



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit;
2. For a monetary order for compensation for loss under the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

On January 17, 2013, the parties were at a dispute resolution hearing which dealt with the tenant's application to cancel a notice to end tenancy for cause. On January 21, 2013, the Arbitrator rendered a decision which found the tenant had significantly interfered with and unreasonably disturbed the downstairs tenant and landlord was granted an order of possession with an effective vacancy date of January 31, 2013.

On January 29, 2013, the tenant filed for a review consideration of the above order and on February 4, 2013, the tenant's application for review consideration was dismissed. The tenant did not file for a judicial review of either of those decisions.

Preliminary issue - May 13, 2013

On February 19, 2013, the landlord filed an application for dispute resolution. On May 1, 2013, the tenant filed a cross application with a large volume of evidence, which did not provide the landlord with a fair opportunity to review and respond to the tenant's application.

Counsel for the tenant submitted that it may be possible for the parties to work out a settlement agreement. As a result, I found an adjournment of these matters appropriate to provide the landlord with a fair opportunity to review the tenant's application and to allow the parties an opportunity to resolve these issues.

Preliminary issue – July 16, 2013

During the adjournment period the landlord filed evidence in response to the tenant's application.

On June 27, 2013, the tenant also filed additional evidence, however, in that evidence was a new monetary worksheet which conflicted with the original monetary worksheet filed with her application on pages 195 to 199 of her evidence book. While the total monetary amount remained the same as the original monetary worksheet filed on May 1, 2013, it appeared when comparing the two documents, that the tenant has deleted items and increased the monetary portion on other items to arrive at the original monetary calculation.

As result, I did not allow the tenant to amend her claim through evidence as it was not formally amended prior to the hearing commencing, which is contrary to Rule 2.5 of the Residential Tenancy Branch Rules of Procedures. Further, it would be administratively unfair to the landlord as the principles of natural justice require that a person be informed and given particulars of the claim against them prior to the hearing commencing.

The parties were informed that the monetary work sheet filed with the tenant's application on pages 195 to 199 of the tenant's evidence book was the only monetary worksheet that would be considered at this hearing.

Preliminary issue - January 13, 2014

At the conclusion of the hearing on October 24, 2013, due to insufficient time, counsel submitted that they would provide a timeline for the final issue to be heard to expedite the hearing process. I found that the document provided addressed other compensation that was not filed in their original claim. However, at the outset of the hearing counsel confirmed that that the only remaining issue to be heard was the loss of personal property.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts, issues or specific documents directed to by the parties in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages to the unit?

Is the tenant entitled to monetary compensation for loss under the Act?

Background and Evidence

The tenancy began in September 2012. Rent in the amount of \$875.00 was payable on the first of each month. A security deposit of \$437.50 and a pet damage deposit of \$437.50 were paid by the tenant. The tenancy ended on January 31, 2013, by an order of possession.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for February 2013	\$ 875.00
b.	Cleaning cost	\$ 450.00
c.	Hole in master bedroom door	\$ 196.00
d.	Flooring	\$ 920.00
e.	Filing fee	\$ 50.00
	Total claimed	\$ 2,491.00

Loss of rent for February 2013

The landlord testified that on January 31, 2013, he went to the rental unit at 1:00 pm to complete the move-out condition inspection with the tenant. The landlord stated when he arrived there was a 20 foot moving truck and the tenant's belongings were being loaded by a moving company. However, when he went to talk to the tenant she threw and spat food at him and used foul language ordered him to get out of the rental unit.

The landlord testified that the tenant then called the police and he sat in his vehicle and waited for them to arrive. The landlord stated that the police told him that the tenant was not giving him possession of the unit as the tenant had filed for a review consideration and that the tenant had the right to possess the unit until the outcome of that decision. The landlord stated the tenant had provided him with a rent cheque for February 2013, but this was returned for insufficient funds. Filed in evidence is a copy of that cheque.

The landlord testified that because the tenant had possession of the rental unit until her review consideration was dismissed on February 4, 2013, he was unable to give the new tenants possession of the rental unit on February 1, 2013. The landlord stated the new tenants had to find alternate rental accommodations. The landlord seeks to recover loss of rent for February, 2013, in the amount of \$875.00.

The tenant testified that on January 31, 2013, she did swear at the landlord and threw a cracker at him. The tenant stated that the landlord also called her names.

