



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

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

The tenants applied requesting compensation for damage or loss under the Act and return of double the security deposit.

Both parties were present for each of the 2 hearing dates. Tenant M.H. was present at the start of the 2nd hearing; he exited shortly after the hearing commenced and S.S. remained to represent the 3 tenant applicants and 2 tenant respondents.

At the start of the 2nd hearing I introduced myself and the participants and reminded the parties they continued to provide affirmed testimony. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Preliminary Matters

The landlord confirmed receipt of the tenant's evidence shortly after the initial hearing was held.

Despite my direction given in the interim decision the landlord failed to serve tenant M.H. with a copy of the landlord's evidence. S.S. confirmed that she was prepared to respond to the landlord's claim on behalf of tenant M.H.

Background and Evidence

The tenancy commenced on November 1, 2012; it was a 1 year term. A copy of the tenancy agreement was not supplied as evidence.

The landlord recorded a move-in condition inspection on a "Report of Rental Premises and Contents" form. The tenant said they were not given a copy of the report; despite repeated requests. The landlord said he gave them a copy with the lease; the tenant said it took a month to receive a copy of the lease.

The tenancy ended on October 31, 2013. An inspection occurred on October 31 at which time the landlord used the same inspection format that was used at the start of the tenancy.

The parties met again on November 3, 2014; the tenant had expected to be able to enter the home again to finish cleaning a few areas. She was not allowed to complete any further cleaning.

On November 3, 2014 the tenants were presented with a Residential Tenancy Branch (RTB) Condition Inspection Report. The tenant said the landlord completed that report in the absence of the tenants and that the content differed from the report that had been used on October 31, 2013. The tenants signed the RTB form, disagreeing with the content, with the exception of allowing a \$100.00 deduction from the security deposit for blind damage caused.

The parties agreed that the landlord was given the tenant's forwarding address on November 3, 2013. On November 8, 2013 the landlord submitted a claim against the deposit.

The landlord has made the following claim:

Carpet cleaning	\$350.00
Cleaning	150.00
Hole/drywall repair	100.00
Blinds	175.00
Paint patching	100.00
Deck floor repair	75.00
TOTAL	\$950.00

The tenants have made the following claim:

Rent reduction June – October 2013, \$1,650.00 per month	\$8,250.00
Return of double the security deposit	1,650.00
TOTAL	\$9,900.00

The landlord supplied a carpet cleaning invoice in the sum of \$281.35. The landlord said the carpets had been cleaned just prior to the start of the tenancy. The invoice indicated that the living, dining and family rooms; 4 bedrooms and the stairs were cleaned. The disputed inspection report indicated that only 2 bedrooms and the entry carpet were dirty.

The tenants supplied a copy of an October 28, 2013 carpet cleaner rental invoice and photographs of carpeting that had been cleaned. The tenant said the carpets were cleaned and pointed out the landlord has claimed the cost of cleaning carpets that were not indicated on the condition inspection report as needing cleaning. The landlord said the tenant used their carpet rental to clean their new unit. The tenant responded that their new rental was clean when they moved in.

The tenant agreed that a few areas of the home required further cleaning on October 31, 2013. The tenants expected to be able to complete that cleaning on November 3, 2013 but the landlord then denied them the opportunity to enter the home to do so. The landlord supplied a photograph of a dirty oven, baseboard heater, window sills, outer deck and sliding glass door track. The tenant provided photographs of other areas of the home that show it in a clean condition.

There was no dispute that the tenant's child peeled away paint from a bedroom wall. The landlord supplied a photograph of this damage caused, resulting in the need for wall repair and paint.

A photograph of damage next to a stairway railing was supplied. The landlord has claimed the cost of this repair. The tenant said they pointed this out at the start of the tenancy as the rail was loose. The drywall patch shown the photograph is repair the tenant's completed, as the landlord did not respond to their request he fix the rail. The landlord said the rail was screwed into 2 X 4's. The landlord stated the walls were last painted just prior to the start of the tenancy

The landlord provided photographs of blinds that were damaged in 2 bedrooms; this was not disputed by the tenant. The family room blinds could no longer be closed or opened. The landlord said the blinds were 3 to 4 years old.

The landlord made a separate claim for paint and patching. The landlord said the tenant put nails in the walls to hang items. The tenant agreed that she put 3 nails in the walls, for hanging art. The tenant said that when they moved in the home not been recently painted and that there were already minor marks on some walls. The tenants did patch the areas that had nail holes but could not paint as they were not provided with paint.

The tenant acknowledged that the outer decking was damaged by at least several cigarette burns. The tenant provided a copy of deck coating product information obtained from a major hardware chain. A gallon of the deck coat cost \$47.99. The tenants provided a photograph of the deck in question; a very small balcony area. The tenant disputed the sum claimed by the landlord for repair.

