



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY PROPERTY MGMT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI MNDC ERP RP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to make emergency repairs for health or safety reasons, to make general repairs to the unit, site or property, and to recover the filing fee.

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

The parties agreed that they received documentary evidence from the other party prior to the hearing and had the opportunity to review it prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

The tenant was advised that their application to dispute an additional rent increase was being refused, pursuant to section 59(5)(a) of the *Act* because their application for dispute resolution did not provide sufficient particulars of this portion of their claim, as is required by section 59(2)(b) of the *Act*. As a result, the tenant is at liberty to reapply to dispute an additional rent increase as that portion of their claim has been refused pursuant to section 59(5)(a) of the *Act*.

Regarding the tenant’s application for an order directing the landlord to make emergency repairs for health or safety reasons and to make general repairs to the unit,

site or property, the parties were able to reach a mutually settled agreement during the hearing. As a result of the above, and in accordance with section 63 of the *Act*, I have recorded the terms of the mutually settled agreement of the parties below, and will not consider those portions of the tenant's application further in this Decision.

Settlement Agreement

#1. The parties agree that the landlord will arrange at the landlord's expense to have a professional window company attend the rental unit to inspect the front window of the rental unit to determine if it needs to be repaired by way of a written recommendation. If the professional window company determines by way of a written recommendation that the front window needs to be repaired, the landlord agrees to have the front window repaired as soon as possible.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on February 13, 2012. Monthly rent in the amount of \$950.00 is due on the first day of each month and was increased over the course of the tenancy to the current amount of \$986.00 per month. The rental unit is approximately twelve years old.

The tenant has applied for \$1,387.97 in monetary compensation comprised of the following:

Item 1. Cleaning expenses	\$595.00
Item 2. Frozen houseplants	\$145.58
Item 3. Deep tissue massage	\$91.00
Item 4. Three acupuncture treatments	\$210.00
Item 5. Rent rollback from May 2013 for nine months (calculated at \$36.00 per month X 9 months)	\$324.00
Item 6. Plastic barrier	\$22.39
TOTAL	\$1,387.97

Item 1

The tenant has claimed \$595.00 for cleaning costs related to having to allegedly clean the rental unit at the start of the tenancy. The tenant submitted a document in evidence that she stated supports that she paid \$45.00 per hour for two people to clean the rental unit for eleven hours shortly after she moved in for a total of \$495.00. In addition, the tenant referred to the same document which indicates that a flat fee of \$100.00 was charged to clean all inside windows and frames, and outside of front window twice for total of \$595.00 in cleaning.

The agent disputed this portion of the tenant's claim and testified that the rental unit was "thoroughly cleaned" at the start of the tenancy. The parties referred to the incoming condition inspection report dated February 22, 2012. The only portions of the incoming condition inspection report dated February 22, 2012, which indicate the code for dirty, ("DT"), are listed as follows:

- Entry - Lighting fixtures/Ceiling Fans/Bulbs – "slightly DT inside fixture"
- Kitchen – Oven + Broiler Pan – "DT between glass"
- Kitchen – Dishwasher – "Slightly DT around door (interior)"
- Kitchen – Lighting Fixtures/Bulbs "Slightly DT inside 1 fixture"
- Living Room – Fireplace "DT interior glass"
- Stairwell and Hall – Lighting Fixtures/Ceiling Fans/Bulbs – "Slightly DT inside fixture"
- Stairwell and Hall – Electrical Outlets – "Slightly DT humidistat"
- Bedroom (2) – Lighting Fixtures/Ceiling Fans/Bulbs – "Slightly DT inside fixture"
- Master Bedroom (1) – Lighting Fixtures/Ceiling Fans/Bulbs – "Slightly DT inside fixture"

The parties agreed that there was no written agreement between the parties regarding extra cleaning to be paid by the landlord at the start of the tenancy. The tenant stated that she did not discover the "dirt" until she began to put things away. The tenant confirmed that when she participated in the condition inspection report she was aware that in the kitchen for instance, that there were worn interior doors and that four cabinet doors were discoloured, which is reflected on the incoming condition inspection report.

