



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications filed by both the landlord and the tenant.

The landlord seeks a monetary order for damages, rent, to retain the security deposit and recover the filing fee paid for this application. The landlord seeks: \$3,956.04 plus the filing fee.

The tenant seeks a monetary order for compensation for damage and/or loss, to recover the security deposit and the filing fee paid for this application. The tenant seeks: \$25,000.00 inclusive of the filing fee.

Both parties appeared at both days of hearing and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

This tenancy began on November 1, 2009 and ended in December 31, 2012. Initially rent was fixed at \$2,500.00 payable in advance on the first of each month. The tenants paid a security deposit of \$1,250.00 at the start of the tenancy. At some point during the tenancy the rent was reduced to \$2,000.00 per month.

Landlord's Claim

The landlord states that the tenant gave notice on December 3, 2012 via FAX. The landlord submitted the FAX, it is a handwritten note stating:

Must move out Jan 1/2013 sorry 2-3 day late on notice no money and so on if you don't agree I'll fight and still move out.

[signed by the male tenant]

On January 4, 2013 the tenant wrote again to the landlord:

Peter, I called no reply I left the keys on the kitchen counter. Talked to Jamie about it. Your phone was just getting no service message yesterday. I maybe going out of town mail Brenda the deposit cheque to *[address noted]*.

[male tenant's name]

House is all nice and clean I thought Jamie would have been in there last Monday last day of December to prep. Gas and Hydro accounts closed as of December 31/12. Because of the cold weather to be expected I left the kitchen tap running to keep water flowing and not freezing.

The landlord submits that the tenant did not give proper notice and he is seeking one month's rent in lieu of proper notice. Further, the landlord seeks recovery of the costs for repairs performed during the tenancy which repairs, the landlord says, were the responsibility of the tenants.

The landlord states that during a move of his office he lost the move-in Condition Inspection Report. He asked the tenant to bring his own copy to the move-out inspection however the tenant advised he had lost his copy as well. As a result of having no record of the move-in Condition Inspection the landlord says the parties agreed not to prepare a move-out Condition Inspection Report.

The landlord submitted photographs that he admits were not taken at the end of the tenancy but he says they show the state of the property when the tenants were living there. The landlord says the photographs depict garbage piling and boxes piling up in the garage. The landlord says photographs of the blinds show how dirty the blinds were.

With respect to Jamie W's invoices, the landlord says Jamie is a handyman, painter, and he also cleaned the house himself. The landlord says Jamie has his own key and he entered the home frequently to make repairs, etc. and always found it messy. At move out Jamie hired 2 people from Filthy Cleaning and they cleaned for 2 hours which was not sufficient. Further cleaning was required and Jamie hired another company.

The landlord says the actual cost of cleaning was \$655.08 but the landlord has no invoice except Jamie W's invoice which Jamie paid on behalf of the landlord. The landlord says there was still further work to do which Jamie did himself. The en-suite bathroom took two hours to clean and Jamie did some upper level dusting and removal of cobwebs which can be seen in the photographs. Jamie was unable to start painting the house because of the dust.

The landlord says he did have a plumber come by in October 2010 to make repairs based on the tenant's complaints and the plumber discovered the toilet was clogged with food items (broccoli). In any event the repairs were performed.

With respect to the landscaping charges the landlord says he paid \$405.00 for yard clean up and \$38 dump fee + HST \$491.60. The landlord says that the landscaping company was told to clean up the outside of the property but not to do any hedge work. The landlord says there was a lot of work to do because there were leaves everywhere in the front and the garden wasn't weeded. The landlord maintains the place was not rentable in the state in which it was left by the tenants.

In summary the landlord seeks the following sums:

1 month rent for notice – claimed	\$2,500.00
Drain Express	288.96
Landscaping charges – no hedging yard was a complete mess	491.60
Jamie W painting	477.00
Jamie W cleaning	178.08
Total	3,935.64

Tenant's Response:

The tenant agrees he gave his notice to the landlord as stated. The tenant says that although the landlord is claiming \$2,500.00, the rent had been lowered to \$2,000.00 and if any sum is applicable it would be \$2,000.00 not \$2,500.00.

