



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

On March 6, 2014 the tenant applied requesting compensation for utility overpayment, damage or loss under the Act, return of the security deposit and filing fee costs.

On June 10, 2014 the landlord applied requesting compensation for damage to the rental unit, unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee costs.

Preliminary Matters

The landlord withdrew their claim for unpaid rent.

The parties confirmed receipt of each other's hearing package and evidence.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$200.00 for utility overpayment?

Is the tenant entitled to compensation in the sum of \$300.00 for damaged personal property?

Is the landlord entitled to compensation in the sum of \$3,368.26 for damage to the rental unit?

May the landlord retain the security deposit or is the tenant entitled to return of the deposit?

Background and Evidence

The tenancy commenced on April 15, 2012, rent was \$900.00, due on the 1st day of each month. A security deposit in the sum of \$450.00 was paid. Move-in and move-out condition inspection report were not completed.

The parties agreed that the tenancy ended on the effective date of a 1 month Notice ending tenancy for cause; February 19, 2014. The landlord obtained the keys on February 28, when they entered the unit. The landlord supplied a copy of a note issued by the tenant dated February 8, 2014, informing the landlord the tenant was moving out on the effective date of the 1 month Notice that had been given to her.

On March 3, 2014 the landlord obtained an Order for February 2014 rent; the tenant said that sum has been paid to the landlord.

The tenant has claimed reimbursement for rent she overpaid in the sum of \$260.00 for utilities; \$300.00 for the cost of personal property damaged by the landlord and \$730.00 she had to pay as a security deposit at her new rental unit.

The tenant paid 100% of utilities when no one was living in the lower unit of the home; the tenant would pay 60% of utility costs when there was a tenant in the lower unit. The utilities were in the tenant's name. The parties agreed that the tenant's son was a tenant in a lower suite of the home up to and including December 2013.

The tenant said that from November 5, 2013 to January 6, 2014 she should not have had to pay all of the utility costs, as there was a tenant in the lower unit. The tenant supplied a copy of the utility bill as evidence of the costs she paid. The landlord did not dispute this portion of the tenant's claim.

The tenant said that when her son vacated the lower unit he placed a television and dresser in the car port; items that she wished to keep. The tenant had purchased the television at the cost of \$200.00; it was not new, but useable. The tenant had paid \$100.00 for the dresser. Sometime in mid-January the landlord's children called her to tell her that the landlord had damaged the property left in the car port. The children took photographs of the items which were supplied as evidence. The police were called.

The photos supplied by the tenant showed a number of items in an outer area of the home. One picture showed the TV upright; the 2nd photo showed the TV on the ground; screen down.

The landlord said that the tenants were not to keep anything in the carport as it was a passageway to the lower unit. The landlord denies having damaged the TV; she said she did roll it out from the carport and that the rest of the items were garbage. The landlord said there was nothing wrong with the dresser. The police did not charge the landlord and told her to leave the items.

The tenant claimed the cost of the security deposit paid after she vacated the rental unit under dispute.

The landlord made the following claim:

Threshold, paint, silicone, curtains, baseboard heaters, paint supplied	\$586.95
Pant supplies	71.07
Bathroom linoleum	95.24
Cleaning	450.00
New stove	60.00
Labour for all repairs	500.00
Labour for painting	320.00
Trampoline replacement	1,200.00
Replace broken window	85.00
TOTAL	\$3,368.26

The landlord and tenant each had copies of hardware store receipts issued on March 26 and April 2, 2014. These receipts could not be located in the landlord's submission given to the Residential Tenancy Branch (RTB.) The landlord provided testimony, detailing the items on each of 3 receipts. The receipts were reviewed during the hearing.

The landlord gave their submission in relation to damage; referencing the extensive number of photographs that had been given to the RTB. It was not until the tenant provided her response that it became apparent the tenant had not been given copies of the same colour, glossy photographs provided to the RTB, but photocopies of the landlord's photographs.

The tenant said that she had trouble discerning the photos, as the copies were not sufficiently clear. The landlord said when she submitted her photographic evidence to the RTB and explained that each copy would cost .40 cents to reproduce; she was told she could go to a local business and have the photographs photocopied; which she did. Those photocopies were then served to the tenant.

