



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to section 67 for agent fees and damages incurred due to a breach of a fixed term lease contrary to section 45;
- b) A monetary order for damages caused by the tenant;
- c) To retain the security deposit to offset the amount owing; and
- d) To recover the filing fee for this application.

Service: I find that the tenants were personally served with the Application for Dispute Resolution. The tenants agreed they received it.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that a fixed term lease was breached and they are entitled to recover compensation for losses, damages and other fees resulting from the breach?

Has the landlord proved on the balance of probabilities that there was damage caused by these tenants, that it was beyond reasonable wear and tear and the cost to repair the damage? Is the landlord also entitled to recover the filing fee for this application?

Background and Evidence:

Both parties, an agent, witnesses and a lawyer for the tenant attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy began on February 20, 2010 with a fixed term lease which after extensions was to end on February 28, 2013. Rent was currently \$1600 a month and a security deposit of \$750 and a pet damage deposit of \$750 were paid on February 20, 2010. The tenant gave notice that they wanted to end the tenancy but it is disputed when this notice was given. The tenant provided emails labelled 1st notice of moving out given. The email states they have looked at a house with a move in date of

February 1 and asked if potential “new” landlords had contacted this landlord for a reference. The email labelled 2nd Notice is dated December 30, 2012 and is a response to the landlord’s query to confirm with him whether they are interested in staying; the tenants respond they will be moved out by January 26, 2013. In his email, the landlord notes his agent has lined up possible tenants to rent the unit (and the new tenants did move in Feb. 1, 2013).

The lawyer for the tenants invited me to consider an application by them which had been submitted too late to be joined with the landlord’s. However, the tenant is claiming a considerable rebate/refund of rent due to interference with their peaceful enjoyment and loss of use of part of their premises. As the landlord’s application had many issues to be considered, I declined to hear the tenants’ application as part of this hearing. The hearing in total took 2 and a half hours.

The landlord claims as follows:

- I. \$5,000 for the flood insurance deductible based on his claim that these tenants caused a flood in August 2012. Although his strata insurance covered the cost to repair the damage, there was a \$5000 deductible which he has paid (proof of payment provided).
- II. \$394.24 for plumber’s cost to clear a second blockage in November 2012.
- III. \$174.91 advertisement in newspaper to run January 10 to February 6, 2013 to avoid loss of revenue.
- IV. \$200 bill from agent to screen tenants
- V. \$600 bill from same agent to expedite repairs, coordinate crews and pay repair bills. No hourly amounts noted; she said it was a lump sum, not an hourly rate.
- VI. \$100 move out fee as set out in bylaws
- VII. \$560 to refinish hardwood floor due to deep scratches, allegedly from dogs, as reported by the refinisher.
- VIII. \$357 for Fibre Medics cleaning cost; noted \$268.75 of this is to clean and reseal grout and \$50 for carpet cleaning. In a report dated Jan. 28, 2013, an agent notes the tiles were never resealed.
- IX. \$653.20 to replace badly stained carpet in second bedroom. The tenant notes that workers had used this room to store items while they were doing restoration work and had spilled some paint. The landlord said the problem was the leaking of water through an area rug from water left for the dogs; the water leaked and stained the carpet below so it could not be cleaned.
- X. \$300 for one cleaner to clean the suite (\$25 hour for 12 hours); in the report on January 28th, the agent told the cleaner to do deep cleaning so appliances were moved. She notes it took 8 hours to clean the kitchen and bathrooms, windows and tile floor. She also took an hour and painted the baseboards and cleaned bathrooms; the

tenant states she cleaned the bathrooms and the landlord's agent in a report notes the tenant cleaned the bathrooms. At move-in, the tenants were allowed \$100 for cleaning the unit and this was credited to the move-in fee.

XI. \$225 (9 hours at \$25 hour) for a second cleaner's fee who notes she cleaned the kitchen appliances, cupboards, walls and mirrors and windows and scrubbed marks off surfaces. She also patched and painted nail holes and dents.

