Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNDC, FF
For the landlord: MNSD, MNR, MND, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlords applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent and alleged damage to the rental unit, and for recovery of the filing fee.

This hearing began on October 31, 2013, and the entire hearing dealt only with documentary evidence issues, as the landlords claimed they did not receive the complete version the tenant's evidence. At the conclusion of the 59 minute hearing, the tenant was ordered to re-serve certain portions of his documentary evidence to the landlords.

An Interim Decision was not entered in this matter as no testimony was taken, and due to oral instructions being given at the hearing.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider all the issues contained in the parties' respective applications.

This final hearing proceeded on both parties' respective original applications for dispute resolution. During the hearing, all parties provided affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, make submissions to me and to make responses to the other's evidence.

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

Preliminary matter-It is noted that the landlord initially had a witness present, who was subsequently excluded from the telephone conference call hearing until her testimony was needed. The witness was not called into the hearing as the landlord never made the request during the hearing.

Preliminary matter #2-I have listed tenant IB as a party to this proceeding, even though tenant JB did not list IB as an applicant in his application. I have done so as the landlords listed IB as respondent in their application and IB is listed as a tenant in the written tenancy agreement. I further note that the tenant was referred to in both the singular and plural form, intentionally, as circumstances were deemed appropriate.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation and to recover the filing fee?
2. Are the landlords entitled to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2006, the original monthly rent was $1400, and the tenants paid a security deposit of $700 at the beginning of the tenancy.

The tenant said that monthly rent has since been increased to $1498, and the landlords said that monthly rent has since been increased to $1500.

Both parties presented a significant amount of documentary evidence, all of which has been reviewed and considered.

The tenant's relevant documentary evidence included, but was not limited to, a written statement of events with a detailed monetary claim, including email communication during the tenancy between the parties discussing tenancy issues, such as reimbursement requests, charts, graphs, and electric bills showing power usage and comparisons, photographs of the rental unit, a written response to the specifics of landlords' application for dispute resolution and their binder of documentary evidence, a prior dispute resolution Decision concerning a 1 Month Notice to End Tenancy for Cause (the "Notice"), a notice of a rent increase, a copy of the move-in and move-out condition inspection report, and digital evidence, including a DVD containing photographs of the rental unit and audio and video of the move-out inspection. I note that the landlord requested and received confirmation that the contents of her copy of the tenant's DVD was the same as the Arbitrator received.

The landlords' relevant documentary evidence was contained in a sizeable binder and included, but was not limited to, a written breakdown of their monetary claim, a written accounting of the landlords' case, receipts for plumbing, photographs showing extractions from the plumbing system, a plumber's report, copies of email

communication between the parties during the tenancy referring to tenancy issues, an undated and unsigned notice of a rent increase, photographs of the condition of the rental unit, deck, and yard, a cleaning invoice, other receipts, insurance documentation, and letter communication between the parties.

Tenant's application-The tenant's monetary claim, although not significantly, differed in his application and his documentary evidence. The application shows a monetary claim of $1436.67 and his documentary evidence shows a monetary claim of $1484.63. It is my decision to go forward on the monetary claim listed in the tenant's documentary evidence, as the claim was very similar to the application amount and the landlord did not present an objection.

The tenant's monetary claim is as follows:

Partial loss of use of the rental unit	$1323.23
Electric power usage for restoration work	$114.40
Balance due from previous reimbursement	$100
Filing fee	$50
Total	**$1484.63**

In support of and in response to the tenant's application, the parties provided the following evidence.

Partial loss of use of the rental unit-The tenant claimed that he and his family lost the use of the lower portion of the rental unit, which was a single family home, for a period of time due to flooding and was instructed by the landlord to do so.

In further explanation, the tenant said that, not for the first time, plumbing issues caused the lower level to flood on April 13, 2013, and on April 15, 2013, the male landlord ordered the tenants and their family to vacate the lower level while that portion of the home was restored by a restoration crew. The tenant submitted that the landlord attended the rental unit on June 7, 2013, and was formally instructed to reoccupy the lower portion of the rental unit.