At this point I explained that, in accordance with Residential Tenancy Branch Rules of Procedure, the parties must provide each other with any evidence that is supplied to the RTB. As the landlord failed to provide the tenant with copies of the photographs; in the same form and quality as those given to the RTB, I have determined that the photographs must be set aside. Despite the landlord's review of the photographs during her submission, I have not considered the photographs in coming to my decision. My decision to exclude the photographs has been made in order to ensure a fair process. As I explained during the hearing, the same decision would be taken if the tenant had given the RTB glossy, coloured photographs and provided the landlord with photocopies of the photographs. Giving the arbitrator the benefit of coloured photographs and expecting the tenant to respond to photographs of poor, indecipherable quality does not meet the standard of fairness.

The landlord said that the unit was freshly painted prior to the start of the tenancy. When the tenant vacated the walls were left in a dirty state. Liquids had been spilled on the walls; gouges were made in the walls. The whole unit had to be repainted. The

landlord said that they always paint at the end of a tenancy, as the result of wear and tear to the walls.

The landlord claimed the cost of painting supplies, such as brushes and paint trays, plus the \$287.74 cost of paint.

The tenant did not clean the bathroom resulting in the need to replace the caulking.

The threshold going into the bathroom from the hall was missing. This caused the lino to rip. The landlord purchased lino and installed the new flooring.

The landlord said that during the tenancy one of the baseboard heaters had caught on fire; another was bent and would not turn on. The landlord replaced the heaters at a cost of \$65.28 and \$49.99.

The landlord hired someone to clean the entire unit. A cash payment in the sum of \$450.00 was made. An invoice supplied indicated the whole home was cleaned.

There was no dispute that the oven handle had been broken; the tenant said that it broke so she glued it together. She had been hanging a tea towel on it when it broke. The landlord has claimed the cost of replacing a stove that the tenant estimated was at least 10 years old. The landlord located a 2nd hand stove for \$60.00.

The landlord claimed the cost of curtains that had been damaged by the tenant's cat. The tenant said that she had taken the curtains down at the start of the tenancy and that they were left behind after she moved out.

The landlord had a trampoline in the backyard and believes the tenant's son cut it with a knife. The landlord said he told other children he had damaged the trampoline. The landlord estimated the cost of replacement that is claimed.

The landlord claimed the cost of replacing a broken window; verification of the cost was not supplied. The tenant acknowledged the window had been broken. In a February 1, 2014 letter to the landlord, supplied as evidence, the tenant informed the landlord the window had been broken when her children were playing in the front of the home; not at the back, where the window is located. The tenant suspects it was the landlord's child who broke the window.

The landlord supplied 3 invoices that were issued from a receipt book belonging to the landlord. On March 1, 2014 an invoice was completed for a cleaning service; it included a telephone number and name of the service provider. On April 8, 2014 an invoice was completed for painting service; no name was indicated; eleven hours were charged at a rate of \$20.00 per hour. The 3rd invoice was made out in the male agent's name for labour and repairs made to the unit. The landlord said that the cleaner and painter were paid by cash. Neither invoice was signed by the service provider, as having been paid.

The landlord said that they never have anyone sign, confirming payment has been received.

The tenant said that she and the landlord had been friends and that when she moved into the unit it was clean, but damaged. She said the unit had not been painted, that the bathroom lino was not new and that the heaters were already broken and the threshold was missing. She used a space heater during the winter months. The tenant said she had been fine with the state of the home at the start of the tenancy and that when she vacated she left the home in better condition that it had been at the start of the tenancy. The tenant had not wanted to be picky at the start of the tenancy; she had rented the unit in the past and there had not been any problems. At the end of the tenancy the tenant and a friend cleaned the unit over a 2 day period of time; but the tenant agreed that she may have forgotten to clean the oven.

The tenant submitted fifteen coloured photographs of the unit taken after she and a friend had cleaned. The photos were marked as having been taken at 1:30 a.m. on February 19, 2014. The photographs showed a unit in good condition. The landlord said the photos of the bedrooms were too dark to show the liquids that had been spilled on the walls.

The tenant indicated that a wall in the stairwell was damaged as the result of a new fridge that had been moved into the unit by the landlord.

The tenant said she did not know when the landlord would have taken photographs and that she could not be responsible for any damage that may have occurred between the time she vacated on February 19, 2014 and the time the landlord indicates repairs were made.

