



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNDC; MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damages and unpaid rent; for compensation under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlords testified that they mailed the Notice of Hearing documents to the Tenant, by registered mail, on October 29, 2013. The Landlords provided a copy of the registered mail receipt and tracking number in evidence. The Tenant acknowledged service of the documents.

The Tenant testified that he sent copies of his documentary evidence to the Landlord by registered mail on January 25, 2014. The Landlords acknowledged receipt of the Tenant's documents on January 28, 2014.

The Landlords testified that they mailed copies of their documentary evidence to the Tenant, by registered mail, on January 29, 2014. The Tenant acknowledged receipt of the Landlords' documents on January 31, 2014.

Preliminary Matter

The Landlords have applied for compensation in the amount of \$500.00 for the estimated cost of removing the Tenant's boats from the rental property. **During the course of the Hearing, the parties agreed that the Tenant would pick up his boats at the rental unit on February 9, 2014, at 3:00 p.m.** Therefore this portion of the Landlords' application is dismissed, with leave to reapply if the Tenant does not pick up his boats.

Issues to be Decided

- Are the Landlords entitled to a monetary award for the cost of replacing items that the Tenant took from the rental unit at the end of the tenancy; for the cost of disposing of the Tenant's garbage; for unpaid utilities; and unpaid rent?
- May the Landlords apply the security deposit towards satisfaction of their monetary award?

Background and Evidence

The rental property is a house with an upper and lower suite, situated on a large lot with outbuildings. The Landlords lived in the lower suite and the Tenant lived in the upper suite. The Tenant and his family moved into the rental unit in August 2009, and moved out of the rental unit in November, 2009. There was a written tenancy agreement for this first tenancy. The Tenant and his family moved back into the rental unit in September, 2010. There was no written tenancy agreement for this second tenancy; however, the parties agreed that rent was \$1,250.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00. At the end of July, 2013, the Tenant gave oral notice to end the tenancy effective September 30, 2013. The Tenant moved out of the rental unit at the end of September, 2013.

There was no Condition Inspection Report completed at the beginning or end of either tenancy.

The Landlord RD gave the following testimony:

RD testified that rent did not include utilities and the Tenant was required to pay 50% of the utility bills.

RD stated that the parties had an agreement that the Tenant could provide work in lieu of paying rent. RD stated that it was "convenient for us to write off his work against his rent" and that the amount was calculated based on \$25.00 per hour. He said that from March 30, 2011 until September 7, 2012, the Tenant's expenses from working on a project at another property were applied towards the Tenant's rent. The Landlords provided a summary of the Tenant's portion of unpaid utilities from March 2, 2011 to and including September 7, 2012. The Landlords calculate that the Tenant's share of utilities amounted to \$1,984.21 over that period of time. \$1,747.17 of the Tenant's share was set off against the Tenant's expenses. The summary indicates that the Tenant paid \$220.00 towards the balance on November 21, 2012, leaving a total of \$17.04 owing as of November 21, 2012.

The Landlords also provided a summary of outstanding utilities from November 21, 2012 to and including October 9, 2013. The Landlords submit that the Tenant's share of unpaid utilities amounts to \$1,658.58. RD stated that the Landlords did not try to negotiate payment of the outstanding utilities with the Tenant because he was behind on his rent and they enjoyed a fairly friendly relationship. The Landlords seek a monetary award in the amount of **\$1,658.58** for unpaid utilities.

RD testified that the Tenant paid only partial rent, in the amount of \$450.00, for July, 2013. He stated that the Tenant paid no rent for the months of August and September, 2013. The Landlords seek a monetary award for the outstanding rent in the total amount of **\$3,300.00**.

RD stated that the Tenant removed some fixtures from the rental unit at the end of the tenancy. He stated that the Tenant left garbage at the rental property. The Landlords provided photographs and some invoices in evidence. The Landlords provided a list of items for which they seek reimbursement, as follows:

Item	Explanation	Cost
CO2 alarm	Paid for by Landlords, stolen by Tenant	\$44.34
Garbage can with track	Paid for by Landlords, stolen by Tenant	\$33.57
Locks	Change of locks due to threat of safety	\$84.00
Faucet, bathroom light, etc.	Replace faucet, lights, bulbs	\$76.72
Water lines	Replace stolen water lines	\$11.97
Fuel	Trips to replace stolen items	\$20.00
Two lights	Replace 2 missing lights	\$20.15
Municipal dump	Dump fees	\$35.00
Fuel	Trips to dump	\$35.11
Labour	To remove Tenant's garbage	\$200.00
Registered mail	Cost of service	<u>\$10.25</u>
TOTAL		\$571.11

The Tenant gave the following testimony:

The Tenant testified that rental property was in poor condition, with a rotten fence; poor insulation and lighting; poorly fitted single pane windows; and unpainted walls. He testified that he did the following repairs/improvements to the rental property while he was occupying the rental unit:

- Replaced two single paned windows in the basement and one single paned window in the Landlord's children's bedroom with double paned windows;
- Insulated and drywalled walls in the laundry area;

- Insulated the ceiling of the utility area and main bedroom for soundproofing;
- Repaired the Landlord's broken toilet;
- Painted walls;
- Installed new wiring and lighting;
- Replaced a leaking kitchen faucet;
- Purchased new laundry machines; and
- Fixed rotting fence (10 to 12 truckloads of material)

The Tenant testified that he performed all of the labour, but the Landlord covered the cost of materials with the exception of the kitchen faucet, mirror, lights and fence. The Tenant stated that he paid for those items and that he only took the items he had paid for: the faucet and water lines; lights; and CO2 alarm. The Tenant stated that he left the old broken faucet at the rental property.