The tenant testified that she does not deny issuing a rent cheque for February 2013, however, she was unsure if there was any money in the account or if she placed a stop payment. The tenant stated while she did file for review consideration she did not believe that application would be successful and had no intention of paying rent if she was not going to be allowed to reside there.

Counsel submitted that the tenancy ended on January 31, 2013, and the tenant complied with the order of possession and vacated the rental unit as required. Counsel further submitted that while the tenant did file for review consideration, she should not be subject to pay rent for February 2013, due to a tribunal process.

Cleaning cost

The landlord testified that the tenant did not clean the rental unit. The landlord stated that all the appliances needed to be cleaned, the floors need to be swept and washed and the carpets needed to be cleaned. The landlord stated that the tenant's child had stamped the floor with permanent ink and there was red crayon on the floor.

The landlord testified that the tenant left an excessive amount of garbage in the outside shed, which had to be removed and disposed of. The landlord stated he paid a person \$15.00 per hour for 30 hours of work. The landlord seeks to recover the cleaning costs in amount of \$450.00. Filed in evidence are photographs of the floors, appliances and garbage.

The tenant testified that she was fleeing the rental unit and everything was removed except for a broom. The tenant acknowledged she did not sweep or wash the floor. The tenant acknowledged she did not clean the oven because she does not like to use oven cleaner stating it is a harmful chemical. The tenant stated the refrigerator did not need cleaning as it was clean. The tenant stated she did leave items in the refrigerator as they were accidentally left behind.

The tenant testified that the carpets in the unit were really dirty when she moved in and that the stains could not be removed. The tenant stated she did not clean the carpets when she vacated.

Hole in master bedroom door

The landlord testified that the tenant damaged the bedroom door as there was a hole in the back of the door. The landlord stated that this damage was not on the move-in condition inspection report. The landlord seeks to recover the amount of \$196.00.

The tenant testified that she agreed with the move-in condition inspection report. However, she also stated that during the move-in condition inspection that they did not inspect the back of the bedroom doors and the hole was in the door when the tenancy started.

Counsel for the tenant submitted that the landlord failed to sign the move-in condition inspection report and therefore the inspection report should not be considered.

Flooring

The landlord testified that the tenant caused damage to the floors as she was always moving her furniture and this caused gauges in the flooring. The landlord stated that the red and black marks in his photographs show that the tenant's furniture had gone through the flooring. Filed in evidence are photographs of the flooring.

The tenant testified that the black marks shown in the photographs are from her child playing with her work stamp and the child used the stamp on the floor as children will often do and the red marks are from her child coloring and as children often do coloured off the paper and on to the floor. The tenant stated the stamps and crayon are removable by cleaning.

Tenant's application

The tenant claims as follows:

a.	Return of Rent from Dec 21 to Jan 31, 2013	\$ 1,120.00
b.	Double the Pet and Damage Deposit	\$ 1,750.00
c.	Loss of use of laundry facilities	\$ 250.00
d.	Cost to keep house secure without changing locks	\$ 600.00
e.	Babysitting	\$ 65.00
f.	Lost wages (difference between wage and LTD)	\$ 5,972.00
g.	Aggravated Damages (play therapy for my son)	\$ 5,241.00
h.	Loss of personal possessions	\$ 6,462.00
i.	Phone and stop cheque fee	\$ 40.00
j.	Filing fee	\$ 50.00
	Total claimed	\$21,550.00

Return of Rent from Dec 21 to Jan 31, 2013

The tenant testified that she seeks to have a refund in rent for the times that she could not use the property due to harassment. The tenant stated that harassment started when the landlord demanded she pay a pet damage deposit when she did not have a pet at the start of the tenancy.

The tenant stated she had made a request to the city to have a painted cross walk installed in front of the landlord's property, as the school her child attends is directly across the street from the rental property. The tenant stated when she told the landlord of the plan, he became angry at her as he explained to her that his fence was built on city property. The tenant testified that after this incident the landlord stated she was too much trouble and started to have her evicted.

The tenant testified there was an incident on December 20, 2012, with one of the other tenants harassing her and that she left the rental unit on that basis. The tenant stated in January 2013, she moved into a transition house as a way to save money.

The landlord testified that the tenant is not entitled to any return of rent. The landlord stated that the tenant was not being harassed. The landlord stated the tenant was required to pay a pet damage deposit as she had indicated she would be getting a cat, which she did shortly after her tenancy commenced.