The tenant claims he is entitled to a 50% loss of use for the 53 days of restoration in which he and his family was not allowed to use the lower portion of the home, which the tenant claimed was 50% of the living space. In support of this claim the tenant supplied a diagram of the total living area in the upper and lower levels of the home, a letter from the male landlord dated April 15, 2013, informing the tenant that he would have to move the contents of the lower level during the restoration work, allow access at all times to the work crew, and that the tenant would be reimbursed for the rent until the project was completed, and copies of requests to the landlord for reimbursement for loss of living space.

In response to this claim, the landlord denied owing the tenants for loss of use of the lower level, as the tenants caused the sewer back-up and subsequent flooding, as shown by the plumber's report. More specifically the landlord claimed that a mop head and hand wipes were flushed down the toilet, causing a back-up.

The landlord also referred to a flood in the fall of 2012, which was allegedly caused by the tenants and which was overlooked by the landlords, according to the landlord.

Electric power usage for restoration work-The tenant claimed that he should be reimbursed for additional power consumption used during the period of restoration, as the restoration company used heavy equipment during this time.

The tenant submitted that he calculated the amount owed by a comparison of electric bills for the same time period of years prior and the year of the restoration, as shown by his evidence, and estimated that the extra usage was 66.6%.

In response, the landlord questioned why the tenant claimed 66%, when only one half of the rental unit was impacted.

Balance due from previous reimbursement-In support of this request, the tenant submitted a copy of an email from landlord LS, dated January 19, 2013, which informed the tenant that they, the landlords, would owe the tenants $1660 from a previous restoration project. The email went on to say that the January rent of $1500 and underpayment of monthly rent, or $58 ($2 per month for 29 months) would be covered by that amount, and that the tenants would owe $1398 for February 1.

The tenant said that the landlords had a pre-paid rent cheque for $1500, meaning the landlords still owed the tenants $102.

In response, the landlord submitted that the monthly rent listed was a typographical error, as it was intended to be $1500 per month.

Landlords' application-The landlords' monetary claim is as follows:

Repairs to sump pump	$168
Insurance deductible	$500
August rent	$1500
Yard work	$750
Missing/burnt out light bulbs	$20
General cleaning	$500
Deck damage	$300
Repair to garage door	$45
Increased insurance renewal	$514
Total	**$4297**

In support of and in response to the landlords' application, the parties provided the following evidence.

Repairs to sump pump; insurance deductible-The landlord submitted that the tenant and/or his family were responsible for damage to the sump pump, due to their actions; in particular the landlord claimed that they were informed by the tenant on April 13, 2013, that the basement had flooded. The landlord submitted that they asked the tenant if a power outage had occurred, and received no response; later the tenant claimed there was a power outage.

The landlord claimed that their plumber found a mop head and hand wipes flushed down the toilet and that the only explanation was that the tenants flushed these items, causing damage to the sump pump due to the blockage. The landlord directed my attention to the plumber's report.

The landlord claimed that the restoration cost was $22,070.41, for which they had to pay a $500 deductible and plumber's cost of $168.

In response the tenant contended that the landlords issued the tenants a 1 Month Notice to End Tenancy for Cause (the "Notice"), seeking to end the tenancy due to the allegation that the tenants caused the basement flooding due to the mop head and hand wipes, in other words, putting the landlord's property at significant risk. The tenant disputed the Notice and a hearing was held on their application for dispute resolution on May 30, 2013, in which another Arbitrator found that the landlord did not supply "sufficient evidence to show that the tenant or someone from his family placed these items (mop head and wipes) into the system or that he did anything to cause the system to fail. Overall I am not satisfied that the landlord has met the burden of proving he has cause to end this tenancy" (*Excerpt from the Decision of May 30, 2013*.)

I note that the other Arbitrator granted the tenant's application seeking to cancel the Notice and the tenancy continued and a copy of this May 30, 2013, Decision was placed into evidence by the tenant.

The tenant further submitted that there have been 3-4 instances of flooding since the beginning of the tenancy, and that as the owners, it is the landlords' responsibility to carry insurance. The tenant further submitted that if the landlords had any issue with the Decision of May 30, 2013, they did not take any actions to "appeal" the Decision.

