



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord testified that she received the tenant's new address through a friend of the tenant by e-mail from the tenant's friend received through a popular social media website. The landlord stated that she mailed the Notice and evidence package to the tenant at the tenant's new address by registered mail. The landlord read the registered mail tracking number into evidence and testified that according to the online registered mail tracking information, the tenant, KE, signed for the registered mail package on June 3, 2013 at 10:20 a.m. Based on the above, I find the tenant to have been sufficiently served under the *Act* with the Notice and landlord's evidence.

Preliminary and Procedural Matters

During the hearing, the landlord requested to reduce her monetary claim against the tenant from \$7,955.11 to \$5,149.40. As a reduction in the monetary claim against the tenant does not prejudice the tenant, the landlord's request to reduce her monetary claim was granted.

It is noted that an agent for the landlord on file number XXXXXX was awarded \$1,000.00 for use and occupancy of the rental unit for the month of January 2013 in relation to the same tenancy before me, in a decision dated January 14, 2013. A review hearing was ordered on file number XXXXXX after the decision and orders had been suspended, and neither the tenant KR (aka KE), nor the respondent agent for the landlord attended that hearing. The decision issued as a result dated February 14, 2013, dismissed the application for the review hearing with leave to reapply and noted that the original decision and orders "remain suspended". As the landlord has applied for unpaid January 2013 rent in the amount of \$1,000.00 in the matter before me, **I find** that I am unable to re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision dated January 14, 2013 and the subsequent review hearing decision dated February 14, 2013, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

"...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

In light of the above, I am unable to consider the landlord's claim for \$1,000.00 for rent/use and occupancy for January 2013 as that has already been dealt with under file number XXXXXX, however, I have considered the remainder of the landlord's application. Therefore, after excluding the landlord's \$1,000.00 January 2013 rent claim portion due to res judicata, from the landlord's amended monetary claim of \$5,149.40, I will consider the landlord's remaining monetary claim of \$4,149.40.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A month to month verbal tenancy agreement began on October 2, 2012. Monthly rent in the amount of \$1,000.00 was due on the first day of each month and included a fully furnished rental unit. The tenant did not pay a security deposit or pet damage deposit at the start of the tenancy.

The landlord stated that the tenancy ended due to the tenant failing to pay rent and ultimately vacating the rental unit on January 19, 2013. The landlord's monetary claim of \$4,149.40 is comprised of the following:

Item #1. Unpaid electrical utility bill	\$107.38
Item #2. Locksmith fees	\$348.32
Item #3. Janitorial cleaning	\$470.40
Item #4. Painter fees	\$616.00
Item #5. Floor repair	\$800.00
Item #6. Unreturned furniture and accessories	\$1,757.30
Item #7. Filing fee	\$50.00
TOTAL	\$4,149.40

The landlord confirmed that she did not complete a move-in condition inspection report or a move-out condition inspection report as required by the *Act*.

Item #1 - The landlord testified that the monthly rent did not include utilities and that the tenant vacated the rental unit without paying the arrears for the electrical utility bill in the amount of \$107.38. The landlord submitted a copy of an electrical bill which supports that \$107.38 was "past due" and owing.

Item #2 - The landlord testified that due to the tenant passing out too many keys to the rental unit, a locksmith had to change the locks at a cost of \$348.32. An invoice submitted in evidence from the landlord's agent, CB, shows the amount of \$348.32 on an invoice dated February 1, 2013, and the company name of the locksmith.

Item #3 – The landlord has claimed \$470.40 for janitorial cleaning for the rental unit. The landlord testified that it took the janitorial company 12 hours at \$35.00 per hour plus tax to clean the rental unit after the tenant vacated the rental unit, as the tenant failed to leave the rental unit in a reasonably clean condition. The invoice submitted in evidence by the landlord supports the amount of \$470.40 including taxes for janitorial cleaning. The name of the janitorial company is listed on the invoice and the invoice is dated January 30, 2013. The invoice details include items cleaned by the janitorial company including but not limited to living area, fireplace, kitchen, sink, all appliances, cupboards, doors and hinges, laundry machines, hardwood floors, bathroom including tiles, walls, mirrors, bathtub, shower and shower glass and door, cabinets, faucet and ceiling fan.

Item #4 – The landlord is claiming \$616.00 for re-painting of the rental unit. The landlord submitted a receipt dated September 14, 2012 in the amount of \$2,000.00 from MC, for painting. The landlord testified that the rental unit was fully painted shortly before the tenant moved into the rental unit. According to the landlord, the tenant vacated the rental unit after approximately three months and the entire unit smelled like smoke, although no smoking was permitted in the rental unit based on the verbal tenancy agreement. Two colour photos of damage to the walls of the rental unit were submitted in evidence. The landlord submitted an invoice from MC, in the amount of \$616.00 dated February 13, 2013 for “painting 1 coat on walls, walls to be prepped (sanding, filling holes, etc)”. MC is the same painter who issued the September 14, 2012 receipt for \$2,000.00 for painting the rental unit in September 2012. The February 13, 2013 invoice is on the company letterhead of MC’s painting company and includes the amount of \$616.00 including taxes.