The landlord stated he received complaints from other tenants regarding the tenant's behaviour and he was obligated to investigate. The landlord stated those complaints had merit and he proceeded with the eviction process and the arbitrator on January 21, 2013, determined that the tenancy was to end based on the actions of the tenant's poor behaviour during the tenancy.

The landlord testified that he believes the tenant is also making up stories as she was away for Christmas holidays during this time and this is supported by her letter on page 65 of her documentary evidence.

Double the Pet and Damage Deposit

Counsel submitted that the landlord extinguished his right to claim against the security deposit and pet damage deposit as he failed to sign the initial report. Counsel submits that the landlord had the tenant's forwarding address as it was provided at the top of a letter dated December 8, 2012.

Counsel further submitted that the tenant had also paid rent for February 2013, as she provided the landlord with a cheque. Therefore, the landlord has no rights to retain any of the deposits based on unpaid rent and they should have been returned within 15 days of the tenant vacating the premises.

The landlord testified that he had not extinguished his right to claim against the deposit. The landlord testified that the letter counsel is referring to does not relate to the tenants forwarding address and was prior to the tenancy ending. The landlord stated it is the tenant's responsibility to provide their forwarding address at the end of the tenancy or at the very least confirm that address.

The landlord stated the tenant issued a rent cheque for February 2013, however, the cheque was returned for insufficient funds and he has a right to claim against the deposits for unpaid rent.

Loss of use of laundry facilities

The tenant testified that she seeks compensation of \$250.00 for the loss of use of the washing machine during her tenancy. The tenant stated that the machine broke in early October and was not replaced until October 27, 2013 and her laundry accumulated. The tenant stated during the month of November the landlord was doing construction work in the laundry area which limited her use of the facility as the appliances were covered with a heavy painter's cloth. The tenant stated there was also no light in the laundry room. The tenant stated during the month of December she limited her use of the laundry room because she was scared of the other tenant due to the alleged harassment in early December.

The landlord testified that the tenant was provided laundry facilities during her entire tenancy. The landlord stated in October the washing machine broke and it was repaired as soon as he was informed of the problem. The landlord stated the washing machine then broke again and he had it replaced with a new appliance on October 27, 2012. The landlord stated during the month of November there was a painter's cloth on top of the appliances to protect them, as they were installing insulation in the ceiling of the rental unit that was next to the laundry room to help eliminate the noise that was coming from the upper unit where the tenant was residing. The landlord stated the tenant had full use of the laundry facilities.

The landlord testified that the tenant was not harassed by the other tenants. The landlord stated the tenant was the instigator as she continued to make noise disturbing the other tenants and she had thrown the other renters clothing on the floor.

Cost to keep house secure without changing locks

The tenant testified that on December 14, 2012, she sent a letter to the landlord and sent that letter by registered mail requesting to receive a key prior to December 21, 2012. The tenant stated that she did not receive a key or a response from the landlord prior to December 21, 2012, and as a result she had to pay her home maker \$100.00 per week to keep the unit secure. Filed in evidence is the letter dated Saturday, December 14, 2012.

The landlord testified that the tenant was never without a key to the rental unit. The landlord stated the tenant merely wanted to have a punch code lock installed to allow her homemaker access to the unit. The landlord stated that the tenant was away on a Christmas holiday during this time period and is attempting to recover the cost of her homemaker taking care of her cats. The landlord stated page 65 of the tenant's evidence book confirms the tenant was away on a holiday and the homemaker was there to feed her cats.

The landlord also referred to paragraph 58 of the tenant's affidavits where the tenant stated she was going to leave the premises unlocked and would not be present for the inspection, which confirmed that the tenant's rental unit was secure and she had a key.

Babysitting

The tenant withdraws this portion of her claim.

Lost wages (difference between tenant's wage and long term disability)

The tenant testified that due to the harassment by the landlord her return to work was delayed and she seeks compensation in the amount of \$5,972.00.

In support of the tenant's position has submitted the following documentary evidence.

The tenant has submitted only page 1 of 2 pages of the medical letter dated December 13, 2012, on page 159, in part reads,

"She is under a lot of stress at the moment. Her landlord is seeking to evict her and her son.... She feels her son's behavior is poor although there is no evidence of that in our office...She is also going to court about child support although she says she is less stressed about this."

[Reproduced as written.]