XII. \$200 for repair and replacement of broken items by a building manager (\$40 hr for 5 hours). He replaced screen doors, broken parts on appliances and moved patio furniture into storage in the garage. The tenants say they did not damage the screen doors, the construction people did it and that there was no need to move the furniture as they were coming back by the 31st but an email message from the agent of the landlord notes on January 29, 2013 that the male tenant had torn his hamstring and the truck was not available.

XIII. \$98.93 to replace a broken crisper drawer in the refrigerator; the tenant does not dispute this.

XIV. \$256.64 to replace a dishwasher panel. The tenant said one plastic button was peeling and it was reasonable wear and tear

XV. \$358.40 to replace a damaged top on the ensuite vanity; the tenant said his contact lenses solution had bleached one part of the counter.

XVI. \$200 to re. and re. the sink when the ensuite vanity is replaced.

The hearing took 90 minutes, then was adjourned and reconvened at 11 a.m. for a further hour with all parties present.

In evidence among other documents is a copy of the lease with extensions, invoices with descriptions from plumbers regarding the floods, invoices for costs to repair damage and for other services, condition inspection reports, the move-in signed and the move-out not signed by the tenants, various emails between the parties and their statements, email reports to the landlord updating them on the repairs and other issues and photographs. The tenant also provided a report from a plumber and evidence rebutting the landlord's evidence.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

As discussed with the parties in the hearing, the onus or burden of proof in any hearing is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not

met the burden of proof, on a balance of probabilities, and the claim fails. As the agent had not completed the written condition inspection report with the tenant at move-out, I place little weight on this evidence and found, in any case, that it had little or no bearing on the contentious issues.

Causation of the two floods in the unit is a very contentious issue in this dispute with the landlord claiming they were caused by the tenants and the tenants alleging alternate theories such as a toilet flange or drywall bits being flushed down the toilet or that the plumbing in the strata is somehow defective which causes water to come up through their shower drain. The onus is on the landlord to prove the cause and I find he has satisfied this onus on the balance of probabilities. I find his evidence more credible than the tenants' as it is well supported by the plumbers and other reports. The manager of the building notes in his report that he first heard of the flood from the unit below, he called the tenants who allegedly told him that they had a water flood from the shower and it must have come from the units above; he called the units above and they were all away in another city. He states he never heard of any other plumbing problems in the 3 years he has lived in the building; although the lawyer for the tenants contended that there may have been floods that the manager had not heard about, I find it unlikely that he would not have heard of plumbing problems if they existed.

Furthermore, I find the plumbers reports persuasive. The first one in August after the first large flood notes he used an auger and brought out a big `clump` of hair and after it was removed, the shower and plumbing were fine. Another plumber in December got Roto Rooter who they thought would have expertise in drain problems; they found the shower drain again blocked with an "excessive accumulation of hair" but a clean main line. After clearing the hair from the shower drain, they checked other appliances, the sinks and ran the washing machine and found there was no back up to the shower and all was draining well. In the hearing, I also note the female tenant first recounted the incident of the second flood happening when she was taking a shower and she noticed her shampoo bottle floating; later she changed her evidence to say it was the washing machine backing up into the shower. I find the report the tenants obtained from a plumber is speculation only as he never attended the premises or inspected the problems so I place little weight on this report but place much greater weight on the plumbers who worked on the problems, cleared the drain and did tests to verify it was working well. Although the tenants supplied emails noting photos informing the owner that the shower base filled up as they were doing laundry , I find the report of Roto Rooter more persuasive as they put cameras into the lines at that time and ran water from various areas before reporting that the build up of hair in the shower drain was the problem. The Insurer for the Strata Owners sent a letter dated November 9, 2012 to the tenants' insurers noting the results of their investigation was that (the tenants) allowed

hair to go down the drain...including dog hair, thus clogging this drain and causing the backup. While it may be a common practice for insurers to deny liability, as the lawyer for the tenants stated, I find this letter supports the finding of the plumbers who were on the site at the time of the floods. Although this probably places a heavy burden on the tenants and their insurer has denied them coverage for this, I find the evidence supports the finding that these floods were caused by the tenants' activities and therefore I find them responsible to compensate the landlord for the \$5,000 deductible plus the \$394.24 to clear the drain the second time in December. However, I find that part of the insurance cost was a new carpet which cost \$1725.00. Since the former carpet had used up 37.5% of its useful life, I find that \$646.87 should be deducted from the cost of \$5,000 as the owner has been enriched by 45 months of additional life in the new carpet.