Item #5 – The landlord has claimed \$800.00 to repair the floor of the rental unit. The landlord provided the original receipt stamped “paid May 18, 2012” from a flooring company, UF, on company letterhead. On the receipt it is written “To sand, re-finish floor in living room, dining area, hall and closets” in the amount of \$2,004.80 including taxes. The landlord also provided a receipt dated February 19, 2013 from the same flooring company that performed the flooring work on May 18, 2012, in the amount of \$800.00 plus tax but does not include the after tax amount on the receipt. On the receipt it is written “Living room and hallway repair floor and recoat”. The landlord submitted four colour photos of damaged hardwood flooring in evidence.

Item #6 – The landlord testified that the rental unit was fully furnished when she rented it to the tenant. According to the landlord, when the tenant vacated the rental unit the tenant removed an accent chair, couch, rug, dinette set, silk fig tree, bedding, a table cloth, two pictures, silk flowers, a candle holder, couch cushions, hand towel stand, towels and a bath mat without the landlord’s permission. During the hearing, the

landlord reduced this portion of her claim from \$1,757.30 to the following, which have been sorted into sub-items:

Sub-Item Description	Value of Sub-item	Supporting document evidence provided regard value of sub-items?
A. Accent chair	\$199.00	Yes
B. Couch	\$500.00	Yes
C. Rug	\$99.98	Yes
D. Dinette set	\$100.00	Yes
E. Silk fig tree	\$75.00	Yes
F. Bedding	\$129.99	Yes
G. Table cloth	\$20.00	No
H. 2 pictures	\$20.00	No
I. Silk flowers	\$70.00	No
J. Candle holders	\$20.00	No
K. Couch cushions	\$70.00	No
L. Hand towel stand, towels and bath mat	Not provided	No
TOTAL VALUE OF ITEMS	\$1,303.97	

The landlord submitted photos which she stated were taken before the tenant moved into the rental unit. The landlord testified that the photos show supporting evidence that the rental unit was a furnished rental unit.

The landlord submitted cost estimates and photo ads from popular local classified websites showing similar items to the items the landlord claims the tenant removed from the rental unit when she vacated the rental unit. As mentioned above in the table, sub-items A through F had supporting documentary evidence submitted including photos of what the landlord describe as close comparisons to the items removed from the rental unit. Sub-Items G through L did not have any documentary evidence to support their value.

Item #7 relates to the landlord's claim for the recovery of the filing fee which will be addressed later in this decision.

Analysis

Based on landlord's documentary evidence, the landlord's undisputed testimony, and on the balance of probabilities, I find the following.

The landlord does not dispute that she failed to complete a move-in and move-out condition report in accordance with sections 23 and 35 of the *Act*. Therefore, **I caution** the landlord to comply with sections 23 and 35 in the future.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Item #1 – The landlord testified that the monthly rent did not include utilities and that the tenant vacated the rental unit without paying the arrears for the electricity bill in the amount of \$107.38. The landlord submitted a copy of an electrical bill which supports that \$107.38 was “past due” and owing. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation of **\$107.38** for the “past due” amount as indicated on the electrical utility bill as the landlord suffered a monetary loss.

Item #2 - The landlord testified that due to the tenant passing out too many keys to the rental unit, a locksmith had to change the locks at a cost of \$348.32. An invoice submitted in evidence from the landlord's agent, CB, shows the amount of \$348.32 on an invoice dated February 1, 2013, and includes the company name of the locksmith.

Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation of **\$348.32** to change the locks due to the tenant passing out too many keys to the rental unit resulting in the landlord suffering a monetary loss.

Section Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

Item #3 - The landlord has claimed \$470.40 for janitorial cleaning for the rental unit. The landlord testified that it took the janitorial company 12 hours at \$35.00 per hour plus tax to clean the rental unit after the tenant vacated the rental unit, as the tenant failed to leave the rental unit in a reasonably clean condition. The invoice submitted in evidence by the landlord supports the amount of \$470.40 including taxes for janitorial cleaning. The name of the janitorial company is listed on the invoice and the invoice is dated January 30, 2013. I have considered the invoice submitted in evidence and it is very detailed including all of the items cleaned by the janitorial company including but not limited to living area, fireplace, kitchen, sink, all appliances, cupboards, doors and hinges, laundry machines, hardwood floors, bathroom including tiles, walls, mirrors, bathtub, shower and shower glass and door, cabinets, faucet and ceiling fan.

