



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, MND, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of hydro costs and return of the deposit.

The landlord has applied requesting compensation for unpaid rent, damage to the rental unit, damage or loss under the Act, to retain the deposit and to recover the filing fee costs from the tenant.

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

In accordance with Residential Tenancy Branch Rules of Procedure, as set out in my interim decision issued on November 7, 2012, the tenant was asked to submit a copy of a cheque and proof of deposit of that cheque. The tenant made the requested submission, within the required time-frame.

The tenant also supplied evidence of service of the documents, to the landlord, as ordered. The evidence was sent on November 21, 2012, to the landlord, via registered mail, to the same address used for service of the application. The tenant supplied a copy of the Canada Post receipt and tracking number. Therefore, I find that the landlord is deemed served with the requested evidence effective November 26, 2012.

The landlord had until December 05, 2012, to make a written submission in relation to the tenant's evidence; no submission was made in response to the copy of the rent payment cheque sent to the landlord and Residential Tenancy Branch.

Issue(s) to be Decided

Is the tenant entitled to return of the \$410.00 deposit paid?

Is the tenant entitled to compensation in the sum of \$711.66 in hydro costs?

Is the landlord entitled to compensation in the sum of \$2,214.76 for repair and cleaning costs?

Is the landlord entitled to compensation for unpaid rent and loss of rent revenue in the sum of \$2,235.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The month-to-month tenancy commenced on September 1, 2006; rent at the end of the tenancy was \$745.00 per month, due on the first day of each month. The tenancy agreement did not include a term prohibiting smoking in the unit.

The landlord said the tenant paid a deposit in the sum of \$360.00; however a review of documents submitted by the tenant confirmed that a deposit in the sum of \$410.00 was paid.

The tenancy agreement included hydro costs as part of the rent; the tenant stated that hydro costs had been an important inclusion in the terms and affected his decision to rent the unit.

A copy of a move-in condition inspection report, completed at the start of the tenancy and a move-out inspection completed on March 12, 2012, was supplied as evidence. The tenant could not recall receiving a copy of the move-in condition inspection report. The tenant was not present for the move-out inspection.

Rent was increased effective September 1, 2008; the only increase given during the tenancy.

The tenant made the following claim:

Hydro costs – reimbursement	\$711.66
Deposit return	\$410.00
TOTAL	\$1,121.66

The tenant supplied a number of documents as evidence, some of which included:

- A July 16, 2012 decision issued giving the tenant leave to reapply requesting compensation and return of the deposit;
- A record of rent payments made to the landlord including cheque numbers, amounts and the bank used;
- A copy of the signed tenancy agreement;
- Copies of receipts issued for payment of the first month's rent and deposit;
- A Notice of Rent Increase, effective September 1, 2008, raising rent to \$745.00;
- A Notice Terminating or Restricting a Service or Facility issued on September 1, 2011; and
- Records of hydro bills.

The landlord made the following claim:

Repair costs	\$1,520.00
Repairs	\$694.76
Unpaid rent/ loss of revenue	\$2,235.00
TOTAL	\$4,449.76

The amount claimed on the application served to the tenant was \$4,089.76; the detailed calculation supplied by the landlord indicated a claim in the amount set out above.

The landlord supplied a number of documents as evidence:

- May 20, 2012 invoice for painting, carpet removal, new baseboards, new counter tops in the kitchen and bathroom, a new sink, removal of blinds from balcony, repair hole in bathroom ceiling;
- May 26, 2012 receipt showing payment in the sum of \$1,520.00 for painting;
- April 23, 2012 receipt for paint supplies;
- May 2012 invoice totaling \$694.00, for the cleaning of the rental unit and 6 hours of cleaning in another suite;
- Partial copy of a cheque issued in the sum of \$694.00 for cleaning and painting;
- 6 photographs; and
- An accommodation inspection report; and a monetary Order worksheet that contained the claim as indicated above.