The tenant says they were forced to vacate the rental unit due to health concerns. The tenant states that there was toilet water coming from the upstairs bathroom into the dining area through the ceiling light fixtures.

The tenant says he initially filed an Application for Dispute Resolution on November 29, or 20, 2012 seeking repairs. The tenant says a hearing was set for December 5 or 6,

2012 and the landlord got a plumber to come around on December 5, 2012. The tenant says the landlord told him that his application was a waste of time. The tenant states that the landlord told him he could phone up the Residential Tenancy Branch and make this matter disappear. The tenant says he didn't see any point in continuing with his claim knowing the landlord could do this.

The tenant agrees that his rent was lowered to \$2,000.00 per month but states that the landlord asked for it to go back up to \$2,500.00 after the tenant filed an Application. The tenant says he decided to hand in his notice instead. The tenant also said that because the toilet was still leaking he gave his notice.

With respect to the landlord's photographs the tenant says the photographs are old. The tenant says the garbage was piled up waiting to be taken to the dump and the boxes in the garage were removed. The tenant says the blinds could not be properly cleaned because there was a bus stop right outside the window and this caused them to get very dirty. The tenant provided a video of the bus stopping at the bus stop and the soot and fumes that the tenant says caused the oily substance on the blinds.

The tenant says the landlord's invoices are confusing in that he first put in an invoice for \$177.00 for cleaning and then states he hired a cleaning service. The tenant says the cleaning service cleaned items he had already cleaned and this is shown in the move out video he has supplied in evidence. The tenant says the kitchen, fridge, stove and every surface was cleaned. The tenant says the invoices shows the same things are being cleaned months later. The tenant says the while he vacated in December this cleaning was not done until February.

The tenant says the claim the landlord is making for \$288.96 is for plumbing work done in October 2010 and is very old.

With respect to the landscaping charges the tenant states that the video shows the back yard surrounded with 120' trees that drop needles into the eaves troughs. The tenant states that there is very little grass to mow although he did mow what grass there was and prune the shrubs during the tenancy. The tenant pointed out that there were "...stacks and stacks..." of wood on the south side of the house that was never used. The tenant maintains that the wood is now gone and that it is likely that this is what the landscapers hauled away.

The tenant says the video he has supplied shows 5 bags of green leaves by the front driveway which were all taken to the dump. The landlord says he's provided receipts for dump fees in this regard to prove he took the bags to the dump. The tenant says the

landlord photographs are all undated but they show big boxes in the drive-way and these were there as he was waiting to take them to the dump.

The landlord responded that he was offended by the tenant's remark respecting the landlord calling the Residential Tenancy Branch. The landlord says that no such remark was ever made.

Tenant's Claim:

With respect to the tenant's claim, the landlord wished it to be noted on the record that the evidence and particulars of the tenant's claim were delivered to him on March 26 while the deadline was March 22, 2013. The landlord says he suffered some prejudice in terms of getting his own evidence together to respond to the claim and he objected to the claim going forward.

The tenant says he supplied his forwarding address to the landlord on January 4, 2013 and the landlord did not return the deposit or make his claim seeking to retain the deposit until January 10, 2013. The tenant is therefore seeking two times the security deposit: $\$1250.00 \times 2 = \2500.00 .

The tenant is also claiming the loss of the use of the dishwasher for 7 months during which time he says he was forced to wash dishes by hand. The tenant claims \$3,150.00 for this loss at the rate of \$15.00 per day.

The tenant says the landlord was well aware he had a severe head injury but for months told the tenant that he would look after the dishwasher and it was never done. Eventually in August 2012 the tenant says the landlord told him to go ahead and purchase a new dishwasher and to deduct the cost of it and the delivery from his rent which he did.

