



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on July 01, 2011 and ended on September 30, 2012. Rent for this unit was \$1,000.00 per month plus 40 percent for utilities. The tenant paid a security deposit of \$500.00 on May 13, 2011. A move in and a move out condition

inspection was done at the start and end of the tenancy and the tenant provided her forwarding address to the landlord on the move out inspection report on September 30, 2012.

The landlord testifies that the tenant has failed to pay the final utility bill for \$119.35. The landlord states she sent the tenant a copy of the bill on December 21, 2012 with the evidence package and it was received on December 24, 2012.

The tenant testifies that she has not received a copy of the final utility bill in the landlord's evidence package. The tenant also draws the landlord's attention to the fact that the final bill will need to be prorated for the days the tenant was residing in the rental unit.

The landlord agrees that she may have forgotten to include a copy of the final utility bill in either the tenant's evidence package or the evidence sent for the hearing to the Arbitrator.

The landlord testifies that the tenant sons have caused damage to the chain link fence by crawling under the fence on numerous occasions. The landlord testifies that the neighbouring property had some water runoff and rocks, water and sand came down through the fence onto the landlord's yard however the landlord testifies that the contractor for that property repaired the fence and removed the rocks and sand. The landlord testifies that she has seen the tenant's sons go under the fence to retrieve their dog and a friend of the landlords also saw the boys go under the fence and she spoke to the boys about this. The landlord testifies that the wire that holds the chain link down has come unthreaded and a friend of the landlords repaired this by undoing the links and rethreading the wire through. The landlord has provided a receipt from her friend who made the repair for \$75.00. The landlord has provided some photographic evidence of the fence.

The tenant disputes the landlords claim. The tenant testifies that when the neighbouring property had the run off on to the landlord's yard, rocks the size of river rocks were washed down with sand and water and the tenant believes this caused the damage to the fence. The tenant disputes that her sons could fit under the fence without causing tears to their clothes or skin and testifies that the fence was already damaged before the tenant even got

her dog. The tenant agrees her sons do go over the fence to retrieve the small dog when it escapes but claims her sons go over the fence using large rocks in the corner of the fence.

The tenant disputes that the landlords friend saw the tenants children go under the fence but may have seen them on the other side and assumed they had gone under. This person yelled rudely at the tenant's sons. The tenant claims that she never saw the contractor repairing the fence but did see him remove the rocks and sand and put fresh grass sod down to repair damage to the yard.

The landlord testifies that the tenant damaged a door stop in the bedroom and the landlord seeks to recover the sum of \$5.18 for the new door stop. The landlord has provided a receipt in evidence.

The tenant does not dispute this section of the landlords claim.

The landlord testifies that the tenant caused damage to the washroom floor. The landlord states this is a white marble floor and there is a large dark stain in front of the toilet and orange stains around the toilet. Another stain that looks like the bottom of a bottle is also on the floor. The landlord testifies that the tenant agreed during the move out inspection that the orange stains could have come from her sons' urine.

The landlord testifies she had a flooring man look at the washroom floor and he told the landlord it looked as if something corrosive had been used on the floor. The landlord states she had asked the tenant to clean the floor with soap and water. The landlord testifies that normal cleaning would not remove these stains and the contractor had to sand the whole floor down to remove the stains. The landlord has provided an invoice and photographs for this work and seeks to recover the sum of \$280.00.

The tenant disputes the landlords claim. The tenant testifies she has provided two statements from flooring contractors in evidence who have written to say that marble flooring is very porous and staining is normal. The tenant states that the washroom had under floor heating installed. The tenant calls her first witness who is a flooring contractor.

The witness LH testifies that white marble is a sensitive surface and it must be sealed every six months to preserve it. When marble is laid in a bathroom the moisture will affect the life of the stone faster and white marble particularly will discolour especially if there is under floor heating which in effect cooks the stone. In high traffic areas with up to four people using a washroom some discolouration would be normal wear and tear.

The tenant asks the witness to give his opinion on the landlord's receipt and if he thinks this is a reasonable amount. The witness replies that this would be reasonable for one sanding and a seal coat.

The landlord cross examines the tenant's witness and asks if the floor should have other stains in other areas such as by the sink. The witness relies staining would be normal in areas with high moisture. If the sink is closer to the door that area would also get more air which would prevent the moisture. The witness states that if the marble has only been sealed once then it would break down sooner and staining would occur. Staining would also depend on the person who originally laid the floor who may have used a darker cement in areas as this would start to show through the floor as spot discolouration in areas where the marble was breaking down.