The parties did not agree when the tenancy ended. The landlord stated that in March 2012 a 10 day Notice to End Tenancy for unpaid Rent was issued. The tenant did not pay rent and in mid-March, 2012, the landlord entered the unit and determined the tenant had abandoned the unit.

The tenant said that at the end of February 2012 he gave the landlord's agent written notice that he would vacate at the end of March 2012. The tenant paid March 2012 rent by issuing a cheque, #64, and that this cheque was deposited to the landlord's account for March rent owed. The landlord's agent at the time told the tenant he could remain in the rental unit until April 15, 2012 and that he would not have to pay rent for that month.

As requested, the tenant submitted a copy of cheque #064, front and back. The back of the cheque had been stamped for deposit to the landlord's account on March 2, 2012. The tenant supplied a copy of a transaction history issued by CIBC as the result of an enquiry made on November 8, 2012. This printed history confirmed that cheque #064, in the sum of \$745.00, had been withdrawn from the tenant's account on March 2, 2012.

The tenant's witness provided affirmed testimony that he was present on April 15 and 16th, assisting the tenant to vacate the unit. The witness provided use of his truck and trailer and said that everything was removed from the unit. He did not think that the unit was left particularly clean.

The tenant supplied a copy of a Notice, issued September 11, 2011 informing him that the landlord was withdrawing the service of hydro as a term of the tenancy. The landlord did not reduce the rent and indicated on the form that the rent reduction had effectively been given as rent had been increased only once during the tenancy.

The landlord stated that new hydro meters had to be installed and that the tenants understood this cost needed to be shared. The notice informed the tenant that if he believed that the rent decrease was not equivalent to the value of the service being removed he could apply for dispute resolution.

The tenant has claimed compensation for the cost of hydro services from October 1, 2011 to April 15, 2012, as set out in the detailed calculation attached to his application. The hydro bills for service from September 30, 2011 to April 16, 2012, indicated a total cost in the sum of \$711.66.

The tenant also claimed return of the \$410.00 deposit; he said that the landlord's agent had been given his address on May 2, 2012.

The landlord supplied a copy of the move-in/move-out condition inspection report. The tenant signed the report at move-in; an agent for the landlord signed the report at move-out. On March 12, 2012, the previous agent, B. completed the move-out inspection.

The move-in portion of the report did not indicate any damage outside of light scratches to countertops in the kitchen. All other items were marked as "clean/OK." The move-out report indicated that a number of items in the unit were damaged and that the unit was left in a very dirty condition. Damage was indicated to doors, walls, floor covering, the fridge, stove, counters and drapes in different areas of the unit. No detailed descriptions were included in the report. The past agent was not present at the hearing to provide testimony.

The landlord supplied a copy of an invoice dated May 20, 2012, for renovation work completed in the unit. The invoice indicated that the carpets, counter top in the kitchen and bathroom, baseboards, blinds and removal of blinds from the balcony and painting costs in the sum of \$1,520.00.

The landlord also supplied a copy of a May 2012 invoice for cleaning costs in the sum of \$15.00 per hour for 45 hours; 39 of which were spent in the tenant's unit; charges were also included on this invoice for another unit; the invoice issued was in the sum of \$694.76. The invoice indicated that the unit was very dirty; it did not include any charge for painting. A copy of a cheque issued to B. by the landlord had a notation that indicated the cheque was issued as payment for painting and cleaning in the sum of \$694.76.

The landlord said the flooring, counters and paint were new in approximately 2003. As the tenant smoked in the unit there was additional damage. The landlord stated that the tenant is responsible for damage to the unit; that the carpets were dirty, the counters were damaged, the blinds were damaged and baseboards had to be replaced when the carpets were installed. The landlord described the work completed as a renovation.

A hole was left in the ceiling of the bathroom. The landlord supplied 6 photographs that were taken of the unit. The photos showed damaged curtains, dirty carpets, a bed and box spring, a small table, another table and some items on the table.

The tenant said the photographs were not taken of his unit; that the patio door was not in the same location as the door in his unit. The tenant said he had vertical blinds, no curtains; which were in the photographs supplied by the landlord. The tenants said the belongings in the unit were not his.

