



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application: (filed December 21, 2012): MNDC

Landlord's application: (filed March 4, 2013, amended March 25, 2013) MND; MNSD; MNDC; FF

Introduction

This Hearing was convened on March 15, 2013, to consider cross applications. There were issues surrounding service of the Landlord's documents at the Hearing. I ordered that the matter be adjourned to allow the Landlord to re-serve her documentary evidence. Time lines were outlined for the service of the Landlord's documents and for the Tenant's rebuttal evidence. An Interim Decision was provided to the parties, which would be read in conjunction with this Decision.

The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord seeks compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary order for damages to the rental unit; to apply the security deposit towards partial recovery of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord testified that she re-served the Tenant with her second package of documentary evidence by registered mail sent March 18, 2013. The Landlord provided copies of the registered mail receipt and tracking numbers in evidence. The Landlord testified that she amended her Application to increase the amount of compensation requested, and that she served the Tenant with a copy of her amended Application by registered mail sent on April 3, 2013. The Landlord gave the tracking number for the registered mail and stated that the document was successfully delivered to the Tenant on April 6, 2013. The Landlord provided a copy of the Canada Post tracking search in evidence.

The Tenant did not provide any rebuttal evidence to the Landlord or to the Residential Tenancy Branch.

On March 20, 2013, the Residential Tenancy Branch provided both parties with Notices of the Reconvened Hearing, by mail to the addresses they gave on their Applications. The Tenant did not sign into the Reconvened Hearing and therefore her Application for Dispute Resolution was **dismissed without leave to reapply** and the Landlord's Application was heard in the absence of the Tenant.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for damage to the rental unit as a result of the Tenant's medical marijuana grow operation?
- Is the Landlord entitled to compensation for the cost of cleaning the rental unit at the end of the tenancy and taking the Tenant's garbage to the dump?

Background and Evidence

The Landlord gave the following testimony and evidence:

The Landlord stated that the Tenant was duly licensed to grow marijuana for medical purposes and that the Landlord had agreed that the Tenant could grow medical marijuana in the basement of the rental unit.

The Landlord testified that the Tenant moved out of the rental unit on December 28, 2012, without giving due notice. She stated that when the Tenant moved out of the rental unit, she ripped out a cold air intake pipe and did not fill in the holes which left a large hole open to the outside. The Landlord stated that the Tenant also removed all of her grow lamps and that this, together with the hole in the wall from the ripped out intake pipe, resulted in the pipes freezing and bursting on December 29, 2012, causing catastrophic flooding.

The Landlord stated that she hired an electrician to check the circuit breaker for safety. He discovered that the Tenant had made unauthorized alterations to the electrical wiring in the basement which voided the Landlord's insurance.

In addition to the damage caused to the walls ceiling and floors in the basement, the rental unit sustained mould damage in the main living quarters. The Tenant also removed a window without the Landlord's permission and moved a cabinet from the kitchen to the basement for use in the grow operation. The Landlord stated that the cabinet was water damaged beyond repair. She stated that the cabinet was about 4.5 feet tall, with three cupboards and three drawers, and was about 10 years old. The Landlord testified that she called 2 cabinet shops, and was advised that she could replace the cabinet for \$240.00.

The Landlord stated that the Tenant also ripped a cupboard door off its hinges in the kitchen, and that it was not repairable. The Landlord testified that it will cost \$40.00 to replace the cupboard door with a matching one.

The Landlord testified that the Tenant broke a storm door, which was approximately 5 years old. The Landlord stated that she can replace the storm door with a used one from Habitat for Humanity for \$80.00.

The Landlord stated that the Tenant left the rental unit extremely dirty. The Landlord testified that a toaster was melted onto one of the elements on the stove and the bottom element was not working. In addition, the Landlord stated that the stove was filthy with caked on dirt and was not salvageable. She stated that the stove was approximately 6 years old and that she can replace it with a new one for \$350.00.

The Landlord stated that she could not rent the rental unit out for the months of January, February and March, 2013, because of the damage caused by the Tenant. The Landlord stated that monthly rent was \$600.00. The Landlord seeks compensation for loss of revenue in the amount of \$1,800.00.

The Landlord provided photographs of the rental unit in evidence.

The Landlord seeks a monetary award, calculated as follows:

Replace cabinet	\$240.00
Replace cupboard door	\$40.00
Replace storm door	\$80.00
Replace stove	\$350.00
Cost of electrician	\$140.00
3 months' loss of revenue	\$1,800.00
Remediation services estimate	\$22,196.74
Cost of developing photographs	<u>\$76.16</u>
TOTAL	\$24,922.90

The Landlord stated that she has not yet completed the remediation work in the basement because her insurance will not cover the cost and she cannot afford it. The Landlord provided a copy of the remediation services' 3 page estimate in evidence.

Analysis

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy agreement, the non-complying landlord or tenant must

compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenant did not sign into the Hearing to provide her version of events and I accept the Landlord's undisputed testimony in its entirety. The photographs provided by the Landlord show that the Tenant left the rental unit filthy, with garbage, cat feces and spoiled food throughout the living area. There is mould in the rooms and considerable water damage in the basement, a gaping hole in the outside wall, a large hole in the ceiling from the burst pipe and dirt and dead plants on the floor.

I find that the Tenant did not comply with Section 37(2) of the Act and that the Landlord suffered a loss as a result of the Tenant's breach of the Act.

I find the Landlord's estimates to be reasonable with respect to the cost of replacing the cabinet, cupboard door and storm door. However these damaged items were not new and therefore I have adjusted the award down 50% to account for depreciation.

The Landlord stated that the stove was 6 years old. The Residential Tenancy Policy Guidelines provide that a stove has a useful life of 10 years. Therefore, I allow this portion of the Landlord's application in the amount of \$140.00 (\$350.00 x 40% of life remaining).

The remediation company's estimate totals \$22,196.74, which includes: cleaning and sanitizing the rental unit; removing debris; repairing or replacing drywall; painting; dump fees and equipment rental. I find that the Landlord suffered a loss, including loss of revenue, as a result of the Tenant's actions. I further find that the Tenant's actions voided the Landlord's insurance. I allow the Landlord's claim for the estimated cost of remediation and loss of revenue for three months.

The Landlord did not provide a copy of the electrician's invoice and this portion of her application is dismissed.

The Act does not provide for recovery of the cost of developing photographs. This portion of the Landlord's application is dismissed.

The Landlord has been largely successful in her application and I find that she is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order against the Tenant, calculated as follows:

Replace cabinet (50% of estimate)	\$120.00
Replace cupboard door (50% of estimate)	\$20.00
Replace storm door (50% of estimate)	\$40.00
Replace stove (40% of estimate)	\$140.00
3 months' loss of revenue	\$1,800.00
Remediation services estimate	\$22,196.74
Recovery of filing fee	<u>\$100.00</u>
TOTAL	\$24,416.74

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$24,416.74** against the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 30, 2013

Residential Tenancy Branch