The tenant seeks \$750.00 for the loss of the garbage disposal which he says broke and which the landlord refused to repair because it is "...a real pain..." The tenant says the dishwasher backs up into the garbage disposal which does not operate and this creates a huge mess.

The tenant claims \$2,000.00 for the loss of use of the dining room. The tenant says the video shows water pouring out of the pot lights into the room and that this water comes in from the upstairs toilet.

The tenant says he reported the issue of water leaking into the dining room to the landlord on October 12, 2012 and a plumber did come on October 15, 2012 but did not make repairs. The tenant says the toilet kept leaking and the landlord came by to look at it but nothing was repaired. Finally on November 14 the tenant says he filed his application which he later withdrew. The tenant says he could not use the toilet, the ceiling began caving in and the dining room is contaminated with toilet water. The tenant says this has created black mould which is a health hazard but he does not have a report on this hazard because this would cost \$10,000.00.

The tenant also seeks \$10,000.00 for aggravated damages and endangerment. The tenant submits that he has been unable to get his medical reports yet to prove how his health has been affected by this but it has been affected.

The tenant also seeks \$8,500.00 for the loss of use of the solarium. The tenant says this was a room that was not insulated and not heated. The tenant says there was a 1" gap through which water was leaking into the solarium.

In summary the tenant seeks the following sums:

2 x security deposit	\$2,500.00
Loss of dishwasher	3,150.00
Loss of Garbage disposal	750.00
Loss of use of dining room for 3 months	2,000.00
Loss of use of 2 washrooms for 3 months	1,500.00
Aggravated damages	10,000.00
Loss of use of the solarium	8,500.00
Total Claim	\$28,400.00

Landlord's Response:

The landlord says the dishwasher became a problem in early 2012 and he told the tenant to call ILAC Services on Lonsdale and order a new dishwasher. The landlord says he expected to receive an invoice from ILAC but none was received. The landlord says that he received a telephone call from a hospital in Ontario advising that the tenant had been injured and would not be able to pay rent. The landlord made no demands and the tenant returned home in April 2012. In May 2012 the landlord had Village Appliances look at the dishwasher and they determined that it could not likely be

repaired. The landlord says he felt it felt it pointless to try to try to repair it so he went to Ikea in May or June and purchased a good Swedish model with a 10 year warranty.

The landlord says he called the tenant for measurements so he could ensure the dishwasher would fit and there was some delay before the tenant supplied the measurements. Eventually the measurements were supplied and the purchase finalized. The landlord says he told the tenant he was going to China and that the tenant should phone Ikea to arrange a convenient shipping time. The landlord says the total cost was \$245.28 and \$66.08 for delivery. The landlord notes that this cost is about a tenth of what the tenant is claiming for the loss of use of the dishwasher. The landlord submits that had the tenant acted promptly he could have had a new dishwasher from ILAC in early 2012.

With respect to the garbage disposal, the landlord says he does not believe in garbage disposals because they cause more problems than they are worth. The landlord says a garbage disposal was not part of their agreement although he agrees one was in place a move-in and it stopped working. The landlord says he was not prepared to replace it and the tenant never advised him that the dishwasher did not work because of it.

With respect to water dripping the landlord says the water drip was minimal and did not even required repair to the drywall after the tenants vacated. The cause of the drip was not the toilet. The landlord says he was advised of the drip on October 12, 2012 and had a plumber there on October 15, 2012 who misdiagnosed the issue. On December 5, 2012 a new plumber came and made repairs. It was at this time it was determined that the source of the water was the small bedroom and the water was coming in from outside and it was not toilet water.

The landlord says that the dining room is just an area in the living room and not a separate room. The landlord says that he came by with his wife in November 2012 and noticed the tenants were using the dining area for their son to do his homework and they had their laptop and computer on the dining room table. The landlord says he noted no issues in the dining room during this visit.

