



DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF, O

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent and utilities; for a monetary Order for damage; to keep all or part of the security deposit; to recover the fee for filing this Application for Dispute Resolution; and "other".

The hearing on January 07, 2013 was adjourned as there was insufficient time to conclude the matter on that date. The hearing was reconvened on February 19, 2013 and was concluded on that date.

Both parties were represented at both hearings. The parties were provided with the opportunity to submit documentary evidence prior to the hearing on January 07, 2013, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for unpaid utilities; for compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 05, 2012; that the Tenant was required to pay rent of \$1,700.00 by the first day of each month; that the Tenant paid a security deposit of \$850.00; that the Tenant paid a pet damage deposit of

\$400.00; that a condition inspection report was completed at the beginning and the end of this tenancy, a copy of which was submitted in evidence; that the rental unit was inspected by both parties on October 04, 2012; that the Tenant did not agree with the contents of the report so the Tenant refused to sign the report; and that the Tenant provided the Landlord with a forwarding address, via email, on October 13, 2012.

The Landlord and the Tenant agree that on September 20, 2012 the Landlord gave the Tenant a Ten Day Notice to End Tenancy for Unpaid Rent, although this notice did not specify the date the tenancy ends. The parties agree that the Tenant vacated the rental unit on October 03, 2012.

The Landlord and the Tenant agree that the Tenant still owes \$850.00 in rent for September, for which the Landlord is seeking compensation. The Tenant does not dispute that this amount is owed to the Landlord.

The Landlord is seeking compensation, in the amount of \$1,700.00, for lost revenue from the month of October. The female Landlord stated that significant repairs were needed in the rental unit which prevented the unit from being rented in October of 2012. The Tenant does not dispute this claim.

At the hearing on January 07, 2012, the Landlord applied to amend the Application for Dispute Resolution to include a claim for lost revenue from November of 2012. Legal Counsel for the Tenant opposed the application on the basis that the Tenant believes the Landlord was making general improvements to the rental unit that exceed the Tenant's obligations to repair damages to the unit.

The Landlord is seeking compensation, in the amount of \$3,000.00, to replace the flooring in the rental unit.

The Landlord and the Tenant agree that the carpet was stained at various locations at the start of the tenancy. The female Landlord stated that the carpet was stained in a variety of additional locations during the tenancy and that as a result of those stains, the carpet needed to be replaced. The Tenant agreed that the carpet was stained in 6-7 places during the tenancy. The Landlord did not submit any photographs to show the condition of the carpet at the start or end of the tenancy. The female Landlord stated that the carpet in the rental unit was over fifteen years old.

The female Landlord stated that the parquet flooring was scratched during the tenancy. The Tenant stated that the parquet flooring was not in good condition at the start of the tenancy and was not scratched during the tenancy. The Landlord submitted two photographs of the parquet flooring, neither of which show significant damage to the floor.

The Landlord and the Tenant agree that a portion of the flooring in the rental unit was simply painted plywood. The female Landlord stated that the paint on the floor was chipped during the tenancy and was replaced with laminate flooring.

The Landlord is seeking compensation, in the amount of \$100.00, for unpaid utilities. The Landlord and the Tenant agree that the Tenant was obligated to pay for utilities used during the tenancy. The Landlord submitted a utility bill for the period between June 23, 2012 and August 31, 2012, in the amount of \$81.20 and a utility bill for the period between September 01, 2012 and October 26, 2012, in the amount of \$15.92

The Tenant agrees that he has not paid any portion of the utility bills because he believes he may have overpaid a previous utility bill. The Tenant submitted no evidence to show that he overpaid a previous utility bill. The female Landlord stated that the Tenant did not overpay a previous utility bill.

The Landlord withdrew the \$165.00 claim for yard work.

The Landlord is seeking compensation, in the amount of \$528.12, to replace window coverings that were damaged during the tenancy. The Tenant agrees that several window coverings were damaged during the tenancy and that the Landlord is entitled to compensation in this amount.

The Landlord is seeking compensation, in the amount of \$705.60, for cleaning the rental unit. The Tenant stated that some cleaning was completed prior to the end of the tenancy but that additional cleaning was required. He stated that he was prepared to hire a restoration company, which will not be named in this decision, to complete the additional cleaning prior to the end of the tenancy but the Landlord told him that the company was not permitted to work on the residential property. The Tenant argues that his ability to leave the rental unit in reasonably clean condition was frustrated by the Landlord's refusal to allow this company to work on the property.

