 6 new blinds; receipt for pots and pans; painting invoice and three painting estimates; and, piano tuning and repair. Therefore, I proceed to consider the landlord's claims with respect to these damages and dismiss the remainder due to a lack of verification of the value of the loss.

The Act provides that a tenant is responsible for repairing damage they, or persons permitted on the property, have caused. The Act also stipulates that normal wear and tear is not damage. Accordingly, I must be satisfied that the items for which the landlord is seeking compensation were damaged beyond normal wear and tear by the tenant, the occupants or the tenant's guests.

It is also important to note that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Therefore, where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

Carpet cleaning – the tenant had a pet in the unit and the tenancy was longer than one year in duration. In such cases, the tenant is generally required to clean the carpets at the end of the tenancy. The landlord provided documentary evidence that she had the carpets steam cleaned and I find this evidence better than the tenant's verbal testimony that he had them cleaned. Even if I accepted that the tenant's wife cleaned it herself, I find a home steam cleaner to be inferior to a professional carpet cleaning. Therefore, I award the landlord the cost of steam cleaning but not the cost of the pre-vacuuming.

I have denied the cost of pre-vacuuming because the parties completed the move-out inspection in the morning and the carpet cleaning was done in the evenings leaving me unsatisfied that the tenant is responsible for debris on the carpet especially when I consider the following: the landlord and new tenants were in the unit on September 15, 2011 and the furnishings were removed from the unit.

In light of the above, the landlord is awarded \$200.48 for carpet cleaning [\$179.00 + HST].

Blinds – the tenant acknowledged damaging one blind but denied responsibility for the remainder of the blinds claimed by the landlord. In the absence of condition

inspection reports; photographs; or original receipts I find I am unsatisfied the landlord has proven that the tenant is responsible for damaging six blinds or the age of the blinds. Although the landlord provided an estimate for \$996.80 this estimate is for six new blinds of varying sizes. I find I am unable to determine the estimated value of the one blind the tenant has acknowledged responsibility for. Therefore, I give the landlord a nominal award of \$20.00 for the damaged blinds in the son's bedroom.

Pots and pans – the condition of the blinds at the beginning and end of tenancy were under dispute and not supported by condition inspection reports or admissible photographs. I find the landlord did not meet her burden to prove the tenant damaged the pots and pans beyond normal wear and tear. Therefore, I dismiss the landlord's claims for replacement pots and pans.

Painting – the condition of the walls at the beginning and end of tenancy were in dispute and not supported by condition inspection reports or admissible photographs. The landlord claimed to have freshly painted the unit before the tenancy began but did not provide supporting documentation of such. Accordingly, I find the landlord failed to prove the condition of the walls at the beginning of the tenancy or that the tenant is responsible for damage to the walls at the end of the tenancy with the exception of certain admissions made by the tenant during the hearing.

The tenant acknowledged that a hole may have been caused by a door handle in his son's bedroom and existence of some crayon marks. I find the landlord and tenant jointly responsible for the hole in the wall as I heard a door stopper was not in place behind the door. This should have been provided by the landlord and, in its absence, the tenant should have requested one of used caution in opening the door.

Even if the landlord had proven the unit was freshly painted in 2009 and the tenant caused the damage to the walls, she is not entitled to the cost of re-painting as landlords are expected to have to repaint a unit every four years.

Therefore, I provide the landlord a nominal award of \$100.00 for painting and wall damage.

Piano tuning and repair – the tenant was provided use of a piano during his tenancy. Both parties submitted verbal testimony that pianos require regular tuning. Accordingly, I accept that piano tuning is the result of normal wear and tear. The invoice provided by the landlord does not provide differentiate the services provided by the piano technician and I cannot determine the cost of tuning vs. repairs made.

Therefore, I find the landlord has not proven that the tenant damaged the piano beyond normal wear and tear.

In summary the landlord has been provided the following awards:

Unpaid rent and utilities	\$ 1,351.71
Carpet cleaning	200.48
Blind damage	20.00
Painting and wall repair	<u>100.00</u>
Total award to landlord	\$ 1,672.19

Tenant's application

There is undeniable evidence that the landlord extinguished her right to claim against the deposits for damages to the rental unit by failing to prepare and provide the tenant without condition inspection reports that comply with the requirements of the Act and Residential Tenancy Regulations. I find no basis to conclude the tenant extinguished his right to return of the security deposit and pet deposit.

I have not doubled the amount of the deposits, as provided under section 38 of the Act, as I was not provided evidence that the landlord filed her application more than 15 days after receiving the tenant's forwarding address in writing. Therefore, the tenant is entitled to credit for the single amount of the deposits he paid, or \$2,000.00.

With respect to hydro, I find the tenant was to pay 34% of the total hydro bill and that his obligation would include taxes and levies. Therefore, I accept the landlord's calculation, based upon the BC Hydro billing history she submitted into evidence, that the tenant's share of hydro amounted to \$3,352.93 during the tenancy.

With respect to the amount paid to the landlord by the tenant for hydro I accept the undisputed testimony that the tenant paid \$200.00 per month for the months of October 2009 through August 2011. I find, based on the balance of probabilities that the pro-rated payment for September 2009 included \$100.00 for hydro. Accordingly, I find the tenant paid a total of \$4,700.00 to the landlord for hydro. Therefore, I find the tenant has overpaid \$1,347.07 [\$4,700.00 – 3,352.93] in hydro and is entitled to recover that amount from the landlord.

With respect to the tenant's claim for compensation for the missing pots and pans I find the tenant has not substantiated the monetary amount claimed for this portion of his application and it is dismissed. As the landlord denied being in possession of the tenant's pots and pans I make no Order for their return.

In summary, the tenant is entitled to recovery of the security deposit, pet deposit and hydro overpayments in the total amount of \$3,347.07.

Monetary Order

Pursuant to section 72 of the Act I offset the awards made to each party and provide the tenant with a Monetary Order in the net amount of \$1,674.88 [calculated as \$3,347.07 awarded to tenant less \$1,672.19 awarded to landlord] to serve upon the landlord and enforce as necessary. I have made no award for recovery of the filing fees.

Conclusion

The landlord and tenant were partially successful in their respective applications. The awards have been offset and the tenant is provided a monetary order for the net balance of \$1,674.88 to serve upon the landlord and enforce as necessary.

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 02, 2012.

Residential Tenancy Branch