The tenant agreed that the unit did require cleaning but that someone who had helped the landlord's agent to clean said it only took 2 days to clean, not 39 hours.

The tenant said that he installed the blinds on the balcony, but he did not remove them when he moved out of the unit. The hole in the bathroom was made by a previous building manager; there had been a leak he investigated, but he failed to repair the hole.

The tenant said that the carpets were old. The counter tops were very thin; the tenant said he had never seen counters like this before; he did take care of them as best he could.

The landlord claimed compensation for unpaid March 2012 rent plus loss of April and May rent revenue. The landlord stated that the unit was in such a poor condition that repairs took 3 months to complete, which barred the landlord from being able to re-rent the unit until June 1, 2012. No advertising of the unit occurred during the time the work was completed on the unit.

The landlord said the invoices issued in May 2012, were for work completed earlier.

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.

I have considered the submissions of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to each party, as applicants. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; based on the evidence supplied, I find, the version of events provided by the tenant was credible and consistent.

Therefore, considered in its totality, I favoured the evidence of the tenant over the landlord.

In the absence of any evidence from the landlord's agent, who the tenant said had been given written notice ending the tenancy; I find that the tenancy did end on April 16, 2012; with the landlord's agents understanding. The landlord asked the tenant why his agent would have allowed the tenant to remain in the unit until mid-April, but provided no submission indicating he had asked his agent for details in response to the tenant's application.

The tenant's witness present at the hearing provided affirmed testimony that in mid-April he assisted the tenant in vacating. The BC Hydro bills submitted by the tenant showed that he had the hydro service terminated on April 16, 2012, which aligned with the tenant's testimony and that of his witness; that the tenancy ended on April 16, 2012. Therefore, I find, on the balance of probabilities that the tenancy ended on April 16, 2012.

There was no evidence before me that the tenant was given notice to complete a move-out inspection with the landlord and I have no confidence that the inspection report was actually completed on March 12, 2012. All the evidence, outside of a date recorded on the report; indicated the tenant was allowed to remain in the unit until mid-April.

In relation to the tenant's claim requesting reimbursement for hydro costs, I have considered Residential Tenancy Branch policy, which suggests that removal of a service must be accompanied by proper notice which must provide a corresponding reduction in rent. I have considered the landlord's submission that the lack of more than 1 rent increase during the 6 year tenancy was the equivalent of a rent reduction and I have rejected that logic. The tenant rented the unit, with hydro included, as this was an attractive term of the tenancy.

I find that the removal of hydro service should have been accompanied by a notice that included a corresponding reduction in rent; equivalent to the value of hydro costs. The landlord was at liberty to increase the rent once every twelve months or to apply requesting an additional rent increase. Removal of services cannot be used as a method to allow a landlord to reduce costs or to compensate for failures to increase the rent.

Therefore, pursuant to section 67 of the Act, I find that the tenant is entitled to compensation in the sum of \$711.66 for the cost of hydro services he paid between November 2011 and April 2012. This amount was verified by the billing records supplied by the tenant. The tenant could have mitigated this claim by applying for compensation earlier, however; that would not have altered the outcome, as the landlord was required to lower the rent by the amount of cost the tenant would incur once he had to begin paying the hydro cost himself.

In relation to the landlord's claim, I have first considered the landlord's submission that he did not receive payment for March 2012 rent and that the tenant vacated in mid-March. At my request the tenant supplied evidence that showed rent had in fact been paid by a cheque issued on February 29, 2012; subsequently deposited to the landlord's account on March 2, 2012. There was no evidence before me in relation to any rent that had not been paid prior to March, 2012. Therefore, I find that the landlord's claim for unpaid March 2012 rent is dismissed. As rent was paid for March, I find this gave further credence to the tenant's submission that he did not vacate the unit in mid-March.