The Landlord is seeking compensation for painting the rental unit. The Landlord and the Tenant agree that there was a significant amount of writing on the walls of the rental unit at the end of the tenancy. The female Landlord stated that the walls in the rental unit needed to be repainted and that some walls needed to be repainted 3-4 times in order to cover the writing.

The Landlord stated that the bedroom had been painted approximately two years ago; that the den had been painted approximately 4 years ago; that the rest of the rental unit had not been painted in over ten years; and that some areas of the walls had been repaired but not repainted at the start of the tenancy. The Tenant stated that the walls were not in good repair at the start of the tenancy and he doubts that any of the rooms had been painted in the previous two years.

The Tenant stated he was prepared to paint the walls in the rental unit using the same restoration company that he planned to use to clean the rental unit. He stated that he believed he should repaint the walls as his children had written on the walls. He stated that the walls were not painted because the Landlord told him the company was not permitted to work on the residential property. The Tenant argues that his ability to paint

the walls was frustrated by the Landlord's refusal to allow this company to work on the property.

The female Landlord stated that the Landlord did not prevent the company from working on the residential property.

The Tenant submitted a copy of an email, dated September 25, 2012, in which the Tenant informed the Landlord that the "move out cleaning" will be completed by this restoration company. The Tenant submitted a copy of a response to this email, dated September 25, 2012, in which the Landlord informed the Tenant that this company must provide proof of current insurance coverage or a consent form releasing the Landlord from liability prior to the company working in the unit.

The Tenant submitted a copy of an email, dated September 26, 2012, in which the Landlord informed the Tenant that this restoration company is not permitted to clean or remove property unless the company "can provide insurance coverage and references".

The Tenant submitted emails in which the parties clearly discussed this restoration company painting the rental unit.

The Tenant submitted additional emails that clearly indicate that the Landlord had previously agreed that this restoration company could work in the rental unit.

The Tenant submitted a copy of an invoice from this restoration company for work completed at the rental unit in September of 2012.

The Landlord is seeking compensation, in the amount of \$27.59, for replacing the kitchen faucet. The Tenant agrees the Landlord is entitled to compensation in this amount.

The Landlord is seeking compensation, in the amount of \$5.59, for resealing the kitchen sink and the bathtub. The Landlord and the Tenant agree that the sealant around the bathtub was mouldy at the start of the tenancy; that the bathtub was not re-sealed during the tenancy; that the sealant behind the kitchen sink was not mouldy at the start of the tenancy; and that the silicone behind the kitchen sink was mouldy at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$17.91, for replacing the door knob on the kitchen door, which had become loose during the tenancy. The female Landlord could not recall why the knob needed to be replaced, rather than simply tightened. The Tenant stated that the knob was not a good quality knob.

The Landlord is seeking compensation for purchasing a mop and pail. The female Landlord stated that they needed to purchase a mop and pail to clean the rental unit as they did not have one at the rental unit. She stated that they still have the items at the rental unit.

The Landlord is seeking compensation for replacing a knob on the washing machine, which had broken during the tenancy. The female Landlord stated that the washing machine was approximately 17 years old. The Tenant agreed that the knob pulled away from the washing machine; that he does not recall how it broke; and that they were able to use the washing machine in spite of the broken knob.

The Landlord is seeking compensation for replacing a light switch in one of the bedrooms. The female Landlord stated that the light switch had been removed during the tenancy but she was unable to locate a photograph of the missing switch in her evidence. The Tenant stated that a light switch was not removed during the tenancy.

The Landlord withdrew the \$65.00 claim for cleaning the kitchen blinds.

The Landlord is seeking compensation for cleaning the air ducts in the rental unit. The female Landlord stated that the Tenant had reported an outbreak of head lice and that a management company had suggested that she should have the air ducts cleaned to ensure the problem with lice was rectified. The Landlord submitted no evidence to show that cleaning air ducts is required after lice have been detected in a rental unit. The Tenant agreed that there had been an incident with head lice and that they cleaned all their furniture and clothing as a result of that problem.

