



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid utilities, compensation for damage to the rental unit and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant testified that she received seventeen of eighteen pages of evidence supplied by the landlord. No document was referenced during the hearing that the other party could not view.

The parties confirmed receipt of each other's photographs, with the exception of photo #55 which was missing from those given to the tenant by the landlord.

The landlord confirmed that they served a list of items damaged, with the application. A detailed calculation of the claim was provided to the tenant as part of an evidence submission given to the tenant on March 19, 2014. The tenant said she had been able to review the calculation and was prepared to respond.

The landlord reduced the claim from \$2,670.00 made on the application, to \$2,422.31, including fees, photographs and mailing costs.

An applicant can recover damages for the direct costs of breaches of the Act or the tenancy agreement but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the claim made for photographs and mailing costs was denied; the landlord is at liberty to write those costs off as a business expense.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$198.99 for utility costs?

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$2,079.00?

Is the landlord entitled to compensation in the sum of \$66.67 for refrigerator repair?

May the landlord retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in December 2012; this was a 1 year fixed term that required the tenant to vacate at the end of December 2013. Rent was \$1,125.00 per month, due on the 1st day of each month. A security deposit in the sum of \$562.50 was paid.

A copy of the tenancy agreement was supplied as evidence.

The tenant was required to pay 40% of water and hydro. The occupant of an upper unit had the utilities in her name; she paid the bill and showed the bills to the tenant, who would then pay her share.

A move in condition inspection report was completed and given to the tenant. The unit was new and had not been previously occupied.

On November 1, 2013 the tenant gave the landlord written, signed notice that she would vacate at the end of November 2013. The parties met on November 30, 2013 to complete the condition inspection report; the tenant left the unit before the inspection was completed and refused to sign the report as she did not agree with the damages the landlord was pointing out. The tenant confirmed she refused to sign the report.

The tenant gave the landlord her written forwarding address and within 5 days of the end of the tenancy the landlord applied claiming against the deposit.

The landlord made the following claim:

Water bill	\$33.44
Hydro bill	165.66
Painting	1,180.00
Replace base board heater	200.00
Repair kitchen cupboard door	150.00
Repair hardwood flooring	450.00
Fridge repair	66.67
TOTAL	\$2,179.10
	2,245.77

All repairs claimed were based on an estimate issued March 7, 2014; the repairs have yet to be made.

The detailed calculation of the claim indicated a sum of \$128.00 for hydro costs. During the hearing the landlord increased this sum to \$165.55 as the occupant had initially provided the landlord with an incorrect calculation.

The tenant confirmed that she owes the sum claimed for a water bill; she had not yet been given a copy of the bill.

During the hearing the tenant looked up her banking records to confirm the last payment she had made for hydro costs. The tenant would make her payments directly to the utility by bank transfer. The last payment the tenant made was on November 2, 2013 in the sum of \$111.96; this sum was shown on the utility bill provided as evidence.

The hydro bill was issued on December 19, 2013 for the period October 18, 2013 to December 17, 2014 in the sum of \$567.33. A total of \$509.96 in payments was indicated on this bill which showed a credit of \$230.28 with a balance owed of \$346.05.

The landlord said that the occupant of the upper unit had calculated the amount owed for hydro; however, no calculation was provided during the hearing, explaining how the other payments indicated on the bill had been applied, how many days were considered or the rate per day. The landlord provided a copy of a cheque in the sum of \$165.55, issued to the occupant on January 8, 2014 for the hydro costs owed by the tenant.

There was no dispute that the tenant made repairs to nail holes in the walls. The tenant obtained a can of paint from the occupant in the upper unit, to cover the repairs. The tenant was under the impression that this paint was the same as that used by the landlord. There was very little paint remaining in the can so the tenant took it to a hardware store and had matching paint mixed. That paint was then used to cover the areas requiring repair. The tenant said she believed the photographs supplied by the landlord were not of her unit or had been taken at another time. The tenant and her witness said that after she had painted the walls looked fine.

Photographs supplied by the landlord showed walls that had been partially painted over; the wall colours differed somewhat. Doors had also been touched up and required repainting. The invoice indicated that crown moldings also needed to be painted; no photographs of this molding were provided; although baseboards were shown. The landlord said he told the tenant not to make the nail repairs. The landlord said every room in the unit requires repainting.

The tenant confirmed that she painted the top of a baseboard heater, as it had a scratch. The landlord has claimed the cost of replacement, based on an estimate. The heater continues to function. A photograph was supplied of the baseboard.

There was no dispute that the inside of a kitchen cupboard was damaged; the landlord said that a pull-out pantry had caused the scratches. The landlord stated that the tenant's young son had caused this damage, by pulling on the pantry. The tenant responded that she had previously pointed out the problem to the landlord as she thought there was an installation problem.

The landlord stated that 2 or 3 months before the tenancy ended the tenant told him about the kitchen door problem and that she had said it was an installation issue. The landlord disagreed, as the units had been newly installed; the landlord believed that the tenant's son was being rough with the pantry. The tenant said her son is 2.5 years old and did not use the pantry.

