



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Preliminary Issues

At the outset of this proceeding there was a lot of feedback and squealing on the telephone line. After canvassing each participant I determined that the squealing and feedback was coming from the Tenant's connection as she had called into the teleconference via her computer. She indicated she was using a computer program and was wearing a headset to eliminate background noise.

I informed the Tenant of the issue and she refused to call back into the proceeding on her cell phone and advised that she did not have a landline to use. I informed the Tenant that given the circumstances I would have to mute her line to avoid the feedback and to ensure that I and the other party could hear the conference, uninterrupted. The muting function allows the Tenant to hear what was being said in the hearing but blocks the noise created from her line. I managed the hearing process by un-muting the Tenant's line regularly to ensure she had opportunity to present her position, respond to the other party's testimony, and provide her closing remarks, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 13, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; unpaid or utilities; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence in support of their claim which included copies of: 39 photos; Canada Post receipts; a monetary order worksheet; invoices; and the Landlord's written statement. The Tenant did not submit documentary evidence.

The parties confirmed they entered into a written month to month tenancy that began on November 1, 2011. Rent was payable on the first of each month in the amount of \$1,250.00 and at the beginning of November 2011 the Tenant paid \$625.00 as the security deposit plus \$625.00 as the pet deposit. Initially the Tenant provided the Landlord notice to end her tenancy verbally and was advised it needed to be in writing. Sometime during the first week of February 2013, the Landlord received the written notice to end the tenancy dated January 31, 2013. Although the parties did a walkthrough at the beginning and end of the tenancy, no condition inspection report forms were completed.

The Landlord has owned this house for approximately seven years and her daughter lived in the unit for approximately five years prior to this Tenant. Her daughter cleans professional's homes for a living and left the unit in excellent condition for the Tenant.

The Landlord testified that on March 2, 2013 she attended the unit to conduct the move-out inspection and found the unit unclean and with some damage. The Tenant had told her that she had hired a cleaning person and that she would have her come back and discuss what additional cleaning was required. The Landlord took photos of the unit that day and submitted them into evidence as proof of the condition of the unit.

The Landlord submitted a receipt for \$431.20 which she paid a contractor, her son in law, to do the repair work. This invoice included charges to scrape and paint the bathroom ceiling to remove mold that resulted from the Tenant not turning on the fan or opening the window; painting the bathroom cabinets and counter to cover up what appeared to be hair dye stains; replace kitchen taps that were damaged; change the locks as the keys were not returned in a timely manner; and repair screens that were damaged by the Tenant's cat.

The Tenant initially denied damaging the bathroom cabinets and counter. Then she argued that they were just painted plywood and absorbed all items spilled before she could wipe them up. She claimed that she did not know what the black substance on the ceiling was and did not know how it got there. The Tenant stated she was of the opinion that the kitchen tap corrosion was normal wear and tear. She stated she should not

have to pay to change the locks because she mailed the keys back to the Landlord on March 3rd or 4th. She confirmed her cat damaged the molding but she does not know if her cat damaged the screens.

After completing the move out walkthrough the Landlord informed the Tenant that the unit was not cleaned properly. The Tenant agreed to have her cleaner come back to the unit and meet with the Landlord to make arrangements to re-clean it. However, at the time the cleaner arrived the Landlord said she was busy showing the unit to prospective tenants. The cleaner was in a hurry and kept saying she needed to go to another job. The cleaner left and did not discuss the required cleaning with the Landlord. The Landlord never heard from the cleaner again. The Landlord argued that she needed to get the unit clean as soon as possible so she could re-rent it to new tenants so she hired her daughter, a professional cleaner, to do the work.

The Tenant argued that she had paid to have the unit cleaned and even sent her cleaning person back to the unit to meet with the Landlord but the Landlord sent her away. Therefore, she should not have to pay to clean the unit again. The Tenant said she paid cash for the cleaning and did not obtain a receipt.

The Landlord submitted that the kitchen counter had burn marks which they were not aware of until after they cleaned it. She is seeking \$275.00 for the damage to the counter which is the price she paid to purchase the counter in 2005, as supported by the invoice in her evidence. This counter has not yet been repaired or replaced.

The Tenant denies that there was damage to the kitchen counter. She was not aware of any damage at the time of the move out inspection nor did the Landlord mention it.