The Landlord is seeking compensation for replacing a basket from the freezer. The Landlord and the Tenant agree that the basket in the freezer went missing during the tenancy. The female Landlord stated that she believes it will cost her \$30.00 to replace the baskets, but she submitted no evidence to corroborate this claim.

The Landlord is seeking compensation, in the amount of \$89.60, for installing a new toilet. The Tenant agrees the Landlord is entitled to compensation in this amount.

The Landlord withdrew the \$500.00 claim for an infestation.

I decline to consider the Landlord's claim for compensation for printing/photograph expenses, as the *Act* does not authorize me to award compensation for expenses such as these.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant had a tenancy agreement that required the Tenant to pay monthly rent of \$1,700.00 by the first day of each month.

As the Tenant agrees that the Landlord is entitled to unpaid rent for September, in the amount of \$850.00, I find that the Tenant must pay this amount to the Landlord. As the Tenant does not dispute the claim for lost revenue from October of 2012, I grant the claim for \$1,700.00.

I decline the Landlord's request to amend the Application for Dispute Resolution to include a claim for compensation for lost revenue from November of 2012, as the Landlord did not amend the Application for Dispute Resolution in accordance with Rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 stipulates that a copy of the amended application must be served on the other party at least five days before the scheduled date of the dispute resolution hearing. In this case the Tenant did not receive any indication that the Landlord was increasing the amount of the monetary claim prior to the hearing on January 07, 2012. I find that the absence of notice makes it difficult for the Tenant to prepare an adequate response to the additional claim and I therefore find that it would be prejudicial to the Tenant to allow the amendment. In reaching the determination to deny the amendment I was influenced, in part, by the fact that the Landlord filed this Application for Dispute Resolution in October of 2012 and the Landlord had ample time to amend the Application in accordance with the Rules of Procedure.

On the basis of the undisputed evidence, I find that the carpet in the rental unit was stained at the start of the tenancy and that it sustained additional staining during the tenancy. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean the areas on the carpet that were stained during the tenancy. Without evidence, such as photographs depicting the condition of the carpet at the start of the tenancy and the end of the tenancy, I find that there is insufficient evidence to conclude that the carpets needed to be replaced solely because it was stained during the tenancy.

Although I do accept that the staining undoubtedly reduced the value of the carpet in the rental unit, I cannot conclude that the Landlord is entitled to compensation for replacing the carpet. Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet in the rental unit was more than fifteen years old. As the carpet has exceeded the life expectancy of carpet, I find that the Landlord is not entitled to compensation for replacing the carpet.

I find that the Landlord submitted insufficient evidence to show that the parquet flooring was damaged during the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that the flooring was scratched during the tenancy or that refutes the Tenant's testimony that it was not scratched during the tenancy. In reaching this conclusion I was heavily influenced by the photographs of the parquet flooring. Even if the Tenant had caused all the scratches that appear in the photographs, I find that the scratches do not exceed normal wear and tear. As a tenant is not obligated to repair damage that is normal wear and tear, I find that the Landlord is not entitled to compensation for replacing the parquet flooring.

I find that the Landlord has failed to establish that the Tenant is obligated to repair damage to the painted floor in the rental unit. As a painted floor is not designed to sustain extended use, I find that any damage to the paint on the floor must be considered normal wear and tear. As a tenant is not obligated to repair damage that is normal wear and tear, I find that the Landlord is not entitled to compensation for covering the painted floor.

In determining the claim for replacing the flooring, I note that I placed little weight on the condition inspection report that was completed at the end of the tenancy, as the parties did not agree that the report accurately reflected the condition of the rental unit at the end of the tenancy.

On the basis of the undisputed evidence, I find that the Tenant has not paid any portion of the utility bill for the period between June 23, 2012 and August 31, 2012, which was \$81.20. I therefore find that the Tenant must pay this amount to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant has not paid any portion of the utility bill for the period between September 01, 2012 and October 26, 2012, which was \$15.92. As the Tenant occupied the rental unit for 33 of this 56 day billing period, I find that the Tenant must pay 33/56 of this bill, which is \$9.38.

I find that the Tenant submitted insufficient evidence to show that he had overpaid a previous utility bill and I am therefore not able to apply an alleged overpayment to the current arrears. The Tenant retains the right to file an Application for Dispute Resolution if he feels a previous utility bill has been overpaid.

