



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 600534 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of the security deposit, and to recover the filing fee.

The tenant and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the evidence from the landlord and that she had the opportunity to review that evidence prior to the hearing. The agent stated that she received all evidence from the tenant except for a receipt for moving expenses, however was willing to proceed with the hearing as the identical amount was indicated on the monetary worksheet submitted with the tenant’s application for dispute resolution which the agent did have before her. The tenant was provided the opportunity to read the moving expense receipt into evidence orally during the hearing as an alternative.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord requested to withdraw his claims for unpaid utilities. As a result, the landlord is at liberty to reapply for unpaid utilities, however, withdrawing that portion of his claim does not extend any applicable time limits under the *Act*.

The landlord also clarified that he has claimed for the labour to re-paint the rental unit but not the cost of paint. By mutual agreement, the cost of the labour to re-paint the rental unit was agreed between the parties to be \$230.00 which will be described further

below in the list of items agreed upon by mutual agreement during the hearing. As the landlord has not applied for the cost of paint, the cost of paint is not before me for consideration.

During the hearing, the landlord claimed to have amended his monetary claim, however, his monetary claim was not amended in accordance with the rules of procedure. As a result, the landlord was advised that it would be prejudicial to the tenant to increase his monetary claim during the hearing. Therefore, the landlord was permitted to either withdraw his claim and file his amended application properly, or proceed with the hearing as original claimed. The landlord decided to proceed with his original monetary claim in the amount of \$1,232.15, however, reduced the \$499.00 carpet replacement portion of his claim to \$469.24 at the outset of the hearing, for a reduction of \$29.76 which reduces the landlord's monetary claim to \$1,202.39.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on April 15, 2012 and expired on April 30, 2013 through the mutual written agreement of the parties. Monthly rent in the amount of \$665.00 was due on the first day of each month. The tenants paid a security deposit of \$332.50 and a pet damage deposit of \$332.50 at the start of the tenancy which the landlord continues to hold. The tenants stated they vacated the rental unit on April 15, 2013.

The landlord has applied for a monetary order in the amount of \$1,202.39 comprised of the following:

1. Outstanding rent (related to unpaid internet bill)	\$33.54
2. Outstanding rent for April 2013	\$65.00
3. Late payment fee for April 2013	\$25.00
4. Replace water filters and furnace filters, plus labour	\$37.37
5. Replace non-working light bulbs, plus labour	\$15.63
6. Disposal of debris including dumping fees	\$69.05
7. Replace studs missing from greenhouse area, plus labour	\$31.00
8. Re-paint exterior metal post	\$17.00

9. Replace damaged carpet in den	\$469.24
10. Labour to re-paint interior walls	\$460.00
11. <i>Less credit of two months of pre-paid garbage bin</i>	<i>(-\$20.44)</i>
TOTAL	\$1,202.39

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement item number	Agreed upon compensation to landlord by tenants
Item 1 – Internet bill (landlord considered unpaid rent)	\$33.54
Item 3 – Late payment fee for April 2013	\$25.00
Item 5 – Replace non-working light bulbs, plus labour	\$7.00
Item 6 – Disposal of debris including dumping fees	\$69.05
Item 8 - Re-paint exterior metal post	\$17.00
Item 9 – Replacement of carpet in den after depreciation	\$46.96
Item 10 - Labour to re-paint interior walls (does not include cost of paint)	\$230.00
TOTAL	\$428.55

Regarding item 2, the landlord stated that the tenants continue to owe \$65.00 for an unpaid portion of April 2013 rent. The tenants referred to the April 7, 2013 agreement signed by the parties which supports that the landlord would accept a total of \$600.00 for April 2013 rent if the tenants vacated the rental unit by April 15, 2013. The tenants testified that they did vacate the rental unit by April 15, 2013 and that based on the April 7, 2013 agreement, they should be permitted to rely on the written agreement with the landlord as a result. The landlord did not dispute that the tenants vacated the rental unit by April 15, 2013.