The landlord supplied a copy of a November 17, 2013 invoice in the sum of \$630.00 detailing:

- \$125.00 for cleaning;
- \$275.00 for drywall repair, painting, mudding, sanding, painting; and
- \$200.00 for the front deck floor and lino replacement.

An additional \$30.00 was charged. The invoice was marked as payment having been made by cash.

A copy of a February 2, 2014 invoice for 5 blinds in the sum of \$315.00 was submitted as evidence. The cost of the blinds ranged from \$147.00 to \$18.60; depending on the size.

The tenants have claimed the loss of value of the rental unit equivalent to all rent paid for the last 5 months of the tenancy. When the tenants moved into the home they were given use of a backyard area. The tenants provided photographs of the yard which

showed a considerable amount of refuse piled along the yard; including old lumber, furniture, broken windows and industrial-type kitchen equipment. The tenant said the landlord had told them he would remove this refuse but he failed to do so. The tenants offered to remove the garbage and requested only the cost of dumping, but the landlord refused. The tenants said that throughout the tenancy their children could not play in a good portion of the yard for fear they would be injured by glass or other sharp objects.

A copy of an April 2, 2013 letter to the landlord was supplied as evidence. The letter set out a number of deficiencies with the property such as the backyard. The tenants reminded the landlord they had rented the unit as it had a fenced yard for their children and that the landlord had a responsibility to maintain the yard by removing the refuse. The tenants asked that the garbage be cleaned up within 2 weeks. The landlord refused to clean the yard.

The landlord said that he placed a fence around all of the areas that had garbage but the children would break the fence. The tenant said the landlord hammered some stakes into the ground and put up plastic construction fencing which would fall down. The landlord denied having promised to remove the refuse from the yard and said some of the garbage belonged to the tenants. The landlord said the tenants still had space in the yard which they could use.

The tenants had concerns about the presence of mold in the home. On April 30, 2013 they had a professional environmental assessment company complete an inspection of the home. The report was issued on May 16, 2013; a copy was supplied as evidence.

The tenants then met with the landlord, who reviewed the report. The landlord declined a copy of the report. The report indicated that the humidity levels were 57%; which was above the recommended level of 40 to 50%. A skylight in a bathroom had mold growth and it was suggested the relatively new roof might have flashing issues. The bathroom fan was inoperable and mold was present behind the fan. There was a small amount of black mold in the attic indicating a possible leak. Mold was also present on some of the window sills, likely the result of high humidity. The report did not assess health risks as there are no exposure limits set within Canada.

The environmental assessment made a number of suggestions, including:

- Replacement of the bathroom fan;
- The mold areas in the attic be HEPA vacuumed and cleaned;
- The home be cleaned and made free of clutter;
- Windows should be opened as much as possible and sills be cleaned;
- The roof and skylight be inspected and repaired is needed; and
- A hygrometer should be purchased to monitor humidity, so the tenants could be aware of times when windows should be opened.

The tenants submit that the deficiencies resulted in a loss of value of the rental unit. They are susceptible to asthma, which was aggravated by the presence of mold. The skylight leaked throughout the tenancy but the landlord refused to make the repair. The tenants had to keep buckets on the floor of the bathroom as it would leak whenever it rained.

The landlord responded that he would have been prepared to allow the tenants to end the tenancy as this would have been a reasonable step if the home was

unsafe. The landlord said the tenants did not properly clean the home and that the mold was never tested. The landlord denied refusing a copy of the report and would have fixed items suggested. The landlord stated the skylight did not leak.

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.

Section 37(1) of the Act requires a tenant to leave a unit reasonably clean and undamaged; with the exception of normal wear and tear. From the evidence before me I find, on the balance of probabilities, that the rug cleaning rental receipt provided by the tenants shows that they did clean the carpets just prior to the end of the tenancy. The landlord chose to clean the carpets again and has claimed the cost for rooms that were not notated on the disputed report as in need of cleaning. Therefore, I find that the landlord has failed to prove the tenants did not leave the carpets reasonably clean and find that the claim for carpet cleaning is dismissed.

The tenant acknowledged the need for some additional cleaning which she had not been able to complete prior to the end of the tenancy. Despite any understanding that the cleaning could be completed later, a tenant must have the unit clean by the end of the tenancy. From the evidence before me I find that, outside of the oven, a few window sills and a door jamb, that the unit was reasonably clean. Therefore, I find that the landlord is entitled to a reduced sum for cleaning; \$50.00. Most of this sum would cover cleaning of the oven, which appeared to be in need of considerable cleaning.