The Tenant agreed that some of the boxes in the photographs were his, but stated that the Landlords were using them, so he didn't take them when he left. He stated that most of the garbage that the Landlord referred to was the Landlords' garbage, or was already there when he moved into the rental unit.

The Tenant stated that he paid cash for rent, at the request of the Landlords. He stated that he was not given receipts. The Tenant denied that he owed any rent to the Landlords.

The Tenant stated that at the beginning of the second tenancy, he paid the Landlords for utilities, based on an amount that the Landlords told him he owed, but that he did not receive any copies of the utility bills. He stated that the Landlords stopped asking for utility payments after he demanded to see copies of the bills.

The Landlord RD gave the following reply:

RD stated that the Landlords are not seeking compensation for the cost of dumping all of the garbage, just the garbage that belonged to the Tenant.

RD stated that he found no faucet at the rental property, and that the Tenant did not tell him that he had left it there.

RD stated that the Tenant was "working under the table" and didn't ask for receipts for rent paid in cash.

RD submitted that it was the Tenant's word against the Landlords'.

Analysis

This is the Landlords' claim and therefore the Landlords have the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Are the Landlords entitled to a monetary award for unpaid utilities?

I find that the Landlords did not take reasonable steps to mitigate their loss. The Landlords' remedy would have been to provide the Tenant with copies of the utility bills as they became due; and if the Tenant did not pay his share within 30 days of receipt of the utility bills, the Landlords could issue a 10 Day Notice to End Tenancy for unpaid utilities. I find that the Landlords failed to satisfy part 4 of the test above and therefore this portion of their claim is dismissed.

Are the Landlords entitled to a monetary award for unpaid rent?

RD did not dispute that the Landlords did not provide receipts for rent paid in cash. Section 26(2) of the Act provides that landlords **must** provide a tenant with a receipt for rent paid in cash. In other words, the tenant need not request a receipt.

RD also aptly pointed out that it was "the Tenant's word against the Landlords". The Tenant disputes that he owes any rent. The onus is on the party making the claim to provide sufficient evidence to support their claim. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. I find that the Landlords provided insufficient evidence that the Tenant was in arrears (for example, copies of receipts or a tenant ledger). Therefore, I find that they have not proven part 1 of the test as outlined above and this portion of their claim is dismissed.

Are the Landlords entitled to a monetary award for the cost of serving the Tenant with documents; missing items; and garbage removal?

The Act does not provide for recovery of the cost of serving a party. This portion of the Landlords' claim is dismissed.

Residential Tenancy Policy Guideline 1 provides guidance with respect to chattels annexed to the rental property. Guideline 1 provides, in part:

A fixture is defined as a "thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land"

For the purposes of determining whether chattels annexed to realty remain personal property or become realty, chattels are divided into two classes:

1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.

2. Other personal property that does not lose its original character after attachment may continue to be personal property, if the owner of the personal property and the landowner agree.

Fixtures that have been considered tenant's fixtures are:

☐ Trade fixtures - where the tenant has attached them for the purposes of his trade or business.

☐ Ornamental and domestic fixtures which are whole and complete in themselves and which can be removed without substantial injury to the building. Examples of a chattel which can be moved intact and are more likely to be considered a tenant's fixture are blinds and a gas stove.

6. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.

In this case, I find that the faucet and lighting fixtures installed by the Tenant were the Tenant's fixtures. However, I also find that the Tenant was responsible for re-installing the faucet and lighting fixtures that he removed at the end of the tenancy. Where the

Landlords provided sufficient evidence to support this portion of their claim, I grant the Landlords a monetary award, calculated as follows:

Replace faucet, light and bulbs	\$76.72
Two additional lights	\$20.15
Replace water lines	<u>\$11.97</u>
TOTAL	\$108.84

I find that the Landlords did not provide sufficient evidence to support their claim for the cost of the CO2 alarm, garbage can, locks or fuel.

Sections 23 and 35 of the Act require a landlord to perform a Condition Inspection at the beginning and the end of a tenancy and to provide the tenant with a copy of the Inspection Report. The Landlord did not comply with Sections 23 and 35 of the Act. Section 21 of the Residential Tenancy Regulation provides that a Condition Inspection Report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or tenant has a preponderance of evidence to the contrary.

I find, without the Condition Inspection Reports or sufficient evidence that the Tenant left all of the garbage that the Landlords allege he left, the Landlords have failed to prove part one and two of the test for damages. However, the Tenant acknowledged that some of the garbage was his. Therefore, I allow the Landlord's claim in the amount of **\$235.11** for the resulting labour and dump fees.

Pursuant to Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award. No interest has accrued on the security deposit.

The Landlords have been partially successful in their application and I find that they are entitled to recover part of the cost of the filing fee from the Tenant, in the amount of **\$50.00**.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Total monetary award (\$108.84 + \$235.11)	\$343.95
Partial recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$393.95
Less security deposit	- \$300.00
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$93.95

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$93.95** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: February 21, 2014

Residential Tenancy Branch