The landlord submitted an invoice dated January 20, 2012 in evidence which the agent stated supports that \$499.00 was paid to have the rental unit cleaned prior to the tenant moving into the rental unit. The invoice matches the rental unit address. The only

repairs to be completed at the start of the tenancy noted on the incoming condition inspection report were “caulking in the bathrooms.”

Item 2

The tenant has claimed \$145.58 for frozen houseplants that the tenant stated froze due to the front window of the rental unit having a broken seal, causing a loss of heat in the rental unit. The tenant did not provide photos or receipts in support of this portion of her claim. The agent disputed this portion of the tenant's claim.

Items 3 and 4

The tenant has claimed a total of \$301.00 for these items comprised of \$91.00 for deep tissue massage and \$210.00 for 3 acupuncture treatments that the tenant stated were needed due to lack of sufficient heat due to the “cold invasion” in her body as a result of a broken seal in the front window of the rental unit which led to a heating loss in the rental unit. The agent disputed these portions of the tenant's claim. The tenant provided receipts supporting that she paid \$91.00 for a deep tissue massage, and \$210.00 for 3 acupuncture treatments.

The tenant also provided a letter from a treatment provider which reads in part that the tenant “...stated during the consultations in my office over the last four treatments that her environment has been quite cold over the winter months. This would be a considered a contributing factor to her illness in Chinese Medicine...”.

Item 5

The tenant has claimed \$324.00 in a “rent rollback” calculated at nine months at \$35.00 per month due to a loss of heat from a broken seal in the front window of the rental unit causing a loss of heat in the rental unit. The tenant provided a photocopy of four photos which were very blurry and dark, which the tenant stated showed condensation in the front window and light making the window allegedly “semi-opaque”. The landlord disputed this portion of the tenant's claim.

The tenant referred to an e-mail dated March 5, 2013 on page 34 of the landlord's evidence package, which reads in part:

“...I'm still waiting to hear about the living room window replacement, now that we are seeing sun again. It's pretty hard to take a rent increase when things as important as this aren't dealt with in a timely manner. After all, I have not created

the problems – it's a combination of unit age & past maintenance, or lack. Please advise when I can expect this to be dealt with. Thank you."

[reproduced as written]

The agent stated that he followed up on the e-mail from the tenant, which is supported by a letter dated June 5, 2013 entitled "Interim Inspection Report" submitted in evidence. According to that document, heat loss was noted as not being a concern "seeing as the season is turning towards summer weather, heat loss is not a current concern" however the front window was seen by a landlord agent, "MC" as having a "faint milky white in between the base of some of the panes, but it was not significantly bad." The tenant stated that she only stayed in the rental unit as she believed the front window would be fixed.

Item 6

The tenant has claimed \$22.39 for a plastic barrier for the front window of the rental unit. The tenant did not provide a photo or receipt to support this portion of her claim. The landlord disputed this portion of the tenant's claim.

Analysis

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

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 tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – The tenant has claimed \$595.00 for cleaning costs. The tenant submitted a document in evidence that she stated supports that she paid \$45.00 per hour for two people to clean the rental unit for eleven hours shortly after she moved in for a total of \$495.00. In addition, the tenant referred to the same document which indicates that a flat fee of \$100.00 was charged to clean all inside windows and frames, and outside of front window twice for total of \$595.00 in cleaning. The agent disputed this portion of the tenant's claim and testified that the rental unit was "thoroughly cleaned" at the start of the tenancy. The parties referred to the incoming condition inspection report dated February 22, 2012.

The tenant failed to submit any photos supporting that the rental unit was dirty at the start of the tenancy. As a result, I will rely on the incoming condition inspection report as evidence of the agreed upon condition of the rental unit at the start of the tenancy. Although a tenant's version of a clean rental unit and a landlord's version of clean rental unit can differ, **I find** that items listed as "DT" which is the code for "dirty" are primarily listed as "lighting fixtures/ceiling fans/bulbs." I do not accept the tenant's testimony that the rental unit required 11 hours of cleaning based on the incoming condition inspection report. In coming to this conclusion, I have considered the tenant's testimony which indicated that the tenant did not discover the "dirt" until she "began to put things away". I find the incoming condition inspection report to have been very detailed, and therefore, I do not accept that portion of the tenant's testimony as a result.