In rebuttal the landlord argued that the landlords were not successful as the plumber was not made available for testimony on the day of the other hearing, May 30, 2013.

August rent-The landlord claimed that the tenancy ended on August 31, 2013, and that the tenants did not pay rent for the last month.

In response, the tenant testified that after the hearing on May 30, he began to grow wary of the landlords, and as the landlords held three rent cheques, not deposited, he did not trust them to not deposit all three.

The tenant further stated that the landlords never responded to his request for the status of the three rent cheques.

Yard work-The landlord submitted that the tenant failed to maintain the yard as required and that they had begun receiving phone calls from neighbours regarding the same as long as 2 years ago.

The landlord additionally referred to their photographic evidence as proof.

In response to my question, the landlord agreed that the allegedly deficient yard maintenance was not mentioned on the final condition inspection report, due to the actions of the tenants during the inspection.

The tenant submitted that the landlord informed him, on June 7, 2013, that he was selling the home, advising the tenant that he would be working on the tree. In another communication to the tenant, date June 23, 2013, the landlord informed him that there would be landscape work on the property, such as “removing some grass, gravel, trees and bushes, trimming trees and bushes, installing bark mulch and gravel in certain areas.” The letter went on to mention that the landlords would be removing a small storage shed, with attached fencing.

The tenant referred to his photographic evidence to show the good condition of the yard and questioned as to when the photographs supplied by the landlords were taken, due to his submissions that some photographs were taken during the restoration work.

Missing/burnt out light bulbs- The landlord submitted that the tenants were responsible for these bulbs.

General cleaning; deck damage; repair to garage door -The landlord testified that the entire rental unit required cleaning after the tenants left, that all walls and windows were dirty, and that was not a square inch in the rental unit which did not require cleaning.

The landlord contended that the tenants were required to leave the rental unit move-in ready for a subsequent tenant.

The landlord contended that the deck was new when the tenancy started and that a propane tank was the source of the burn.

The landlord submitted that the tenant drove his car into the garage door, and that they noticed the damage 4 years ago; however, according to the landlord, they just “let it go.”

The landlord referred to her photographic evidence.

The landlord acknowledged that these issues were not mentioned on the final condition inspection report; however the intense behaviour the tenant and his son exhibited during the final inspection prevented the landlords from listing any items of concern on the report, according to the landlord.

In response, the tenant strongly denied the allegations of the tenant, stating that the rental unit was very clean when they left. The tenant further submitted that there is no way he would trash a home where he and his family lived for 7 years, and he questioned the landlord's photographs, as the landlord attended many times during the restoration work, taking photographs, and there was no time reference. The tenant submitted that he was not allowed to do yard work during the restoration. The tenant said that the photograph of the oven was from three years ago, when a repair request was made.

I must also note that the tenant requested at this point that the landlord be more respectful in tone to him during the hearing, and I did caution the landlord about her manner.

The tenant said that the occurrence with the garage door occurred 4 years ago, the garage door was 40 years old, and its functionality was not impacted, as shown by his digital evidence.

The tenant submitted that his digital evidence shows that the deck was not damaged and that the landlord's evidence was falsified.

The tenant referred to his photographic evidence, which shows the condition of the yard at varying times and of the home at the end of the tenancy.

Increased insurance renewal-The landlord contended that due to the damage for the flooding in the fall of 2012 and in April 2013, their insurance renewal has increased, for which the tenants should be responsible. In response to my question, the landlord said they gave the tenants the benefit of the doubt as to whether the flood of 2012 was their fault, but the flood of April 2013, was definitely the tenants' fault.

In response, the tenant denied causing the blockage in the toilet and system, and pointed out that this issue has previously been litigated in the dispute resolution hearing of May 30, 2013.

Final inspection of the rental unit and condition inspection report-I find it important to note the evidence taken surrounding the condition inspection report.

Both parties submitted a condition inspection report, which contained information about the rental unit at the beginning and the end of the tenancy. The condition inspection report supplied by the landlord contained blue ink, which indicated an original

document; however the copy supplied by the tenant was a duplicate of the one supplied by the landlord.

