



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, MND

Introduction

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

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Note: although the landlord attended the original hearing on October 23, 2012, at which time the landlord's application for dispute resolution was dealt with, the landlord did not appear at the December 5, 2012 hearing at which the tenant's application was dealt with.

All testimony was taken under affirmation.

Issue(s) to be Decided

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

The landlord's application is a request for a monetary order for \$3180.00 and a request to retain the full security deposit towards the claim. The landlord is also requesting recovery of his \$50.00 filing fee.

The tenant's application is a request for a monetary order for \$4500.00 and a request for recovery of their \$50.00 filing fee.

Landlord's application

Background and Evidence

The landlord is claiming that:

- The tenant's dog chewed on and/or scratched the cabinets in the master bathroom, main bathroom, and kitchen, and as a result the cabinets will have to be repaired. The quoted cost for those repairs is \$1042.50, however there will also be a cost to have a plumber come out to remove and reinstall the sinks at an average rate of \$65-\$85 per hour with a minimum of two hours required.
- The tenants also caused a mark approximately 2" x 1" on the ceiling between the kitchen and living room and the cost to scrape off the ceiling and reapply the ceiling finish is approximately \$459.00 plus taxes. He is not asking the full amount but would like some compensation for the damage and lost value to the house.
- The tenants also caused dents in the front door of the house and the cost to replace the door is \$599.99. Again he is not asking for the full amount but would like some amount of compensation for the damage and lost value to the house.
- The tenants also left the barbecue in the rental unit extremely dirty and the total cost for having a barbecue cleaned was \$173.60.
- The tenants also broke off a retaining clip on a refrigerator shelf and the cost of repairing that damage is \$84.99 just for the part.
- The tenants also spray-painted something in the garage and over sprayed onto the garage floor. The garage floor is an epoxy finish, and the quote to repair it was absolutely ridiculous at \$3360.00, I therefore priced the cost of the materials to do the work myself, and the cost would be \$69.99 for an acid prewash and \$219.99 for an epoxy gel and therefore when you add on my time and labour I'm requesting \$500.00.

Therefore the total amended amount claimed by the applicant is as follows:

Cabinet repairs	\$1200.00
Front door replacement cost	\$599.99 plus tax
Barbecue cleaning cost	\$173.60
Refrigerator shelf	\$84.99 plus shipping and tax
Garage floor repair	\$500.00
Filing fee	\$50.00
Total	\$3067.58

The landlord is therefore requesting an order to retain the full security deposit towards the claim and is requesting a monetary order for the difference.

The tenant is claiming that:

- There is absolutely no way his dog could have chewed the cabinets in the rental unit, because his dog is 17 old and has almost no teeth. They believe the marks on the cabinets were caused by the central vacuum cleaner hose and are normal wear and tear.
- We had noticed the mark on the ceiling which is a red mark, and mentioned it to the applicant's father and his father told us not to worry about it.
- We did absolutely no damage to the front door and in fact we rarely used that door as we entered through the garage.
- The barbecue in question was badly damaged in a wind storm and as a result they did not use the barbecue, they used their own barbecue even though the barbecue was included in the rental.
- We did not break any clip from a shelf in the refrigerator, and in fact the landlord walked directly to this shelf as if he knew something was missing there. They find that very suspicious
- They did slightly overspray paint in a small area of the garage floor the size of a 5 gallon bucket however \$500.00 to repair this small overspray is excessive. After all this is a garage floor.

Analysis

There is some damage to the cabinets in the rental unit, however it's my finding that the damage is relatively minor, and within the realm of normal wear and tear. I therefore will not allow the claim for repair to the cabinets.

It's also my finding that the damage to the ceiling is very slight, and is also within the range of normal wear and tear. I therefore will not allow the claim for ceiling repair.

It's also my finding that the damage to the door of the rental unit is very slight and within the range of normal wear and tear. I therefore also deny the claim for door repair or replacement.

The landlord also claims that the barbecue in the rental unit was left in need of cleaning; however the evidence provided is insufficient for me to determine the condition of the barbecue. I find no mention of the barbecue on the move out inspection report. The claim for barbecue cleaning is also denied.

I also deny the claim for replacing the refrigerator shelf that is missing a clip. Although there is no mention of any missing clip on the move-in inspection report, I find it very

unlikely that such a minor item would have been noticed by the tenants at the move-in inspection.

I will allow a small portion of the landlords claim for the paint over spraying on the garage floor; however I agree with the tenants that the amount claimed by the landlord is excessive. I'm willing to allow \$100.00 for depreciation to the floor.

As I only allow a very minor portion of the landlords claim, I order that the landlord bear the cost of the \$50 filing fee paid for dispute resolution.

Tenant's application

Background and Evidence

The tenant claims that:

- They did no damage to the rental unit, and therefore they believe that their full security deposit and pet deposit totaling \$1500.00 should be returned.
- They are also asking for the equivalent of one month's rent as compensation for having received a two month notice to end tenancy from the landlord for landlord use. Rent was \$1500.00 per month and therefore they are requesting that the landlord compensate them in the amount of \$1500.00.
- There are also asking for compensation because the landlord disrupted their right to quiet enjoyment and peaceful occupation of the premises in their final month.
- During that month they received harassing e-mails and notices attached to their front door that Began around July 1, 2012 and continued until they vacated.
- The landlord cautioned us about bylaw fractions and our fishing boat being parked on the front parking area. We never received any fines from the strata council.
- The landlord posted notices to enter our rental unit for inspections, and entered the unit twice to change TVs. All of this was unnecessary.
- They also believe that the landlord may have entered the rental unit while they were away on vacation at the end of June. They felt that somebody had been entering their unit and so when they went away they put a piece of tape on top of the front door before leaving out of the garage door. When we return from vacation the tape on the top of the door was broken.

Therefore the total amount they are requesting is as follows:

Return of security deposit	\$750.00
Compensation for landlord use	\$1500.00

Compensation for loss of quiet enjoyment	\$1500.00
Filing fee	\$50.00
Total	\$4550.00

As stated above the landlord did not attend the hearing on October 5 however in the landlords written submissions he states:

- He had fully intended to pay the \$1500.00, 1 month compensation on the night of the move out inspection, however since the inspection was not going well he decided to hold onto the money and file a claim against the tenants.
- He completely denies the tenants claim that he did not allow them peaceful enjoyment. They were treated very fairly and the number of times he requested entry to the rental unit was not unreasonable.
- He did warn them about possible bylaw infractions in case fine was levied against him by the strata Corporation.

Analysis

It's my finding that the tenants have established the right to the return of their full security deposit and pet deposit, less the \$100.00 I have allowed in the landlords claim.

It is also my finding that the landlord must pay the tenants the equivalent of one month compensation, as he gave them a two month notice to end tenancy for landlord use and the Residential Tenancy Act requires compensation in the equivalent of one month's rent.

I deny the tenants claim for one month compensation for loss of use and enjoyment. It's my finding that the tenants have not met the burden of proving that they suffered a substantial loss of use of enjoyment of the rental property or that the landlords actions in the last month of the tenancy were unreasonable.

Since I have allowed the majority of the tenant's application I also order that the landlord bear the \$50.00 cost of the filing fee paid by the tenants for dispute resolution.

Conclusion

I have allowed \$3050.00 of the tenants application, less the \$100.00 I have allowed in the landlord's application, and I have therefore issued an order for the landlord to pay \$2950.00 to the tenants.

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: December 05, 2012.

Residential Tenancy Branch