



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, MNDC, FF

For the landlord: MNSD, MNR, MNDC, FF

Introduction

This hearing, which was adjourned due to the length of the oral submissions of the parties, and reconvened in order to conclude the oral submissions, dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlord applied for authority to retain the tenant’s security deposit and pet damage deposit, for a monetary order for unpaid rent and a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

At both hearings, all parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-The tenant has now vacated the rental unit and therefore it was no longer necessary to consider her request to cancel the landlord's notice to end the tenancy.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this 2 year, fixed term tenancy began on September 15, 2012, monthly rent was \$3200, and the tenants paid a security deposit and a pet damage deposit of \$1600 each at the beginning of the tenancy.

The tenant submitted that she vacated the rental unit on April 30, 2013, and the landlord said the tenants moved out on May 1, 2013.

Tenant's application-

The tenant's monetary claim listed in their application is as follows:

Security deposit	\$1600
Pet damage deposit	\$1600
Small repairs for broken 2 year lease	\$2500
Forced move-out due to living conditions	\$4500
3 months unliveable property	\$9600
Repair invoice	\$1148.05
Filing fee	\$100
TOTAL:	\$21,048.05

The tenant's agent in the hearing said that the tenant's revised monetary claim is \$9600.

The tenant's relevant documentary evidence included email communication between the tenant and the landlord, a property management company, and photographs.

In support of their application, the tenant submitted that when they moved into the rental unit on September 15, 2012, there were some issues with the condition, which was noted on the condition inspection report, including that the water to the dishwasher and ice maker were not connected. According to the tenant, the problem revealed itself to be a plumbing problem instead. The tenant submitted that they also discovered that the garburator was not functional and caused heavy leaking, which rendered the sink unusable.

The tenant submitted that they contacted the landlord about the issues, with no response. The tenant accordingly did not pay rent in October 2012.

The tenant submitted that they delayed payments the remainder of the tenancy due to the lack of response from the landlord, who had repeatedly assured them the owner would be seeing to the repairs.

According to the tenants, in December a pipe burst in the downstairs bathroom, which caused the tenants to act immediately to repair the pipe, the garburator and refrigerator. The tenants also submitted that the rental unit was unlivable due to the condition caused by the leaking pipe, the lack of a dishwasher and garburator, and lack of any response to the tenant's request for repairs.

The tenant said that they made one final attempt in March to have the landlord address the repairs, and when no response was forthcoming, the tenants withheld rent in April, leading to the landlord issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant said they complied with this Notice and vacated the rental unit.

In response, the landlord submitted that she did not receive notice of any issues in December, rather the tenants notified her at the end of January about the leak. According to the landlord, the leak had been fixed by the tenants when she attended the rental unit. The landlord submitted that the tenants have been reimbursed the amount of their invoice.

According to the landlord, there were only two issues with the rental unit, those being the dishwasher and the garburator; the landlord stated that the rental unit was not unlivable, although it did take longer to make the repairs than it would have normally. The landlord submitted that a new dishwasher was purchased by the landlord and delivered to the rental unit.

Landlord's application-

The landlord's monetary claim is as follows:

April rent	\$3200
May rent	\$3200
Utility bill	\$533.41
Painting	\$4923.45
Estimated utility bill	\$178
Filing fee	\$100
Cleaning	\$250
TOTAL	\$12,384.86

The landlord's relevant documentary evidence included a painting proposal, a water bill, banking information, a dishwasher receipt, a condition inspection report, a receipt for repairs made by the tenant to the garburator and water line dated January 27, 2013, an inspection of the premises report dated April 18, 2013, noting that tiles around the sink needed to be repaired and a burner was not working, an inspection of the premises report date January 30, 2013, and the tenancy agreement.

The tenant agreed to the utility bill, and half of the estimated utility bill, as they did not live there the entire time.

The landlord submitted that they are owed for April and May's rent as the tenants did not pay either month, abandoning the rental unit in late April, in breach of the fixed term agreement.

The landlord submitted that the landlord is owed for painting the rental unit as the tenant agreed to paint the rental unit, as per the tenancy agreement, for a reduced monthly rent from \$3900 to \$3200.

The landlord submitted that they were required to clean the rental unit at a cost of \$250; however no receipt or other evidence was provided showing the rental unit was cleaned.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Tenant's application-The tenant has claimed that the rental unit was unliveable for at least the last three months, due to issues with the dishwasher and the condition of the downstairs bathroom, for which they should be compensated with a return of all rent paid for those three months.

Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit.

It is important to note that major repair issues, extermination problems and other issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

In the case before me, I am satisfied that the landlord was aware of a problem with the dishwasher at least by February 26, 2013, as demonstrated by the tenant's evidence. The tenant did not provide proof that the landlord was notified earlier than this date. Although the tenants referred to the ongoing problems, these problems were not specifically mentioned, with the exception of the dishwasher and the loose bathroom tiles.