The tenant has submitted a medical note on page 160 and 161 of their documentary evidence. The medical notes of Feb 12, 2013, by (JR) in part read,

"Thinking of going back to work part-time. However she doesn't want to work more than the amount that her insurer gives her and she doesn't want to stop the insurance at this point which I think is wise..."

[Reproduced as written.]

I note page 1, 4 and 5 of the medical notes were not submitted.

The medical note of December 21, 2012, by (AH) on page 162, in part reads,

“she was recently evicted from her home – something to do with reporting criminals across the road. She is currently on disability from [name removed] for her medley of ailments, chronic fatigue, chronic pain, insomnias, depression and anxiety.

[Reproduced as written.]

The medical letter dated March 15, 2013, by (FW) on page 165, in part read,

“...The initial diagnosis was that of a bipolar disorder type II with complicating factors of medication interaction, a chronic sleep disorder and at least a demanding situation as a single parent for her behavior not easy to manage now 6-year-old son... Over the time [tenant's name removed] appears to have made progress with her mood issues and, since living in the [location removed], also could find an essential support network for her and her son. With this back up she now can be seen as fit for a gradual return to work...”

[Reproduced as written.]

The landlord testified that the tenant has not worked in the previous 2 years and he is not responsible for her health issues. The landlord stated there is no evidence to support that he is responsible for any loss of wages. The landlord stated at no time was the tenant harassed by him. The landlord stated the only contact he had with the tenant was for legitimate purposes when he was investigating the complaints he received from the other tenants and when he was dealing with her through the eviction process.

Aggravated Damages (play therapy for tenant's son)

The tenant testified that she seeks compensation for aggravated damages for her son due to her son hearing the verbal threats of eviction from the landlord. The tenant stated as a result of those threats her son started acting up at school, and even threw a kitten over a railing. The tenant testified that her son also had irrational fears such as, “mommy will marry the landlord”.

In support of her position she has submitted the following documentary evidence.

The email thread on page 133 of the tenant's evidence book starts at September 24, 2012 to November 27 2012, which reads in part,

“[child's name] behavior is getting hard to manage. He ran away from school last Thursday and threw a cat over the railing yesterday...I am having a very difficult time managing his behavior and my health is declining again.”

[Reproduced as written.]

The Behavioral Assessment completed by the child's teacher on page 135 of the tenant's documentary evidence, assessed the child to be at risk for attention, adaptability and functional communication. The teacher assessed the child at clinically significant at atypicality, and developmental social disorders.

The letter dated January 24, 2013, from Child and Youth Mental Health, on page 137, which in part reads,

".. he was referred by his mother and [name removed] in June 2012; the reason for the referral were behavior concerns.."

[Reproduced as written.]

The letter dated January 28, 2013, from (KS), on page 139, which in part reads,

"We have had 11 sessions in total, mainly in the spring of 2012, but also recently....I find [tenants name] to be well-meaning and earnest, and although the decision she has made, have sometime led her and [child's name] into difficulties, I do not believe that she has ever been motivated by any form of malice... [the child] is a young, energetic lad who shows great difficulty with self-regulation, especially in the school setting. He will probably find himself diagnostic label or two as he grows older..."

[Reproduced as written - **Emphasis added.**]

The landlord testified that the tenant's son does have a tough life. The landlord stated all the trauma he gets is from his mother's actions such as screaming at him, which she did not deny at the previous eviction hearing. The landlord stated that the tenant's son was also found outside at 10:30 pm in nothing more than his under pants in December 2012, while his mother was busy on her computer.

The landlord testified that the only time he was at the rental unit was to talk to the tenant regarding the complaints he had received from other tenants as he was obligated to investigate and take appropriate action.

The landlord testified that he did not have any influence with the tenant's child and had no direct contact with the child at any time. The landlord stated if the child is repeating things such as, "mommy will marry the landlord", those comments must be from the child hearing that from his mother.

The landlord testified that the child had behavioural concerns prior to their tenancy commencing.

Loss of possessions

The tenant testified that on January 31, 2013, she hired a moving company to move her belongings from the rental unit. The tenant stated as a result of the truck having a load of mattresses, they were unable to move all her belongings in one trip. The tenant stated that due to this she had the moving company take the balance of her belongings from the rental unit and place them in the outside shed that was located on the property, to ensure the rental unit was empty and her belongings would be safe.