The tenant confirmed that the fridge handle had broken when she was cleaning it; she did question the estimated replacement cost invoice and the difference indicated on the repair bill that were supplied as evidence. The landlord said that the repairperson was able to purchase the handle for \$13.74 and charged them a mark-up totalling \$17.45 for the part. The total cost for repair was \$66.67.

Both parties provided photographs that showed some damage to the flooring. The landlord referred to the flooring as hardwood; the tenant said it was laminate; suggesting it was less resilient than hardwood. There was no dispute that some damage had occurred. The landlord said that the entry, kitchen and living room had small areas of damage that would require replacement of a number of boards; as single pieces could not be changed.

The tenant said that she placed felt pads under all of her furniture and that the damage that did occur was the result of normal wear and tear. The tenant said that she would have had to hover over the floor in order to ensure marks were not made in the laminate.

The tenant's witness provided affirmed testimony that she was present when the tenant talked with the landlord about painting and repairing the nail holes. The witness went with the tenant, who had the paint matched and was at the unit when the tenant painted over the repaired areas. The witness said that after painting you could not find differences and she suspects the photographs supplied are not of the walls that the

tenant painted. The witness viewed the landlord's pictures and determined that they could not have been taken of the same walls that had been repaired by the tenant.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. I find this to be a reasonable stance.

The tenant has agreed that she owed the sum claimed for water utility costs; therefore, based on this agreement I find that the landlord is entitled to sum claimed.

In relation to the hydro bill, there was no detailed calculation provided that supported the sum claimed. The landlord did supply evidence that the occupant of the upper unit had been reimbursed for some utility costs, but a calculation of the payment was not provided. The landlord was given an opportunity during the hearing to provide a detailed calculation of the hydro bill, including the number of days the tenant was being charged, the sum paid during this period of billing and the rate charged to the tenant. The landlord was unable to do so. In the absence of a detailed breakdown I find that the claim is dismissed.

Discussion occurred during the hearing suggesting that placing utility costs in a tenant's name could pose problems in relation to payment and enforceability.

I have considered the claim for painting and have rejected the tenant's testimony that the photographs supplied by the landlord were not of the unit in question. There was no dispute that the tenant had attempted to make repairs by having paint mixed to match the previously used paint. I find, on the balance of probabilities, that the paint used by the tenant; in the end, was not a match to that already on the walls. Despite the efforts of the tenant, the painting resulted in the need for repainting of the unit. Evidence showed that doors, walls and a baseboard heater had all been brushed over with a colour that was not a full match to the walls.

I also considered the witness testimony and gave it similar weight to that of the tenant. I have rejected the testimony that the photographs were not taken of the unit in question. The photographs taken by the landlord appeared to be of the same unit photographed by the tenant.

Therefore, I find that the landlord is entitled to compensation in the sum claimed for painting.

In relation to the kitchen door, I find that the landlord failed to fully investigate the report made by the tenant that the pantry shelf was causing the inside of a door to be scratched. The cabinets were new and it is not unreasonable to accept that an adjustment could have solved with problem. There was no evidence before me to support the claim that the tenant's son had caused this damage. The tenant acknowledged the damage was occurring and had reported it to the landlord in an attempt to have the issue addressed. Therefore in the absence of evidence of negligence on the part of the tenant, I find that the claim for kitchen cabinet repair is dismissed.

The tenant admitted she painted the new baseboard heater, which altered the finish. I find that this was a deliberate attempt to cover a scratch that resulted in a diminished aesthetic value of the heater. Even though the heater continues to operate I find it is reasonable to expect the landlord to replace the heater, as the appearance has been permanently altered and the finish is destroyed. Therefore, I find the landlord is entitled to compensation as claimed.

In relation to the floors, there is no dispute that some small areas of damage have occurred. The landlord did not dispute that the floors were laminate; vs. hardwood. From the evidence before me I find that the damage caused is the result of normal day to day living.

It is reasonable to expect that after a 1 year tenancy laminate flooring would have experienced some wear and tear. The tenant provided 2 photographs that showed several small areas that were damaged, which when compared to the 3 photographs provided by the landlord, support the tenant's submission that use over a 1 year period of time could be expected to result in some signs of use. There was no evidence before me that the damage was caused by deliberate action or neglect of the tenant. In fact, the tenant took steps to protect the flooring by placing felt under her furniture.

Therefore, I find that the claim for flooring repair is dismissed.

As the tenant has admitted breaking the fridge handle while cleaning it, I find, in the absence of any evidence that the handle was faulty, that the landlord is entitled to compensation in the sum of \$66.67 to repair the handle. This sum is based on the documentation supplied by the landlord; indicating reasonable costs for repair.

The landlord is entitled to the following compensation:

	Claimed	Accepted
Water bill	\$33.44	\$33.44
Hydro bill	165.66	0
Painting	1,180.00	1,180.00
Replace base board heater	200.00	200.00
Repair kitchen cupboard door	150.00	0
Repair hardwood flooring	450.00	0
FRIDGE repair	66.67	66.67
TOTAL	\$2,179.10 2,245.77	\$1,413.44 1,480.00

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$562.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of ~~\$900.94~~ **967.61**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for utilities and damage, as set out above and has been issued a monetary Order. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

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*.

Corrected: April 23, 2014

Residential Tenancy Branch