Furthermore, the landlord submitted an invoice dated January 20, 2012 in evidence which supports that \$499.00 was paid to have the rental unit cleaned prior to the tenant moving into the rental unit. The invoice matches the rental unit address. The only repairs to be completed at the start of the tenancy noted on the incoming condition inspection report were "caulking in the bathrooms." At the very least, I find that if the tenant disagreed with the state of cleanliness of the rental unit, and that it required such a degree of cleaning at the start of the tenancy, that she would have indicated such on the incoming condition inspection report next to the "caulking of the bathrooms" noted on the inspection report. Given the above, **I find** the tenant has failed to meet part one

of the test for damage or loss as indicated above. Therefore, **I dismiss** this portion of the tenant's claim due to insufficient evidence, **without leave to reapply**.

Item 2 - The tenant has claimed \$145.58 for frozen houseplants for this portion of her claim. The tenant alleged that her houseplants froze due to the front window of the rental unit having a broken seal, causing a loss of heat in the rental unit. The tenant did not provide photos or receipts in support of this portion of her claim. The agent disputed this portion of the tenant's claim. Given the above, **I find** the tenant has failed to meet part one, two and three of the test for damage or loss as indicated above. Therefore, **I dismiss** this portion of the tenant's claim due to insufficient evidence, **without leave to reapply**.

Items 3, 4, and 5 – I have combined these items as items 3 and 4 related to an alleged cause indicated by the tenant for the need for a deep tissue massage and 3 acupuncture treatments due a “cold invasion” to her body caused by a broken seal of the front window. As a result, I will deal item 5 first in my analysis.

For item 5, the tenant has claimed \$324.00 in a “rent rollback” calculated at nine months at \$35.00 per month due to a loss of heat from a broken seal in the front window of the rental unit causing a loss of heat in the rental unit. The tenant provided a photocopy of four photos which were very blurry and dark, which the tenant stated showed condensation in the front window and light making the window allegedly “semi-opaque”. The landlord disputed this portion of the tenant's claim. I afford the tenant's photos little weight as they are blurry, dark and do not support the tenant's testimony as a result. Although the landlord's evidence supports that the window was “milky white”, I find that the tenant has provided insufficient evidence to prove that the window itself has failed resulting in a loss of heat in the rental unit. Therefore, **I find** the tenant has failed to meet part one and part two of the test for damage or loss as indicated above. Therefore, **I dismiss** item 5 of the tenant's claim due to insufficient evidence, **without leave to reapply**.

In keeping with my finding regarding item 5, **I find** that the tenant has provided insufficient evidence to support items 3 and 4 of her claim. I afford little weight to the letter from the treatment provider as the treatment provider is writing what the tenant self-reported, versus making a finding based on the treatment provider's own assessment of the tenant. Therefore, **I find** the tenant has failed to meet part one and part two of the test for damage or loss as indicated above. Therefore, **I dismiss** items 3 and 4 of the tenant's claim due to insufficient evidence, **without leave to reapply**.

Item 6 - The tenant has claimed \$22.39 for a plastic barrier for the front window of the rental unit. The tenant did not provide a photo or receipt to support this portion of her claim. The landlord disputed this portion of the tenant's claim. Therefore, **I find** the tenant has failed to meet part one, two and three of the test for damage or loss as indicated above. Therefore, **I dismiss** item 6 of the tenant's claim due to insufficient evidence, **without leave to reapply**.

As the tenant's application did not have merit, **I do not grant** the tenant the recovery of the filing fee.

Conclusion

A portion of the tenant's application was resolved by way of a mutually settled agreement between the parties which has been recorded above in accordance with section 63 of the *Act*. I order the parties to comply with the term of their mutually settled agreement described above.

The remaining portion of the tenant's application has been dismissed in full, without leave to reapply, due to insufficient evidence.

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: March 10, 2014

Residential Tenancy Branch