The tenant testified that they were expected to make a second trip back to pick up these items, however, due to the landlord following her it took longer than expected as she did not want the landlord to see where she would be residing. As a result the movers were not able to pick up the balance of her items that day, and they were booked for the following week.

The tenant testified that before she could have the movers return to the shed and retrieve her belongings the landlord has already removed them and disposed of them. The tenant stated that she had estimated the value of these items to total \$6,462.00.

The landlord testified at no time did he follow the tenant and she is making up stories. The landlord stated he had other things to do and they simply left at the same time.

The landlord testified that he called the moving company and they told him that they were finished and they had no intent of returning. The landlord stated the movers had a five ton truck and it would be highly unlikely that they would not have room for the tenant's personal belongings.

The landlord testified that on February 4, 2013, after he was notified that the tenant's application for review consideration was dismissed, he emptied the shed. The landlord stated the only thing in the shed was garbage. The landlord stated the child's easel the tenant has indicated in their documentary evidence had both legs broken off. The landlord stated everything was garbage, covered in cat urine or mouldy. The landlord stated there was no value to any of the items.

The landlord testified on February 4, 2013, the tenant watched him remove the garbage from the shed and drove by several times. The landlord stated if these items were of value and as precious as she has claimed, it would be unreasonable for her to have done nothing. The landlord stated he believes the tenant is simply making up a story to cause him grief and get money from him as she is upset from being evicted. The landlord referred to paragraph 138 of the tenant's affidavit.

The landlord's witness (CD) testified that he helped the landlord remove the items from the shed on February 4, 2013. (CD) stated the shed was full of garbage, everything was covering in cat urine and the shed had an extremely strong smell of mould. (CD) stated there was absolutely no value to any of the items. (CD) testified while they were

removing the garbage from the shed the landlord had indicated to him that the tenant was driving by.

The landlord's witness (KT) testified that she did not witness all the items being removed from the shed as she had other things to do. (KT) stated what she did see was disgusting, and it was nothing more than garbage covered in cat urine, mould and parts of broken items. (KT) stated there was nothing of any value that she saw.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant 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. In this case, each party has the burden of proof to prove their respective claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Loss of rent for February 2013

The evidence of both parties was that on January 31, 2013, the tenant was required to deliver vacant possession of the rental unit to the landlord based on an order of possession that was issued on January 21, 2013.

When the landlord arrived at the rental unit on January 31, 2013, the tenant telephoned the police. After the police had consulted with the tenant they informed the landlord that the tenant had filed an application for review consideration, and that the tenant would not be delivering possession of the rental unit to the landlord until a decision was reached.

The tenant was vacating the premises on January 31, 2013, by moving her possessions out of the rental unit, however, it is clear in paragraph 125 of her affidavit that she was "not vacating the property". I find that the tenant did not deliver full and vacant possession of the rental unit to the landlord, as required by the order of possession.

I accept counsel's submission that the tenancy legally ended on January 31, 2013, by the order of possession issued on January 21, 2013, as that order was not suspended. However, that order was unenforceable until the outcome of the review consideration, and the tenant continued to have legal possession.

In normal circumstances a tenant is not liable to pay rent after a tenancy has ended. However, in this situation the tenant filed for a review consideration which was her right under the Act. Nevertheless, the tenant had the option on January 31, 2013, to provide peaceful vacant possession to the landlord, which she did not do, even though she had moved her belongings from the unit and by her own admission knew that she would likely be unsuccessful with her application for review. I find the action of the tenant was a deliberate attempt to cause the landlord further losses and this action caused her to overhold the rental unit. As a direct result of the tenant's action, the landlord suffered losses. Therefore, I find that the tenant is liable to compensate the landlord for the portion she over held the rental unit.

Furthermore, the evidence of the landlord was that he had new tenants for February 1, 2013; however, he was unable to give the new tenants possession of the rental unit due to the pending review consideration application filed by the tenant. The new tenants were required to find alternate accommodation. I find that the tenant's action caused further losses to the landlord as the landlord lost revenue for February 2013. Therefore, I find the landlord is entitled to recover the portion of time the tenant overheld the rental unit and the loss of revenue for the balance of rent for February 2013, in the total amount of **\$875.00**.

Cleaning cost

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The evidence of the tenant was that she was fleeing from the rental unit and was not able to clean it. I find it unlikely that the tenant was fleeing the rental unit. The tenant's own evidence was that she did not expect her review consideration to succeed. Therefore, the tenant knew that she was likely going to be evicted within a short time.