I find the weight of the evidence is that the tenants had a fixed term lease and vacated before the end of the fixed term. Although the tenants allege they gave notice in October, I find the wording of the email is ambiguous, it is not written notice but I find there was notice provided in December by email. In any case, I find a notice to end tenancy is not effective until the end of the fixed term according to section 45 of the Act and the tenant remains responsible for the rent. However, the landlord has a duty to mitigate the losses by diligently trying to re-rent as soon as possible after he/she receives notice. I find in this case that the landlords fulfilled their duty by having their rental agent advertise and obtain a tenant so there were no rental losses. I find the landlord entitled to recover the cost of the advertisement \$174.91 as this contributed to the quick re-rental. However, I find the tenancy was at an end on February 28, 2013 and the landlord would have incurred the costs (although a few weeks later) of agent's fees to screen and meet new tenants. Therefore I find the landlord not entitled to recover the \$200 agent's fee as it is unreasonable to assign these costs to the tenants.

As part of their lease, the tenants signed a Form K which requires them to obey the strata rules. The strata bylaws impose a \$100 move-out fee. I find this is not an extra fee imposed by the landlord and the landlord receives no benefit from it. I find the tenants were aware of this at move-in for they applied a credit of \$100 for cleaning the unit themselves to the move-in fee. I find the landlord entitled to recover the \$100 move-out fee.

The landlord's information at tab A states they purchased the condo on May 1, 2009 (although they mentioned a Fall date in the hearing) and I prefer to use this date for the age of the condo and appliances as it is supported by the documentary evidence. Therefore, I find the condo was 3 years and 9 months old (45 months) at move-out and the equipment and fixtures were also 45 months old. I find the weight of the evidence is

that the landlord had to replace carpet in one bedroom due to stain leaking from a rug which had had water utensils on it for the pets. The Residential Tenancy Policy Guidelines provide an estimated useful life of equipment in rental premises; this is designed to account for reasonable wear and tear. Carpets are assigned a useful life of 10 years (120 months). As this carpet was 45 months old, I find the landlord entitled to recover \$408.25 for the 62.5% of its useful life remaining.

I find the landlord's evidence credible and the weight of the evidence is that the tenants' dogs did put marks and scratches on the hardwood floor. The landlord's evidence is well supported by notes from the refinishing company in respect to the gouges and scratches and also by emails between the parties. Hardwood floors are assigned a useful life of 20 years in the Guidelines; I find the landlord entitled to recover \$455 for refinishing the floor as it had approximately 81% of useful life remaining.

I find certain other cleaning was required but the onus is on the landlord to prove on a balance of probabilities that the tenants are responsible for the cleaning required. I find the Fibre Medics bill is \$268.75 for cleaning and sealing the tiles and \$50 for cleaning carpet. However, I find the tiles were never resealed in the first place according to the agent's report on January 28, 2013 and I find it likely that this intensified the dirt accumulation as it was the grout that was very dirty; therefore I find the tenants not responsible for costs of cleaning and resealing tiles. After almost 4 years of tenancy, I find the tenants are responsible for costs of cleaning carpet, especially as they had pets; they provided no invoices to indicate they had done this; therefore I find them responsible for the cost of \$56 for cleaning the carpet (\$50 plus HST).