Regarding item 4, the landlord is claiming \$37.37 for the replacement of the water filter and furnace filters including labour pursuant to section 7 of the tenancy agreement addendum. The landlord testified that he did not submit evidence to support the value of this portion of this claim of \$37.37.

Regarding item 7, the landlord is claiming \$31.00 to replace the studs missing from the rental unit greenhouse area which includes the landlord's labour to replace the studs. The tenants denied that they removed any studs from the greenhouse area. The landlord confirmed that he did not have any before photos showing that the studs were there at the start of the tenancy. The landlord did submit photos showing studs missing at the end of the tenancy, however, the tenants deny that the studs were there at the start of the tenancy. The move-in condition inspection report submitted in evidence did not mention a greenhouse or the condition of a greenhouse at the start of the tenancy.

The landlord submitted photos, a summary of his claim, registered mail receipts, the tenancy agreement, the tenancy agreement addendum, invoices, receipts, rent receipts, condition inspection report, correspondence and other documentation in evidence. All of the relevant evidence has been reviewed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Item 2 – The landlord has claimed \$65.00 for an unpaid portion of April 2013 rent. The tenants referred to the April 7, 2013 agreement signed by the parties which supports that the landlord would accept a total of \$600.00 for April 2013 rent if the tenants vacated the rental unit by April 15, 2013. The tenants testified that they did vacate the rental unit by April 15, 2013 and that based on the April 7, 2013 agreement, they should be permitted to rely on the written agreement with the landlord as a result. Based on the tenants vacating the rental unit by April 15, 2013, which was not disputed, **I find** the landlord made an agreement in writing with the tenants to reduce April 2013 rent to \$600.00 which the parties agrees was paid, albeit late. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply. The tenants had the right to rely on the written agreement they had with the landlord which was supported by the documentary evidence submitted in the landlord's evidence.

Item 4 – The landlord is claiming \$37.37 for item 4 which relates to the replacement of the water filter and furnace filters including labour pursuant to section 7 of the tenancy

agreement addendum. As the landlord did not submit evidence to support the value of this portion of this claim, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 7 – The landlord is claiming \$31.00 to replace the studs missing from the rental unit greenhouse area which includes the landlord's labour to replace the studs. The tenants denied that they removed any studs from the greenhouse area. The landlord confirmed that he did not have any before photos showing that the studs were there at the start of the tenancy. The landlord did submit photos showing studs missing at the end of the tenancy, however, the tenants deny that the studs were there at the start of the tenancy. The move-in condition inspection report submitted in evidence did not mention a greenhouse or the condition of a greenhouse at the start of the tenancy. Therefore, based on the above, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Monetary order – Based on the above, **I find** the landlord has established a total monetary claim of **\$478.55** related to items 1, 3, 5, 6, 8, 9 and 10 which were resolved by way of a settlement agreement between the parties during the hearing, plus the filing fee of \$50.00. I have dismissed items 2, 4 and 7. As the landlord continues to hold \$665.00 in deposits, comprised of a \$332.50 security deposit and a \$332.50 pet damage deposit, **I authorize** the landlord to retain **\$478.55** from the tenants' security deposit and pet damage deposit and return the balance of the deposits in the amount of **\$186.45** within **15 days** of receiving this decision. Should the landlord fail to return \$186.45 as ordered, **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$186.45 which must be served on the landlord and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Conclusion

I dismiss items 2, 4 and 7 of the landlord's claim without leave to reapply, due to insufficient evidence.

By way of a settlement agreement, I order the parties to comply with the terms of their settlement agreement as described above.

I authorize the landlord to retain \$478.55 from the tenants' security deposit and pet damage deposit and return the balance of the deposits in the amount of \$186.45 within

15 days of receiving this decision. Should the landlord fail to return \$186.45 as ordered, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$186.45 which must be served on the landlord and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2013

Residential Tenancy Branch