The tenant contended that the final condition inspection report shows that the tenant left no damage or required cleaning at the end of the tenancy, as shown by the lack of notations in the move-out condition comments column and in s. Z on the final page of the standard condition inspection report form. S. Z on the condition inspection report form gives space for the landlord to write "Damage to the rental unit or residential property for which the tenant is responsible." In this box, landlord LS wrote "not applicable."

It is further noted that the condition inspection report, on the move-in condition column, notes areas of repairs needed to be performed or concerns about the condition; however, the only notations listed in the move-out column was a remark made by the landlord stating that the kitchen ceiling was dusty, with the tenant's remark that he disagreed that the ceiling was dusty, and another notation that a master bedroom door was removed and on the premises in the room. I must also point out that this same door or a closet door had the word "theft" by it on the move-in inspection, with no explanation.

The landlords submitted that they were intimidated at the move-out inspection by the landlord and his son and were pressured into not giving an accurate description, which is why no damage was listed.

The tenant disagreed with the landlord's version of the final inspection, and pointed out that his video and audio recordings showed that after inspecting each room or other areas of the residential property, the landlord confirmed that the condition was good or there were no issues, including the garage door and functionality, the deck and the yard.

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-

Partial loss of use of the rental unit-Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit. Where a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation, it is upon the landlord to repair the rental unit and residential property.

Residential Tenancy Policy Guideline 16 provides for claims in damages, and in part states,

> *A landlord is expected to provide the premises as agreed to.... If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.*

In the case before me, the landlords were notified of the flood or leak in the basement and did address the repair of the same, although several days after being notified.

I find the tenant submitted sufficient written evidence to show that the landlord instructed the tenant and his family to vacate the rental unit, which came in the form of an email to the tenant on April 15, 2013, and the landlord was notified on April 16, 2013, that the tenants had in fact vacated the lower portion of the rental unit. An additional email to the tenants on June 4, 2013, informed the tenants that the landlord would be at the rental home to have a look at the repairs later in the week.

I also find the tenant's evidence of a diagram of the layout of the home shows that the lower level of the rental home was equal in size to the upper level.

In the circumstances before me, while I do not find that the landlords were negligent in attending to the basement flooding, I do find that the tenants suffered a loss of one half of the use of the rental home for 53 days, April 16-June 7, 2013, through no fault of their own. I find the tenant should be compensated by way of a rent abatement for the portion of the rental home affected by the flooding, which is one half for 53 days. I therefore grant the tenant a monetary award of $1306.98 ($1500 monthly rent x 12 months per year = $18,000 yearly rent ÷ 365 days = $49.32 daily rate x 53 days = $2613.96 ÷ ½ loss of use = $1306.98).

Electric power usage for restoration work-I find the tenants had requested several times from the landlord to obtain the electric consumption usage by the restoration company, but that this information was never provided. I find the tenant submitted sufficient evidence that his power consumption increased for the same time period in the year 2012 and 2013, for which he is not responsible. I am not able to determine from the power consumption data chart supplied by the tenant said to be downloaded from the BC Hydro site to be sufficiently clear. I would have preferred to compare the actual electric bills from several past years, rather than the one from the time period of 2013.

As I have found that the tenant has shown an increase in power consumption due to the restoration work, he should not be responsible for extra hydro costs used by the restoration company, and I find a reasonable amount to award the tenant is $100 for the 50+ days of restoration.

Balance due from previous reimbursement-I find the January 19, 2013, email from the landlord to the tenant which informed the tenant that they, the landlords, would owe the tenants compensation from a previous restoration project and therefore monthly rent for February 2013 would be $1398 to be compelling. I find the tenant, due to the landlords having a pre-paid cheque of $1500 for the monthly rent for February, amounts to an overpayment by the tenant, in the amount of $102. I therefore find for the tenant and award him $102.

Landlords' application-

Repairs to sump pump; Insurance deductible; increased insurance renewal-All of these claims relate to the landlords' contention that the tenants caused the flooding in the lower level of the home on April 13, 2013, and should therefore be responsible for any associated costs.