The landlord testifies that the tenant failed to leave the stove top clean and the landlord had to replace four lights one of which was a light beneath the microwave oven. The landlord has provided receipts for the lights and stove top cleaner and seeks to recover the sum of \$36.49.

The tenant disputes this section of the landlords claim. The tenant testifies that the light under the microwave was burnt out at the start of the tenancy and there were only two closet lights that had burnt out.

The landlord testifies that the tenant failed to replace a broken closet door slider in the bedroom. The landlord seeks to recover the sum of \$3.35 and has provided a receipt in evidence.

The tenant does not dispute this section of the landlords claim.

The landlord testifies that the tenant left the fridge door with two small dents the size of a pencil point and some circular scratch marks. The landlord spoke to the flooring contractor about the scratches and he advised the landlord to try to remove them with a specific product. The landlord testifies that she did attempt to remove the scratches with this product but it did not work. The landlord seeks to recover the cost for the product of \$15.66 and has provided photographic evidence showing the scratches and dents and the receipt for the product to remove the scratches. The landlord testifies that she asked a fridge company if she could just replace the skin of the fridge door but was told she will have to purchase a new door. The landlord has provided a quote from this company to the sum of \$706.71 and seeks to recover this from the tenant.

The tenant disputes the landlords claim. The tenant testifies that the two dents were in the fridge when she moved into the unit and were not noticed at the move in inspection. However the tenant's father did notice these dents. The tenant disputes the landlords claim that the tenant caused scratches to the fridge door. The tenant has provided photographic evidence showing the fridge door at the end of her tenancy with a small ink spot. This ink spot is not shown on the landlord's photographs and the tenant suggests the landlord tried to remove these marks as they are in a circular pattern consistent with someone rubbing an abrasive cloth on the door.

The tenant cross examines the landlord and asks the landlord what she applied to the fridge door to remove the ink. The landlord replies that she used a cleaning product on a cloth and removed the ink marks. The tenant asks the landlord why the tenants pictures did not show any scratches. The landlord replies that the photographs were taken after the landlord tried to take the ink off and then the flooring man told the landlord to use the product for scratches. The tenant testifies that there are discrepancies in the landlord's testimony.

The landlord testifies that the tenant's cat has caused damage to the window screen. The landlord seeks to recover the sum of \$22.40 to replace the screen and has provided the receipt in evidence.

The tenant does not dispute this section of the landlords claim.

The landlord testifies that the tenant caused some dents and divots in the walls. These marks had to be filled, sanded and the wall repainted. The landlord seeks to recover the sum of \$75.00 for this work and has provided photographs and a receipt in evidence.

The tenant disputes this section of the landlords claim. The tenant testifies that the marks on the walls are minor and no more than normal wear and tear in a tenancy of over a year.

The landlord has applied to recover the costs incurred to send three registered mail packages at \$34.78 and the costs for producing the photographic evidence for this hearing to the sum of \$49.96.

The landlord testifies that the tenant caused damage to the engineered wooden floor in the unit. This flooring was installed three years ago and is a floating floor so individual damaged boards cannot be removed and the entire floor has to be replaced. There are also issues concerning replacing individual boards because of getting a colour and size match and as it is an engineered floor it cannot be sanded.

The landlord testifies that a previous tenant did cause some damage to the floor and there were three scrapes in front of the entertainment unit and another long scratch caused by a staple in a box they had dragged across the floor. These were documented on the move in inspection report at the start of the tenancy. However this tenant has caused additional gouges, scrapes and scratches to the flooring in all areas and some water damage on the bedroom floor. The landlord has provided 13 photographs in evidence showing marks on the floor. The landlord seeks to recover the sum of \$17,315.00 and has provided an invoice from the flooring company for this work.

The landlord has also provided a letter from the flooring contractor who examined the floor and has stated that some areas he would consider to be normal wear and tear on a floor considering its age. However there are some areas that in his opinion have been abused beyond normal wear and tear and areas damaged by moisture most likely something spilled on the floor, and more notable areas that have had heavy objects dragged across the floor leaving deep dents running across a large area of the unit most notably in front of where the

entertainment center was located. The flooring contractor has stated that in his opinion the flooring will need to be replaced.