RTB policy allows a tenant to place a reasonable number of nail holes in a wall to hang art. There was no evidence before me that the tenants placed an unreasonable number of holes in the walls or caused any other damage to the walls. The damage by the hand rail appears to have been the result of an installation that was made into drywall, vs. 2 X 4's. I find, on the balance of probabilities that installation into wood would not have allowed the railing to fall away from the wall. Therefore, I find that the claim from drywall and hole repair is dismissed.

From the evidence before me I find that the landlord is entitled to compensation for the 2 blinds that appeared to be damaged. The landlord did not provide any details as to which blind related to the charges set out on the invoice for multiple blinds. Therefore, I have deferred to the sum the tenant originally agreed to pay, \$100.00, as reasonable compensation for the 2 blinds that were damaged by the tenant's children. The balance of the claim is dismissed.

There was no dispute that the wall in a bedroom was damaged by the tenant's child. I find, from the evidence before that the landlord is entitled to the sum claimed for paint and patching.

There was no dispute that the tenants caused at least 2 burns to the balcony decking; this was not the result of normal wear and tear but negligence. Based on the invoice supplied as evidence and the evidence before me I find that the sum claimed for deck repair is reasonable and that the landlord is entitled to compensation as claimed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Carpet cleaning	\$350.00	0
Cleaning	150.00	\$50.00
Hole/drywall repair	100.00	0
Blinds	175.00	100.00
Paint patching	100.00	100.00
Deck floor repair	75.00	75.00
TOTAL	\$950.00	\$325.00

In relation to the tenant's claim Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.***

(Emphasis added)

RTB policy suggests that the duty to mitigate begins as soon as the party becomes aware damages are occurring. When a landlord does not respond to requests for repair or maintenance a tenant should submit an application requesting repairs, in accordance with the legislation. When an applicant fails to take these steps it can affect any subsequent claim for compensation. If an applicant has not minimized the loss a reduced claim may be awarded, adjusting for the amount that might have been saved.

The tenants have claimed a loss equivalent to all of rent paid for the last 5 months of the tenancy. While the tenants asked the landlord to remove the refuse within 2 weeks of April 2, 2013; there was no evidence any other requests or action was taken on the part of the tenants to minimize the loss they have claimed. However, I find that the landlord was well aware of the need to remove the refuse and that he failed to take any action. The landlord rented the home allowing use of the yard, which I find was not in a state that allowed full use. The photographs indicated a yard that had an excessive amount of garbage all along the yard, which could reasonably pose a risk to children. I have rejected the landlord's submission that the fence he installed addressed any potential risk or loss of use; a plastic fence would be inadequate. Further, installation of any

fence would not address the loss of use of space in the yard which the tenants should have had for their use.

Therefore, in the absence of evidence of any attempt to further mitigate the loss that they have claimed, I find that the tenants are entitled to reduced compensation in the sum of \$250.00 for loss of use of the yard.

In relation to the allegation that mold caused a loss to the tenants I find that the tenants failed to mitigate the claim they have made by taking steps to obtain orders for repair within a reasonable period of time the environmental report was obtained. Further, the report indicated that the tenants may have, to a certain degree, contributed to moisture problems by not opening windows and clearing clutter from the home. Further, there was no independent evidence before me that the tenants suffered any ill health effects.

I have rejected the landlord's submission that the skylight did not leak and have relied upon the inspection report which confirmed it did leak. As the tenants were forced to use a bucket under the skylight each time it rained I find that this resulted in a loss of value of the tenancy and that the tenants are entitled to reduced compensation in the sum of \$150.00.

The balance of the tenant's claim for damage or loss is dismissed.

As the landlord is entitled to \$325.00 compensation and the tenants are entitled to \$400.00; the sums are set off against the other. I find that the balance owed to the tenants is \$75.00.

The tenants have requested return of double the \$825.00 security deposit. I considered the testimony that the tenants were not given a copy of the move-in condition inspection report and find, on the balance of probabilities that the tenants failed to prove that a copy was not provided. The landlord stated he had given a copy with the tenancy agreement; which the tenants did receive.

The landlord applied claiming against the deposit within several days of receiving the tenant's written forwarding address; well within the required fifteen days. Therefore, I find that the tenants are entitled to return of the \$825.00 security deposit.

As each application has some merit the filing fee costs are set off against each other.

Based on these determinations I grant the tenants a monetary Order in the sum of \$900.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 in the sum of \$325.00; the balance of the claim is dismissed.

The tenants are entitled to compensation in the sum of \$400.00; the balance of the claim is dismissed.

The tenants are entitled to return of the \$825.00 security deposit.

Filing fee are set off against the other.

This final 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: June 10, 2014

Residential Tenancy Branch