The evidence of the tenant was that she did not sweep, wash the floors, or clean the carpets. The tenant also acknowledged she did not clean the oven and left food in the refrigerator. The photographs submitted as evidence, support the tenant did not leave these items clean.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets regardless of the length of tenancy, if they had pets.

The evidence of both parties was the tenant had a cat. I find the tenant has breached section 37 of the Act, when she failed to clean the carpets.

Under the Residential Policy Guideline 1, the tenant must clean the stove top, elements and oven, and defrost and clean the refrigerator. The tenant is responsible for pulling out the appliances and cleaning behind and underneath at the end of the tenancy.

I further find that the tenant did not clean the shed and the items had to be removed and disposed of.

I find the tenant has breached section 37 of the Act, when she failed to clean these items.

As a result, I find the landlord is entitled to recover the cost of having the rental unit cleaned due to the breach of the Act, by the tenant. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$450.00**.

Hole in master bedroom door

Counsel for the tenant submitted the move-in condition inspection report should be excluded as the landlord forgot to sign the report. However, the tenant testified in the hearing that the report accurately reflected the condition of the unit at the start of the tenancy.

Section 21 of the Act states that a condition inspection report 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 this case, the evidence of the landlord was the tenant damaged the back of the door in the main bedroom. The evidence of the tenant was that they did not check the back of the door and that the damage was there when she moved in. While I accept that often items can be missed during an inspection, such as the back of a door, I find that to be highly unlikely in this case because a reasonable person would have immediately notified the landlord when they discovered the damage. The tenant has provided no evidence to support that she made any attempt to notify the landlord of such damage. I find the tenant has not provided a preponderance of evidence to the contrary. Therefore, I find the landlord is entitled to recover the cost of the broken door in the amount of **\$196.00**.

Flooring

The evidence of the landlord was that the floor was gouged by the tenant moving her furniture. The evidence of the tenant was that there was no damage caused to the floors and that the photographs provided by the landlord simply show that her child has coloured and stamped the floor with her work ink stamp.

In this case, the landlord has submitted photographs, however, I am unable to determine if the marks on the floor are gouges as described by the landlord or if these marks from the tenant's child colouring and stamping ink onto the floors, which are removable through cleaning.

As a result, I find the landlord has provided insufficient evidence to support his claim that the tenant caused damage to the floor. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,571.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

Tenant's application

Return of Rent from Dec 21 to Jan 31, 2013

In this case, the tenant claimed to have been harassed by the landlord, such as having to pay for a pet damage deposit when she did not have a pet. However, it is clear that the tenant had a cat shortly after the tenancy commenced.

Further, the tenant has not provided any evidence of any conduct that was directed at her that was not for a legitimate purpose. The landlord had the right to investigate and take appropriate action when he determined that he had cause sufficient to end her tenancy.

Black's law dictionary defines harassment as "a course of conduct directed at a specific person that causes substantial emotional distress in such a person and serves no legitimate purpose.

Further, I find the tenant not to be credible on this issue as the evidence supports that she was away on a Christmas holiday during this time period as stated on page 65 in her documentary evidence.

I find the tenant has failed to prove that the landlord has harassed the tenant. Therefore, I find that the tenant is not entitled to any return of rent for December or January 2013. I dismiss this portion of the tenant's claim.

Double the pet damage and security deposit

Under section 38(1) of the Act the landlord must return the security deposit and pet damage deposit within 15 days after the tenancy ends or the date the landlord receives the tenant's forwarding address.

In this case counsel submitted that the landlord had the tenant's forwarding address as it was written in a previous letter and referred to the letter dated December 8, 2012. However, I find that position unreasonable because that letter was written by the tenant during her tenancy, and she did not notify the landlord that the address on the December 8, 2012, letter was, in fact, her forwarding address.

While the tenant may have retained the same post office box, the onus was on the tenant to notify the landlord of her forwarding address or at the very least confirm that address in writing at the end of the tenancy. The tenant provided no evidence that she did either. I find the tenant has failed to prove the landlord violated the section 38 of the Act. The tenant's application for double of the security deposit and pet damage deposit is dismissed.

Loss of use of laundry facilities

In this case, the evidence submitted by the tenant does not support that they had lost use of the laundry facility, except for a very short period in October 2013. However, as soon as the landlord was informed of the problem, on both occasions, he took appropriate action to have the appliance repaired or replaced. Temporary inconvenience is not grounds for compensation.