I have rejected the submission that the tenant was told he could reside in the rental unit until April 15, 2012, without paying rent and find, on the balance of probabilities, that the landlord is entitled to compensation for one half of April 2012, rent in the sum of \$372.50. I have accepted, on the balance of probabilities that the landlord's agent allowed the tenant to remain for 1 half a month beyond the date he had given notice and that possession of the unit should result in payment of rent.

In relation to the landlord's claim for damage and loss of rent revenue, I find, in the absence of evidence that the tenant was given the opportunity to attend the move-out inspection; that I cannot rely upon the inspection report that was dated March 12, 2012. Further, based on the evidence before me I have rejected the submission that the tenant abandoned the unit in mid-March; this has caused me to question the validity of the inspection report. The tenant had paid rent for March and paid hydro costs to mid-April, both of which cause me to conclude the tenancy ended in April.

In relation to repairs, I find, on the balance of probabilities that the landlord has failed to prove that the tenant caused damage to the unit. The invoice issued in May 2012, referenced replacement of blinds, yet the photographs showed drapes. There were no photographs of the counters; the carpets and paint were either near or beyond the end of the useful lifespan as suggested by policy, ten years for the fixtures and 4 years for

paint. I find, based on my assessment of credibility, combined with the inconsistencies reported by the tenant in relation to the photographs, and policy, which I find takes a reasonable stance, that the claim for repairs is dismissed.

The tenant's own witness confirmed that the rental unit was not left in a clean state; a tenant is required to leave a unit in a reasonably clean. However, I find there are inconsistencies between the invoice issued for cleaning costs and the cheque issued for payment of those costs. The cheque indicated that payment, in the sum shown on the cleaning invoice, also included payment for painting. That inconsistency causes me to question the time that was actually spent cleaning the unit. There is no doubt that the unit required cleaning, however; given this inconsistency and the credibility issues I have raised, I find that the landlord is entitled to cleaning costs in the sum of twelve hours at \$15.00 per hour in the sum of \$180.00. The balance of the claim for cleaning is dismissed.

In the absence of any evidence that the landlord attempted to mitigate the loss he is claiming I find that the claim for loss of the balance of April rent and May 2012 rent revenue is dismissed. The landlord did not provide evidence that the cleaning and repairs could not have been completed immediately after the tenant vacated; which would have mitigated the claim made. The landlord did not advertise the unit or provide any evidence of steps taken to minimize the loss he has claimed for loss of revenue.

When the landlord failed to provide evidence of an attempt to schedule a move-out condition inspection he breached the Act and the right to claim against the deposit for damage to the unit was extinguished. However, there was no evidence before me that the tenant had given the landlord his forwarding address in writing, as required by the Act, on May 2, 2012, as he said he had. Therefore I find that the deposit, in the sum of \$410.00 will be set off against the amount owed to the landlord for unpaid rent.

Therefore, the tenant is entitled to the following:

	Claimed	Accepted
Hydro costs – reimbursement	711.66	711.66
Deposit return	410.00	0
TOTAL	\$1,121.66	\$711.66

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Repair costs	\$1,520.00	0
Cleaning and repairs	694.76	180.00
Unpaid rent/ loss of revenue	2,235.00	372.50
TOTAL	\$4,449.76	\$552.50

As each application has merit I decline filing fee costs to the landlord.

Therefore, the landlord's compensation is set off by the \$410.00 deposit plus \$13.12 in interest and the tenant's claim has been reduced by the balance owed to the landlord, in the sum of \$129.38.

Therefore, the tenant is entitled to compensation for the balance, in the sum of \$582.28.

Based on these determinations I grant the tenant a monetary Order for the balance of \$582.28. 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

Conclusion

The landlord is entitled to compensation in the sum of \$552.50.

The amount owed to the landlord is set off against the \$410.00 deposit and interest and the sum owed to the tenant.

The tenant is entitled to compensation in the sum of \$711.66; less the balance of \$142.50 owed to the landlord.

The balance of each claim is dismissed.

This final decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 12, 2012.

Arbitrator
Residential Tenancy Branch