I reject the landlord's assertion that the tenants caused the flooding in the lower level by flushing a mop head and hand wipes into the system. The landlords attempted to evict the tenants based upon this assertion by issuing the tenants a 1 Month Notice to End Tenancy for Cause, for which the tenants filed an application for dispute resolution in dispute of the Notice. A subsequent hearing on the tenants' application resulted in another Arbitrator's Decision finding that the landlords failed to supply sufficient evidence that the tenant or someone from his family placed the mop head or hand wipes into the system or that he did anything to cause the system to fail.

As there has previously been a finding on these same issues in another dispute resolution hearing, on May 30, 2013, I cannot re-decide these issues as I am bound by this earlier Decision, under the legal principle of *res judicata.*

I therefore dismiss the landlords' monetary claim for repairs to the sump pump for $168, their insurance deductible for $500, and their increased insurance renewal for $514.

August rent-While I do not find that the tenant deliberately withheld rent as the landlords had possession of previously paid rent cheques, I do find that the tenant owed rent for August 2013, under the terms of the tenancy agreement and s. 26(1) of the Act and that is was not paid.

I therefore approve the landlords' monetary claim for rent for August 2013, in the amount of $1500.

Yard work; general cleaning; deck damage; garage door repair; missing or burnt out light bulbs-All these claims relate to the landlords' assertion that the rental unit required repair to the rental unit due to the tenants' damage and that the rental unit was not left reasonably clean, which are matters dealt with in a final inspection and as noted on a condition inspection report.

S. 21 of the Residential Tenancy Regulation states the following:

> *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.*

In the case before me, the landlord contended the condition inspection report did not accurately reflect the condition of the rental unit or residential property at the end of the tenancy as noted previously.

I have no evidence which would convince me the landlord was intimidated by the tenants, considering the landlord's demeanour in the hearing and the landlords' communication with the tenant, and I find it unlikely the landlord would complete the report herself or affix her signature to the condition inspection report had she not agreed with it. I therefore accept the document as is and find that it was the agreement of the parties at the time of the final inspection as to the condition of the rental unit, which was that there was no damage for which the tenants were responsible and there were no individual items marked, with the exception of a disputed dusty kitchen ceiling.

As such, I find that the landlord failed to prove that the rental unit required cleaning or any repair due to damage by the tenants, and I further find the landlords are not entitled to yard maintenance repairs. I find it highly likely that the landlords, if any yard work was performed, did so in preparation for selling the residential property.

I therefore dismiss the landlords' monetary claim for yard work for $750, general cleaning for $500, deck damage for $300, garage door repair for $45 and missing or burnt out light bulbs for $20.

Consideration of both applications-

Due to the above, I find the tenant is entitled to a monetary award of $1508.98, consisting of partial loss of use of the rental unit for $1306.98, electric power usage for restoration work for $100, and balance due from previous reimbursement for $102.

Due to the above, I find the landlords are entitled to a monetary award of $1500 for August rent.

I have set off the amount of the landlords' monetary award of $1500 with the tenant's monetary award of $1508.98, and find that the tenant is entitled to monetary compensation for the difference of $8.98.

Further as to the issue of the tenant's security deposit of $700, which was held in trust for the tenant during the course of the tenancy, I find that he is now entitled to its return as I have set off the landlords' monetary award with the tenant's monetary award as noted above and the tenancy is now concluded.

Due to the above, I find the tenant is entitled to a monetary order for $731.36, consisting of the difference in the parties' monetary award of $8.98 in favour of the tenant, the tenants' security deposit of $700 and interest on the tenants' security deposit in the amount of $22.38.

I have not awarded either party recovery of the filing fee as I find each application contained merit.

Conclusion

The landlords are granted a monetary award of $1500.

The tenants are granted a monetary award of $1508.98.

The landlords' monetary award is set off against the tenants' monetary award and I have granted the tenants a monetary order of $731.36, which also includes their security deposit and interest.

I grant the tenants a final, legally binding monetary order against the landlords pursuant to section 67 of the Act for the amount of $731.36, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants 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 landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both parties.

Dated: January 10, 2014

Residential Tenancy Branch