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.

There was no evidence before me in support of the tenant's claim she suffered a loss of personal property. The photograph of a TV that had fallen on the ground does not prove who may have caused this damaged. Further, the TV was an older model that I find would have essentially no value. There was no evidence before me to support the claim the landlord had damaged a dresser. The photograph supplied by the tenant showed a number of items in an outdoor area and did not provide any proof that some damage may have been caused by the landlord. Therefore, I find that the claim for damaged personal property is dismissed.

In relation to the tenant's claim for the value of a security deposit she had to pay when moving; the tenant accepted the Notice ending tenancy issued for cause and vacated on the basis of that Notice. A deposit paid in a new tenancy has no bearing on the matters before me. Therefore, the claim for the security deposit cost is dismissed.

The parties have agreed that the tenant is entitled to the sum claimed for utility costs and that the oven was not cleaned. I note that a term of a tenancy that requires a tenant to put the utilities and their name and to then collect costs from other tenants could be found to be unconscionable and unenforceable.

Therefore, based on the evidence before me and the mutual agreement of the parties I order, pursuant to section 63(2) of the Act, that the tenant is entitled to compensation in the sum of \$260.00 for utilities paid and that the landlord is entitled to a nominal fee of \$30.00 for oven cleaning.

There was agreement that the landlord had given the tenant receipts for painting costs, curtains, caulking, heaters, silicone, and threshold material and paint supplies. I have considered this verification in coming to my decision. The most recent receipt was issued on March 26, 2014; almost 6 weeks after the tenancy ended.

Section 23 and 35 of the Act require the landlord to schedule move-in and move-out condition inspection reports and to provide the tenant with copies of the reports. The landlord failed to arrange the inspections and, as a result, in accordance with section 24 of the Act, has extinguished the right to claim against the security deposit.

A condition inspection report is meant to provide evidence of the state of repair and condition of the rental unit on the date of inspection. Residential Tenancy Regulation determines that the report provides evidentiary weight, unless the landlord or tenant has a preponderance of evidence to the contrary. In the absence of any record of the state of the unit at the start of the tenancy, I have considered the testimony of the parties, the testimony and written submission of the tenant and landlord.

I find, in the absence of condition inspection reports and, based on the disputed testimony that the landlord has failed, on the balance of probabilities, to prove that the tenant did not leave the unit reasonable clean and free from damage outside of normal wear and tear. From the photographs supplied by the tenant I find that the unit appeared to be reasonably clean. Some of the photographs supplied by the tenant were dark and details could not be discerned, but on the balance, I find that the unit was clean, with the exception of the oven. I also found the tenant's acknowledgement that she had missed the oven gave her testimony more weight; leading me to believe that she had indeed cleaned, but simply missed the oven.

I find that the landlord has failed to prove, on the balance of probabilities, that the tenant removed the threshold and damaged the curtains and heaters. I find it is just as likely these items were in that state at the start of the tenancy. The landlord did not establish the state of the home at the start of the tenancy and I find that the tenant's submission,

that she accepted the unit with deficiencies, just as likely. Therefore, I find that the claim for the threshold, painting, heaters and curtains is dismissed.

There was no evidence to convince me that the tenant was responsible for the broken window. She and her children were at the front of the house when the window was broken; leading me to accept that it was broken by a 3rd party. In fact the tenant informed the landlord of the broken window. Therefore, the claim for the broken window is dismissed.

Damage to the landlord's trampoline is a matter that I find falls outside of the tenancy agreement. There was no evidence before me that a trampoline was a fixture left on the property, secure, for the tenant's use only.

I note that the invoices supplied as evidence for services lacked what I would consider basic information verifying the costs claimed; in particular, signatures of those who provided the service, acknowledging payment had been made.

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

Therefore, I find that the tenant is entitled to return of the security deposit in the sum of \$450.00 plus \$260.00 for utility costs; less \$30.00 owed to the landlord.

Based on these determinations I grant the tenant a monetary Order for the balance of \$680.00. 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 tenant is entitled to compensation in the sum of \$260.00 plus return of the \$450.00 security deposit; less \$30.00 owed to the landlord.

The balance of each claim is dismissed.

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: June 23, 2014

Residential Tenancy Branch