The tenant disputes the landlords claim. The tenant testifies that photos five, seven, eight and sixteen are all of the same area; photos ten, eleven, twelve, thirteen and fourteen are also of the same area. The tenant testifies that it appears from the amount of photographs the landlord has provided that there are many scratches on the floor when in fact this is not the case as many of the photographs show the same two areas. The tenant testifies that the letter from the landlords flooring contractor states he noted areas of normal wear and tear. The area that has deep dents in front of the entertainment unit is the area damaged by the previous tenants. The tenant disputes that any scratches caused during their tenancy are anything more than normal wear and tear and the landlord is attempting to hold them responsible for pre-existing damage.

The tenant testifies that she placed area rugs under her children's beds, in front of the door, a play mat in the children's bedroom, two area rugs in the living room, one in front of the television and one under the dining table. Felt pads were also used on the legs of the dining table and chairs and all shoes were removed before entering the unit. The tenant states she looked after the floor and swept and cleaned it regularly going above and beyond what was required to take care of the unit. The tenant testifies that the area the landlord has claimed was damaged by moisture was located under the tenant's bed. The tenant testifies she had complained to the landlord about high moisture levels in the unit and has provided email correspondence relating to this. The tenant has also provided photographs of the rooms showing the area rugs in place in evidence.

The landlord refers to the move out condition inspection report which states the tenant agrees the report represents the condition of the unit.

The tenant testifies that during the walk through the landlord said the gouges were done by the previous tenant and told the tenant she must sign the report in two places. The tenant testifies that she only signed the report in the security deposit section because the landlord

told her she had to do so and because the landlord was going to provide some receipts for what needed to be done in the unit before a figure was agreed.

The tenant calls her witness who is the tenant's father. The witness SS testifies that he was present at the final walk through inspection and the landlord did make the tenant sign the report. The witness testifies that the landlord also agreed that the gouges in front of the entertainment unit were done by the previous tenants. The witness testifies that he noticed the two small dents in the fridge door when the tenant moved in and testifies that the tenant told the witness they were done by the previous tenants. The witness testifies that the tenant never dragged any furniture across the floor. When the furniture had to be moved the witness brought his dolly and used that or they lifted furniture to move it. The witness testifies that the tenant never abused the floors.

The witness testifies that the tenant's children never went under the fence but rather they went over the fence. The witness testifies that he did witness the rocks and gravel wash down from the neighbouring property and this could have loosened the fence.

The landlord declines to cross examine this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the landlords claim for unpaid utilities; I direct the landlord to s46(6) of the *Residential Tenancy Act (Act)* which states:

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

Consequently as the landlord has not yet provided a copy of the utility bill to the tenant and a written demand for payment within 30 days I find this section of the landlords claim is premature and is therefore dismissed with leave to reapply in the event the tenant does not pay the final prorated utility bill provided to the tenant and after written demand for payment within 30 days has been made.

With regard to the landlords claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlords claim for the repair to the fencing of \$75.00. The landlord argues that she saw the tenants children go under the fence which resulted in this damage to the fence. The tenant argues that her children could not fit under the fence and went over the fence in a different location. The tenant also argues that the fence was damaged due to the runoff from the neighbouring property. I have considered the photographic evidence and find it is likely the tenants children did go under the fence to retrieve their dog and in doing so caused some minor damage to the fence. As a result I find

the landlord has met the test for damages in this matter and I uphold the landlords claim for **\$75.00**.

With regard to the landlord claim for the broken door stop of \$5.18; the tenant does not dispute this section of the landlords claim. Therefore I uphold the landlords claim for **\$5.18**.

With regard to the landlords claim for damage to the washroom floor to the sum of \$280.00; I have considered the landlords evidence and the evidence and testimony of the tenant and her witness. I am not satisfied that this damage was caused as a result of the tenant's actions or neglect. While I agree that some staining has been caused to the flooring, as the landlord has not sealed this marble in over three years then the landlord must expect some staining and discolouration to occur. A landlord must mitigate any loss by ensuring the flooring suitable for normal living conditions and in this case I am not satisfied that this has happened. Consequently this section of the landlords claim is denied.

With regard to the landlords claim for bulbs and stove cleaner; at the end of a tenancy a tenant is responsible to ensure the stove is left clean and any burnt out light bulbs are replaced. The inspection report indicates that the microwave bulb and the closet lights are not working and that the oven is dirty. The tenant does not dispute the closet lights but does dispute the microwave bulb was her responsibility as the tenant testifies that it was burnt out at the start of the tenancy. The tenant also disputes that there were other burnt out bulbs. Having reviewed the move in inspection I find the landlord has put very limited information on that report and as such it is my decision that the landlord has not completed with the move in inspection with enough detail to provide a clear picture of the condition of the unit at the start of the tenancy and as such I limit the landlords claim for the costs for two light bulbs for the closet only to a sum of **\$5.96** and the stove cleaner to the sum of **\$8.99**. The reminder of the landlords claim is denied.