The Landlord is seeking to be paid \$350.00 to purchase a new stove, as supported by the cash sale receipt provided in her evidence. The Landlord stated she had purchased the stove on September 7, 2012, as a backup, and kept it in storage at the rental unit. The Tenant broke the existing stove and moved the Landlord's spare stove into the house without the Landlord's permission.

The Tenant acknowledged responsibility for breaking the stove. She agreed to pay up to \$200.00 for a replacement stove and thought the Landlord's claim was too high.

The Landlord testified that the Tenant had threatened to move out back in 2012 because the utility costs were so high. In order to keep the Tenant in the unit the Landlord agreed to pay \$235.00 towards her utility bill. The Landlord made no attempt to collect payment from the Tenant for this bill during the remainder of the tenancy. She said that initially she was going to forget about that bill but because of the mess the Tenant left behind she wanted to be reimbursed for it.

The Tenant confirmed she had a discussion with the Landlord about the utilities being too high and that the Landlord offered to pay one bill for her back in March 2012. She

said they never discussed her having to pay the Landlord back and the subject was never brought up again until now.

In closing the Tenant argued that she kept the rental unit in clean, beautiful condition because the Landlord was trying to sell it.

The Landlord argued that she did not keep it in clean condition as the pictures prove otherwise.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security and pet deposits for damage to the property is extinguished.

In this case, the Landlord applied to keep the pet and security deposits in partial compensation of monetary claims for damage and pet damage to the property as well as for unpaid rent or utilities. As the Landlord's claim was not only for damage to the property, I find that the Landlord complied with the requirement under section 38 to make an application to keep the deposits within 15 days of receiving the Tenant's forwarding address. Therefore, the Landlord is not subject to the provision that would require doubling of the deposits.

Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and the tenant must return the keys to the rental unit.

In this case, in the absence of a condition inspection report form, I accept the Landlord's evidence as proof that the rental unit was left clean and undamaged at the beginning of the tenancy. I further accept the Landlord's photographic evidence as sufficient proof that the rental unit was left damaged and unclean at the end of the tenancy.

I do not accept the Tenant's arguments that the damage was either normal wear and tear or unknown to her. After consideration of all the evidence before me, I find that as of March 1, 2013, the Tenant left the rental unit unclean and with some damage, in breach of sections 32 and 37 of the Act. I further find the Tenant breached section 37 of the Act by failing to return the rental unit keys on March 1, 2013. Mailing the keys two or three days after the end of the tenancy does not meet the requirements of the Act. Accordingly, I find the Landlord suffered a loss as the result of these breaches, and I award her the following compensation.

I find the Landlord has provided sufficient evidence to support her claims that she was required to pay a maintenance person and cleaning lady to repair and clean the unit. Accordingly, I award the Landlord \$431.20 for repairs plus \$325.00 for cleaning for a total amount of **\$756.20**.

The Tenant has accepted responsibility for the cost of a replacement stove; however she suggested the cost should be no more than \$200.00. I accept the Landlord did what was reasonable in purchasing a second hand stove when she saw it was a good deal. Therefore, I award her recovery of the actual amount paid of **\$350.00**.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Policy Guideline # 40 stipulates that the normal useful life of a countertop is twenty five years. In this case the kitchen counter was only eight years old and has suffered damage by the Tenant. This counter has not been repaired or replaced, therefore the actual cost of the repairs is not known at this time.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Therefore, I award the Landlord nominal damages for the kitchen countertop in the amount of **\$25.00**.

The Landlord has reneged on a verbal agreement to pay a utility bill in order to have the Tenant stay in the rental unit. The evidence supports that the parties did not discuss repayment of the utility bill and the Landlord made no effort to collect payment during the course of this tenancy. Therefore, I find this was not a loss; rather, it was a mutual agreement which the Landlord unilaterally changed. Accordingly, I dismiss the request for payment for utilities, without leave to reapply.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's pet and security deposit plus interest as follows:

Cleaning & repairs	\$ 756.20
Stove replacement	350.00
Kitchen counter	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,181.20
LESS: Pet Deposit \$625.00 + Interest 0.00	-625.00
LESS: Security Deposit \$625.00 + Interest 0.00	<u>-625.00</u>
Offset amount due to the Tenant	<u>\$ - 68.80</u>

The Landlord is hereby ordered to return the balance of the deposits in the amount of **\$68.80** to the Tenant forthwith.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$68.80**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be 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: June 07, 2013

Residential Tenancy Branch