Further, I also find if the tenant chose to limit her use of the laundry facility for the month of December that was a choice she made as the appliances were available for her use. While the tenant claimed she was harassed by the other tenant, I find the tenant was the instigator as the evidence at the previous hearing was that the tenant had thrown their clothing onto the floor and disturbed their quiet enjoyment. I find the tenant has failed to prove a loss.. Therefore, I dismiss this portion of the tenant's claim.

Cost to keep house secure without changing locks

In this case, I prefer the evidence of the landlord over the tenant because if the tenant was without a key as suggested, I find it was unreasonable to send a letter by registered mail and expect a response within such a short time period. Further, there was no evidence that this letter was received by the landlord. I find it would have been reasonable for the tenant to contact the landlord directly to request a key.

Also, I find the tenant lacked credibility when she stated that the house keeper was there to keep the premises secure. It was clear the homemaker was attending the rental unit to feed the tenant's cats, not for the purpose of keeping the premises secure. I find the tenant has failed to prove a loss exists. Therefore, I dismiss this portion of the tenant's claim.

Babysitting

The tenant withdrew this portion of her claim. As a result, I dismiss this portion of the tenant's claim.

Lost wages (difference between tenant's wage and long term disability)

In this case the tenant claimed that due to the harassment by the landlord it delayed her return to work. The landlord denied any harassment.

The medical documentary evidence submitted by the tenant supports the fact that the tenant suffered from a medley of conditions which prevented her from working. I also accept the tenant may have been stressed from the eviction process. However, I find there is no evidence to support that she was seen fit to return to work during her tenancy or that her health issues were a result of the landlords action. I find the tenant has failed to prove a loss exists, and I dismiss this portion of her claim.

Aggravated Damages (play therapy for tenant's son)

In this case the tenant claimed aggravated damages for her son.

While I accept the documentary evidence submitted by the tenant supports that her child suffers with behaviour problems, I find the evidence the tenant's does not support that her child's behaviour problems were caused by the actions of the landlord. Rather, the documentary evidence supports that the tenant's child had previous behaviour problems prior to the tenancy commencing and the child was having difficulty adjusting to new settings such as school. I find the tenant has failed to prove the landlord has violated the Act. Therefore, I dismiss this portion of the tenant's claim.

Loss of possessions

The evidence of the tenant was that the moving company she hired to move her belongings did not have sufficient room in their truck to accommodate all her belongings, so she had the movers take the balance of her personal belongings from the rental unit and place them in the shed that was located on the landlord's property.

In this case, the evidence of the landlord's witnesses (CD) and (KT), both confirmed that the items in the shed were garbage, covered in cat urine and held no value. The evidence of landlord was that everything in the shed was covered in cat urine, mould or broken and it was all garbage. The evidence of the landlord was that it would be unreasonable to expect an inventory list to be created for garbage and that would be unsafe to store.

In this case, I prefer the evidence of the landlord over the tenant, as the landlord provided two witnesses to support his position that the items left in the shed were garbage. Further, I find it would be highly unlikely that the tenant would have had these personal items moved into a shed when a returned trip was planned. I also find it would have been unreasonable to move these items into a shed when she had indicated that she was not "vacating the property".

Also I find if the movers had seen these items and placed them in the shed as claimed by the tenant, it would have be reasonable for the tenant to have the moving company attend the hearing and provided evidence to support that these belongings existed and to provide evidence on the condition of the items that were stored in the shed. Without that evidence, I find the tenant failed to meet the burden of proof.

Therefore, I find the tenant has failed to prove a loss exists. I find on the balance of probabilities that the items left behind were garbage. While the regulations require an inventory list to be created for personal property left behind by a tenant, I find that it would not apply to garbage as it would be unreasonable to do so.

Phone and stop cheque fee

The tenant provided no testimony regarding this portion of her claim. Therefore, I dismiss this portion of their claim.

In light of the above, the tenant's entire application is dismissed without leave to reapply. The tenant is not entitled to recover the cost of the filing fee from the landlord.

Conclusion

As I have previously found that the landlord has established a total monetary claim of **\$1,571.00**. I order that the landlord retain the security deposit of **\$437.50** and pet damage deposit of **\$437.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$696.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed.

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: January 21, 2014

Residential Tenancy Branch