With regard to the landlords claim of \$3.35 for the closet door slider; the tenant does not dispute this section of the landlords claim and the landlords claim is therefore upheld. The landlord is entitled to recover the sum of **\$3.35** from the tenant.

With regard to the landlords claim for a product to clean the fridge for \$15.66 and to replace the fridge door for \$706.71; I find the dents in the fridge door are so minor it is likely they were missed on the move in condition inspection and the landlord has documented very limited details on this inspection report. It is my decision that the landlord has not met the burden of proof that the tenant caused these dents through her action or neglect and I am not satisfied that the landlord has met the burden of proof regarding the scratches on the fridge door particularly as the evidence from the tenants photographs contradicts the evidence shown on the landlords photographs. Consequently this section of the landlords claim is denied.

With regard to the landlords claim for a replacement window screen to the sum of \$22.40; the tenant does not dispute this section of the landlords claim; therefore the landlords claim for **\$22.40** is upheld.

With regard to the landlords claim for \$75.00 for painting touch ups. I refer the parties to s. 32(4) of the *Act* which states:

A tenant is not required to make repairs for reasonable wear and tear.

Having considered the documentary evidence presented I am not satisfied that the marks on the walls would fall into a category that showed that these marks are anything other than normal wear and tear and consequently this section of the landlords claim is denied.

With regard to the landlords claim for floor replacement; the landlord agrees that the gouges in the floor and another mark were caused by the previous tenants, The landlord has provided a letter from her flooring contractor to give his opinion on the damage to the floor in which he states that some of the damage is normal wear and tear and some has been caused by abuse most notably areas that have had heavy objects dragged across the floor in front of the area where the entertainment unit was located. As the landlord agrees this was the area that had been damaged by the previous tenants I find it is likely that the other damage documented is normal wear and tear. I find the amount of photographs provided by the landlord to be misleading as group's of these photographs relate to only two areas of damage and not damage throughout the entire unit as suggested by the landlord.

I have further doubts about the cause of the damage indicated as being moisture damage as the tenant has notified the landlord about a moisture problem in the unit and the area of damage was located under the tenants bed and would therefore be unlikely to have suffered from something spilled on the floor as suggested by the landlord and the flooring contractor. I further find the landlords claim against this tenant for all the damage to the floor is not justified as the landlord agrees some of the deep gouges were caused by the previous tenants for which the landlord retained their security deposit. The normal wear and tear caused by this tenant to the flooring would not warrant the landlord's claim of \$17,315.00 and a landlord must expect some wear and tear on a floor of this nature. Consequently the landlords claim is denied.

With regard to the landlords claim for registered mail costs of \$34.78 and costs for photographs of \$49.96; there is no provision under the *Act* for me to award costs of this nature associated with the preparation and service of evidence. Consequently the landlords claim for these costs is denied.

With regard to the landlords claim to recover the filing fee; as the landlord has been partially successful with her claim I find the landlord may retain half the \$100.00 filing fee to the sum of **\$50.00** pursuant to s. 72(1) of the *Act*.

The landlord may retain a portion of the tenants security deposit, pursuant to s. 38(4)(b) of the *Act*, in settlement of the successful portion of her claim as follows:

Repair to fencing	\$75.00
Door stop	\$5.18
Replacement bulbs	\$5.96
Stove cleaner	\$8.99
Closet door repair	\$3.35
Replacement window screen	\$22.40

Filing fee	\$50.00
Subtotal	\$170.88
Less security deposit	(-\$500.00)
Amount to be returned to the tenant	\$329.12

Conclusion

I hereby find in partial favor of the landlords monetary claim. The landlord may retain the sum of \$170.88 from the tenant's security deposit. The remainder of the deposit to the sum of **\$329.12** must be returned to the tenant.

A Monetary Order has been issued to the tenant for this amount. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

The reminder of the landlord's monetary claim for damages is dismissed without leave to reapply.

The landlord is at liberty to reapply for the tenant's share of the utility bill if it remains unpaid after 30 days written notice has been given.

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: January 11, 2013.

Residential Tenancy Branch