In respect to the general cleaning costs claimed by the landlord, I find he only allowed the tenants \$100 to clean the unit themselves when they moved in yet the cleaners were instructed to do "deep cleaning" and to move appliances, paint baseboards etc. One cleaner notes it took 8 hours to clean the kitchen and bathrooms, windows and tile floor and the second cleaner notes she cleaned the kitchen appliances, cupboards, walls and mirrors and windows and scrubbed marks off surfaces and cleaned bathrooms. I find both cleaners are claiming time for the same items and I also find the tenant's evidence credible that she cleaned the bathrooms and did some kitchen cleaning as it is supported by the landlord's agent noting the tenant cleaned the bathrooms. I also find the tenants' evidence credible that the ongoing construction caused a lot of dust and dirt; however, I note the construction was largely because the tenants caused the flood. The cleaners also note they took an hour and painted the baseboards. Considering facts such as that the unit needed cleaning at move-in and the cleaners appear to have duplicated work to reach a standard ("deep clean") beyond that at move-in, and the cleaners were painting baseboards which may not have been

damaged by the tenants, I find the landlord entitled to recover costs of 10 hours of the 21 hours claimed or \$250 (10x\$ 25 hour) for the general cleaning of the unit.

In respect to the invoice from the building manager, I find it is well supported by photographs of missing or damaged screens and damaged appliances. I find the landlords evidence more credible that the damage to the screens and appliances was caused by the tenants as the tenants admitted they had damaged the refrigerator drawer and caused wear and tear on the dishwasher panel and I find it unlikely that workmen would break or damage doors and screens while repairing the unit. Although the tenant's lawyer submitted that the tenants could have moved the patio furniture by Jan. 31, I find the building manager's evidence more credible that he had to move the patio furniture as it is well supported by the email from the male tenant dated January 29, 2013 noting his injury and failure to obtain a truck. I find the weight of the evidence supports the landlord's claim for \$200 compensation to the building manager for the minor repairs and moving the patio furniture.

The tenants agreed that they caused a crack in one crisper drawer of the refrigerator and there was some peeling on the dishwasher panel. Refrigerators and dishwashers are assigned a useful life of 15 yrs. (180 months) and 10 years (120 months) respectively in the Guidelines to account for wear and tear so I find the landlord entitled to recover \$74.19 for the refrigerator repair and \$160 for the dishwasher. The tenant agreed that he had damaged the vanity top. The Guidelines assign a useful life of 25 years (300 months) to bathroom counters so I find the landlord entitled to recover \$474.64 for the 85% of useful life remaining. The re. and re. sink cost to the plumber is included in this calculation.

I find the invoice for \$600 from the landlord's agent to do the condition inspection report at move-out, report and arrange for work crews and furniture removal from the patio is somewhat excessive as the building manager handled the furniture removal and handled the coordination of some of the workers. When invited to give an hourly rate in the hearing, the agent said it was just a "lump sum". Therefore, I do not find her invoice well supported. In addition, she did not do a written condition inspection report with the tenant but only a walk through and completed the report herself which has resulted in that report being given little weight as evidence in this hearing. In the absence of a detailed accounting for her time or an hourly rate, I find the landlord entitled to compensation for her time calculated at 10 hours at \$30 an hour; I find her work was mainly co-ordinating and reporting and much of it would have been undertaken anyway as part of a landlord's business expense in installing a new tenant when the lease ended at the end of February.

Conclusion:

I find that the landlord is entitled to a monetary order as calculated below. As the evidence is that the pets did some damage, I find the landlord entitled to retain both the security and pet damage deposits to offset the amount owing and to recover the filing fee for this application.

Insurance Deductible	5000.00
Less deduction for age of carpet	-646.87
Second Plumbing Blockage	394.24
Advertisement Cost	174.91
Move out fee	100.00
Carpet Replacement in bedroom allowance	408.25
Refinish hardwood floor allowance	455.00
Fibre Medics carpet cleaning only	56.00
Allowance for Cleaners (10 hrs x \$25)	250.00
Building Manager invoice	200.00
Refrigerator Drawer allowance	74.19
Dishwasher panel allowance	160.00
Vanity top and re. & re. sink	474.64
Agent allowance re. co-ordinate work	300.00
Filing fee	100.00
Less security & pet damage deposits (no interest 2009-2013)	-1450.00
Total Monetary Order to Landlord	6050.36

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 20, 2013

Residential Tenancy Branch