The landlord says the solarium is a room build entirely of glass and cedar build on top of a former deck. The landlord says he and his wife occupied the house for 5 years and enjoyed this room a great deal. The landlord says it was always dry and he has never seen any sign of moisture. The landlord says the tenant is claiming that he couldn't use solarium as there was water leaking into it from a small gap. The landlord says the tenant claimed the moisture damaged his laptop. The landlord submitted that he did not recall if it was this application or another application but the tenants asked for a rent

reduction because the solarium was cold and he told them it was cold because it cannot be heated except with a space heater. However, because the tenant was in financial difficulties the landlord did reduce the rent by \$500.00 to \$2,000.00 per month effective January 2010 and in January 1, 2013 the landlord asked that the rent go back up to the usual \$2,500.00 and that's when the tenant filed his application complaining about things he never complained about previously and then he vacated on December 31, 2012 without proper notice. The landlord says he has now re-rented the premises for \$2,250.00.

The landlord wished it to be noted that since the filing of this application the tenant asked if he and his wife could move back to the house. The landlord says the tenant advised that he only wanted to end up out of the red and wouldn't have brought this claim if his security deposit had been returned.

The tenant acknowledges that he requested to move back in but says he only made this offer based on a reduced rate of rent.

Analysis

Landlord's claim

With respect to the landlord's claim for one month rent in lieu of notice, I find this to be appropriate. The evidence shows that the tenant provided his notice to end tenancy on December 3 with the intention of vacating on January 1. The tenant's rent was payable in advance on the first of each month. This means that the tenant would have to vacate on the last day of the month and, if he wished to vacate December 31, 2012 he would have had to provide his notice on or before November 30, 2012. However, while the landlord has claimed \$2,500.00 I find \$2,000.00 to be the appropriate sum because that is the rate of rent the tenant was paying at the time.

With respect to the Drain Express invoice I agree with the tenant. This invoice goes back to 2010 and I find that if the landlord wished to claim this sum he should have done so earlier. This claim is dismissed.

With respect to the landscaping charges, the parties evidence as to whether the tenant maintained the yard properly is conflicting. The landlord therefore needs to bring evidence to show that the tenant did not do that which was necessary. The evidence shows that this property was surrounded by 120' trees, a high laurel hedge and very little grass. I am not satisfied that the tenant did not maintain the yard as he should have and I find that it is reasonable and probable that the maintenance performed by

the landlord's landscaper may have been a larger yearly maintenance task that I do not believe the tenant should be held responsible for. This claim is dismissed.

With respect to painting, this tenancy lasted for 4 years and I find that the landlord has not proven to my satisfaction that the painting was required as a result of damages caused by the tenant or regular maintenance. I will therefore dismiss this claim.

With respect to cleaning, a tenant is required to clean a rental unit to a reasonable standard. That standard may not be the standard of the landlord or another person. I find that the video evidence supplied by the tenant shows that the rental unit was reasonably tidy at move-out with no apparent issues. I am also mindful that if the rental unit was sanded and painted as stated that this may have caused some dust, etc. and the rental unit may have required more cleaning prior to the move-in of the next tenants but this is not the responsibility of this tenant. However, although the tenant has claimed that the blinds were dirty because of a bus stop outside the window, it seems reasonable to me that knowing there is a bus stop just outside the window and knowing soot, etc. is coming in the window allowing debris to accumulate on the blinds that the tenant would have shut the window or cleaned the blinds more frequently throughout the tenancy to relieve the buildup of soot etc. I will therefore allow \$25.00 for the cleaning of the blinds.

In summary I award the landlord the following sums.

1 month rent for notice – claimed	\$2,000.00
Drain Express	0.00
Landscaping charges – no hedging yard was a complete mess	0.00
Jamie W painting	0.00
Jamie W cleaning	25.00
Total award to the landlord	\$2,025.00

The landlord holds a security deposit of \$1,250.00 and I will allow him to retain this sum in partial satisfaction of this award.