Based on the above, **I find** the tenant breached 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition and undamaged, except for reasonable wear and tear. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation of **\$470.40** for janitorial cleaning as the invoice submitted supports that the landlord suffered a loss for having to clean the rental unit after the tenant vacated.

Item #4 - The landlord is claiming \$616.00 for re-painting of the rental unit. The landlord submitted a receipt dated September 14, 2012 in the amount of \$2,000.00 from MC, for painting. The landlord testified that the rental unit was fully painted shortly before the

tenant moved into the rental unit. According to the landlord, the tenant vacated the rental unit after approximately three months and the entire unit smelled like smoke, although no smoking was permitted in the rental unit based on the verbal tenancy agreement.

The landlord submitted two colour photos of damage to the walls of the rental unit in evidence. I find that those colour photos show damage to the walls of the rental unit. The landlord submitted an invoice from MC, in the amount of \$616.00 dated February 13, 2013 for "painting 1 coat on walls, walls to be prepped (sanding, filling holes, etc)". MC is the same painter who issued the September 14, 2012 receipt for \$2,000.00 for painting the rental unit in September 2012, which is three weeks before the tenancy began. The February 13, 2013 invoice is on the company letterhead of MC's painting company and the total of \$616.00 includes taxes. Based on the above, **I find** the tenant breached 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition at the time she vacated the rental unit.

Therefore, **I find** the landlord is entitled to **\$616.00** in compensation for re-painting the rental unit as the landlord has met the burden of proof in proving that the landlord arranged to have the rental unit painted before the tenancy began, that the tenant damaged the walls during the tenancy, and that the landlord suffered a monetary loss as a result.

Item #5 - The landlord has claimed \$800.00 to repair the floor of the rental unit. The landlord provided the original receipt stamped "paid May 18, 2012" from a flooring company, UF, on company letterhead. On the receipt it is written "To sand, re-finish floor in living room, dining area, hall and closets" in the amount of \$2,004.80 including taxes. The landlord also provided a receipt dated February 19, 2013 from the same flooring company that performed the work on May 18, 2012, in the amount of \$800.00 plus tax but does not include the after tax amount on the receipt. On the receipt it is written "Living room and hallway repair floor and recoat". The landlord submitted four colour photos of damaged hardwood flooring in evidence. I find the photos submitted in evidence show damage to the flooring. Based on the above, **I find** the landlord has failed to meet the burden of proof as too much time passed between May 2012 when the hardwood flooring was installed and the start of the tenancy which was October 2012 and the landlord failed to complete the move-in condition inspection report which would have established the condition of the hardwood flooring at the start of the tenancy. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item #6 - The landlord testified that the rental unit was fully furnished when she rented it to the tenant. According to the landlord, when the tenant vacated the rental unit the tenant removed an accent chair, couch, rug, dinette set, silk fig tree, bedding, a table cloth, two pictures, silk flowers, a candle holder, couch cushions, hand towel stand, towels and a bath mat without the landlord's permission. During the hearing, the landlord reduced this portion of her claim from \$1,757.30 to \$1,303.97.

I accept the landlord's undisputed testimony that the photos submitted in evidence, which she stated were taken before the tenant moved into the rental unit, supports that the rental unit was a furnished rental unit when the tenant moved into the rental unit.

The landlord submitted cost estimates and photo ads from popular local classified websites showing similar items to the items the landlord claims the tenant removed from the rental unit when she vacated the rental unit. Sub-items A through F for item #6 had supporting documentary evidence submitted including photos of what the landlord describe as close comparisons to the items removed from the rental unit. Sub-Items G through L did not have any documentary evidence to support their value.

Based on the above, **I find** the landlord has met the burden of proof for items A through F only, and is entitled to **\$1,103.97** in compensation for items A through F as a result. **I dismiss** the landlord's claim for compensation for items G through L due to insufficient evidence, without leave to reapply. At the very least, I would have expected the landlord to provide documentary evidence of the value of sub-items G through L, which the landlord failed to do.

The landlord has applied for the recovery of her \$100.00 filing fee. For claims over \$5,000.00, the filing fee is \$100.00 and for claims \$5,000.00 and under, the filing fee is \$50.00. **I find** that the landlord is not entitled to the return of her full \$100.00 filing fee as her amended monetary claim after removing the \$1,000.00 portion of her claim due to res judicata, was \$4,149.40. Therefore, **I grant** the landlord the recovery of \$50.00 of her filing fee as the landlord was partially successful with her claim.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$2,696.07** comprised of \$107.38 for unpaid utilities, \$348.32 for locksmith fees, \$470.40 for janitorial fees, \$616.00 for re-painting costs, \$1,103.97 for items removed by the tenant from the furnished rental unit, plus \$50.00 for the filing fee. Therefore, **I grant** the landlord a monetary order pursuant to section 67 of the Act in the amount of \$2,696.07.

Conclusion

I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$2,696.07. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

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 19, 2013

Residential Tenancy Branch