As the Tenant agrees that the Landlord is entitled to compensation, in the amount of \$528.12, to replace window coverings that were damaged during the tenancy, I find that the Landlord is entitled to compensation in this amount.

I find that the Tenant clearly communicated his intent to clean the rental unit and paint the rental unit with a restoration company and that the Landlord clearly informed the Tenant that the restoration company was not permitted on the rental unit unless the company could provide proof of insurance or the Landlord was provided with a consent

form releasing them from liability. In light of the Landlord's communications, I find it reasonable for the Tenant to have concluded that he was no longer required to clean the rental unit at the end of the tenancy or to paint the walls in the rental unit. I therefore dismiss the Landlord's claim for cleaning and painting the rental unit.

Section 37(2) of the *Act* requires a tenant to leave a rental unit in reasonably clean condition at the end of the tenancy and to repair damage to the rental unit. The *Act* does not give a landlord the right to dictate how a tenant must comply with this obligation. In the absence of evidence to suggest that this particular restoration company was not a legitimate company with proper insurance, I cannot conclude that the Landlord's request for proof of insurance was reasonable. In determining this matter, I note that there is an invoice from this restoration company, which adds, in a small way, to the credibility of the company.

In determining this matter, I note that the Landlord had previously granted permission for this restoration company to make repairs to the residential property. In the absence of a legitimate reason for the Landlord to rescind that permission, I cannot conclude that the Landlord's request for proof of insurance was reasonable.

As the Tenant agreed that the Landlord is entitled to \$27.59 for replacing the kitchen faucet, I find that the Landlord is entitled to this amount.

I find that sealant around bathtubs and sinks often become mouldy and need to be replaced as part of routine maintenance. On the basis of the photograph of the sealant behind the kitchen sink and the admission that the sealant around the bathtub needed replacement at the start of the tenancy, I find that the sealant needed to be replaced as a result of normal wear and tear. In my view, the photograph of the area behind the kitchen sink shows the sealant is old and there is nothing that causes me to conclude that the sealant needs to be replaced as a result of misuse or neglect. As tenants are not obligated to repair damage arising from normal wear and tear, I find that the Tenant was not obligated to replace the sealant in either of these locations, and I dismiss the Landlord's claim for compensation for the cost of sealant.

I am aware that door knobs do come loose though years of normal use. As this home is quite old and there is no evidence that the knob was misused by the Tenant, I find it reasonable to conclude that the knob came loose as a result of normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for compensation for the replacing the door knob.

I find that having a mop and pail are tools that landlords typically own in preparation for emergencies or to clean a rental unit at the end of the tenancy. As the Landlord still has the mop and pail that they used to clean the rental unit, I cannot conclude that the Tenant should pay for these items. I therefore dismiss their claim for the cost of purchasing these items.

I am aware that knobs on appliances break though years of normal use. As this washing machine is approximately 17 years old and there is no evidence that the knob was misused by the Tenant, I find it reasonable to conclude that the knob came loose as a result of normal wear and tear. As tenants are not obligated to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for compensation for the replacing the knob on the washing machine.

I find that the Landlord has failed to establish that a light switch was removed from a bedroom during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that a switch was removed or that refutes that Tenant's testimony that it was not removed. As the Landlord has failed to establish the switch was removed, I dismiss the claim for replacing the light switch.

In the absence of evidence from a qualified professional that shows that air ducts should be cleaned after an outbreak of head lice, I find that the Landlord has submitted insufficient evidence to show that the Tenant had an obligation to clean the air ducts. I therefore dismiss the Landlord's application for cleaning the air ducts.

On the basis of the undisputed evidence, I find that a freezer basket went missing during the tenancy. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the freezer basket. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's estimate that it will cost \$30.00 to replace the basket. I therefore dismiss the Landlord's claim for compensation for replacing the basket.

As the Tenant agreed that the Landlord is entitled to \$89.60 for installing a toilet, I find that the Landlord is entitled to this amount.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,385.89, which is comprised of \$2,550.00 in unpaid rent/lost revenue; \$90.58 in unpaid utilities; \$645.31 in damages; and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$850.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,535.89. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: February 19, 2013.

Residential Tenancy Branch