Tenant's Claim

With respect to the tenant's claims I would first like to address the tenant's allegation that he dropped his first application because the landlord told him that all the landlord had to do was call the Residential Tenancy Branch and have the tenant's application "disappear". The landlord has denied saying this and I find the tenant has failed to

bring other evidence, such as a witness, to corroborate this allegation. However, most telling to me is that if the tenant erroneously believed that the landlord had some power that could make an application “disappear” this did not prevent the tenant from bringing this second application and indeed this application has not disappeared.

With respect to the security deposit the tenant provided his forwarding address on January 4, 2013. The landlord applied to retain the deposit on January 10, 2013 well within the 15 day time frame stipulated in the Act. The tenant’s claim for double the deposit is therefore dismissed.

With respect to the dishwasher, I prefer the landlord’s evidence. While it may have been more appropriate for the landlord to take care of the purchasing and installation of the dishwasher himself he did give the tenant the ability to obtain a new dishwasher for himself as opposed to going so many months without one and thereby alleviating the need to wash dishes by hand. That the tenant chose not to avail himself of this opportunity is his choice and I do not find that the landlord should be held responsible for that choice. I also find the tenant’s claim of \$3,150.00 absurd in relation to the cost of replacing a dishwasher. This claim is therefore dismissed.

With respect to the garbage disposal, whether or not the landlord likes these mechanisms is not the issue. The issue is that the tenant had a garbage disposal to use at move-in and subsequently lost the use of it. I will allow the tenant the sum of \$100.00 in total for the loss of the use of the garbage disposal.

With respect to the use of the dining room, the video shows that some water was leaking into the dining area however I am not convinced that this was a long term problem, that it was toilet water or that as a result of this small leak that the tenants suffered a loss of the use of the entire room or that the value of such a loss could possibly be \$2,000.00. In fact the landlord says it was not toilet water and that it was repaired as soon as the cause could be determined. However, it is clear from the video that a small amount of water was leaking onto the floor and that this may have caused a slipping hazard and I will therefore allow \$100.00 for this claim.

Likewise with respect to the loss of use of the two bathrooms I find that the tenant has failed to show that he suffered any loss of use of any of the bathrooms in the rental unit for any period of time. This claim is therefore dismissed.

With respect to the claim for aggravated damages, such damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation

to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

I find that there has been insufficient evidence to show that the landlord was in any way indifferent or reckless with respect to this tenancy. This claim is therefore dismissed.

With respect to the loss of the use of the solarium, the evidence is clear; this is an “add on” space, located on top of a carport. It is a glass and cedar structure and there is no heat in the room and there has been no evidence to show that the room was ever heated except for the use of a space heater. As such moisture may build up but the landlord who used the room himself for 5 years has stated he did not encounter moisture. I accept his testimony especially in the face of a lack of evidence from the tenant to prove otherwise. This claim is therefore dismissed.

Most telling with respect to all of the tenant's claims is that even though he claims to have had so many problems with this tenancy and this landlord, he sought to return. This suggests to me that this rental unit and this tenancy were not as dreadful or ridden with loss and health concerns as the tenant has alleged.

In summary I make the following awards in favour of the tenant:

2 x security deposit	0.00
Loss of dishwasher	0.00
Loss of Garbage disposal	100.00
Loss of use of dining room for 3 months	100.00
Loss of use of 2 washrooms for 3 months	0.00
Aggravated damages	0.00
Loss of use of the solarium	0.00
Total award to the tenant	200.00

Given that both parties have paid fees to pursue their claims I will award recover of those fees to neither party.

The landlord will be provided with a monetary order calculated as follows:

Monetary award in favour of Landlord	\$2,025.00
Less Security Deposit (no interest accrued)	-1,250.00
Less Award to Tenant	-200.00
Total monetary award to landlord	\$575.00

Conclusion

The landlord is provided with an Order in the above terms. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: May 07, 2013

Residential Tenancy Branch