I am also satisfied that the landlord failed to act upon the tenant's request in a timely manner; however, I find the tenants submitted insufficient evidence that the issue with the dishwasher and the loose bathroom tiles rendered the rental unit unliveable.

Rather than withhold rent or vacate the rental unit, the tenant's recourse would be to file for dispute resolution seeking compensation as these issues may arise and not dealt with by the landlord in a timely manner.

I find that the landlord's response of having a dishwasher delivered to the rental unit in April, without installation, to be an insufficient response to the tenant's repair requests and that the tenants are entitled to compensation for a devaluation of the tenancy.

I find a reasonable amount considering the landlord's lack of response to be \$350 per month, for March and April 2013, for the lack of a dishwasher and loose bathroom tiles.

I therefore find the tenants are entitled to a monetary award for a devaluation of the tenancy in the amount of \$700.

Landlord's application-

April rent- Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined by the Act. As the tenant has not submitted evidence under Sec. 33 of the Act that any alleged repairs were necessary for the health and safety reasons or that there were any emergency repairs which were urgent, they have not met this criteria as I find a lack of a dishwasher and loose tiles do not rise to the level of emergency repairs.

I find that the tenant owed rent for the month of April 2013 and did not pay. I therefore find the landlord is entitled to a monetary award of \$3200.

May rent- It is clear the tenancy agreement was for a fixed term set to expire on September 30, 2014 and that the tenant breached this term of the agreement. I find it reasonable that the landlord would be unable to find a new tenant for May given that the rental unit was abandoned at the end of April. I therefore find that under the tenancy agreement the tenants were responsible for rent for May and I find the landlord is entitled to a monetary award of \$3200.

Utility bill-The tenant agreed to pay the utility bill and I therefore award the landlord compensation for the amount listed on the bill, \$533.41.

Estimated utility bill-The landlord failed to submit proof of the actual costs of utilities to the end of the tenancy; however as the tenant agreed to pay half, I find it reasonable that the landlord is entitled to a monetary award of \$89.

Painting-I dismiss the landlord's claim for painting as the landlord failed to submit proof of a loss, as an estimate is not a cost; additionally, I do not find the landlord is entitled to a monetary award as the term in the tenancy agreement to which the landlord has referred is enforceable under the provisions of the Residential Tenancy Act.

Cleaning-I dismiss the landlord's claim as the landlord has failed to submit proof of a cost or that the tenants were responsible for cleaning.

As to the issue of the filing fee, as I have found merit with both parties' applications, I decline to award either party recovery of the filing fee.

Due to the above, I find the landlord has proven a monetary claim in the amount of \$7022.41, comprised of unpaid rent for April of \$3200, loss of revenue for May for \$3200, an unpaid utility bill of \$533.41, and an estimated unpaid utility bill for \$89.

I must now consider the issue of the security deposit and the pet damage deposit held by the landlord.

Under section 38 (1)(d), I find the landlord properly filed an application claiming against the tenants' security deposit for unpaid rent and damages; however, pursuant to section 38 (7) of the Act, a pet damage deposit may be used only for claims of damage caused by a pet.

As the landlord has not claimed for damage caused by a pet, I therefore find that the landlord possessed no such right to make a claim against the pet damage deposit and was required to return the tenants' pet damage deposit within 15 days of the later of the date the tenancy ended or the date the landlord received the tenants' written forwarding address. In this case the later of those two dates was May 3, 2013, when the landlord filed an application for dispute resolution using the tenants' written forwarding address, and the landlord has not returned the tenants' pet damage deposit.

Therefore pursuant to section 38(6)(b), the landlord must pay the tenants double the amount of the pet damage deposit of \$1600, or \$3200.

In explanation, I find the tenants are entitled to total monetary compensation of \$3900, comprised of their monetary award for a devaluation of the tenancy of \$700 and their pet damage deposit of \$1600, doubled to \$3200.

I direct the landlord to retain the tenants' security deposit of \$1600 in partial satisfaction of their monetary award of \$7022.41. I also direct the landlord to retain the \$3200 from the tenants' pet damage deposit, which was been doubled, in further partial satisfaction of their monetary award.

I therefore find the landlord is entitled to a monetary order pursuant to section 67 of the Act, in the amount of \$2222.41, which is their monetary award granted to them in the amount of \$7022.41, less the tenant's security deposit of \$1600, and less the tenant's pet damage deposit, doubled to \$3200.

Conclusion

The tenant's application for dispute resolution has been granted in part and dismissed in part.

The landlord's application for dispute resolution has been granted in part and dismissed in part.

The landlord is granted a monetary order in the amount of \$2222.41 for the reasons stated above. This final, legally binding monetary order is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: July 11, 2013

Residential Tenancy Branch