Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes

OPR, MNR, MNDC, MNSD, FF

Introduction

This Decision is pursuant to an Interim Decision respecting certain portions of the landlord's claim - settled by the parties – entitling the landlord to $1347.87. The hearing was reconvened to address the balance of the landlord's claim for damages and incorporating the tenant's claim for loss under the Act and the return of their security deposit.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving all the evidence of the other.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

From the Interim Decision:

The undisputed relevant evidence in this matter is that the tenancy started August 25, 2013 and ended April 15, 2014 when the tenant vacated. The payable monthly rent was $1295.00. The landlord currently holds the security deposit, in trust, in the amount of $645.00.

The tenant testified they disagreed with the landlord's claim and assessment of damages. As a result, this hearing was ***adjourned*** *to deal with the landlord's*

application solely in respect to their claim for damage to the unit, and, to hear the tenant's application subsequently filed and set for hearing June 30, 2014 at 2:30 p.m.

The Interim Decision concluded the landlord was owed, in the interim, $**1347.87**.

The hearing had benefit of the written Tenancy Agreement providing for the standard terms of a tenancy as well as for the tenant to pay 35% of utilities. The parties agree there was no *move in* or *move out* inspections conducted by the landlord in accordance with the statutory requirements for a Condition Inspection Report (CIR). At the end of the tenancy the parties did not come to an agreement as to the administration of the security deposit.

The parties were apprised that they may not claim litigation costs related to their application as each party is responsible for all costs to advance their claim.

Landlord's application

After initial testimony on the merits of the landlord's claims, the landlord confirmed they solely seek the cost for *mould in the bathroom, replacement of a fireplace remote, and a damaged deck.*

The landlord seeks compensation for replacement of the bathroom silicone caulking because of the presence of mould in it. The landlord claims that the tenant did not utilize the ventilation control feature of the humidistat / fan – claiming the tenant did not allow it "to do its work"; and, as a result, the bathroom caulking contained mould. The landlord provided that this had not occurred to the caulking in the previous 5 years the rental unit was occupied, thus they speculate the issue to be rooted in the tenant's conduct of not utilizing the humidistat / fan. The tenant testified that the humidistat fan could be on for considerable periods of time and that they allowed the humidistat control system to *do its work* as often as they could, but that at times the ongoing fan intruded on their quiet – especially at night - so they periodically turned it off. The landlord claims that the tenant did not alert them to the fan being intrusive on their quiet, and had they done so they would, "somehow", have remedied it. The landlord seeks $110.00 for

their labour and $35.00 for materials to re-caulk the bathroom. The landlord provided photographs of the caulking in the bathroom which depict mould stains in the caulking.

The landlord seeks compensation for the replacement cost of a fireplace remote control. The landlord claims it was somehow damaged by the tenant – likely dropped - and no longer worked as intended and contributed to the fireplace overheating. The landlord claims the remote had a visible crack in the display. The landlord provided a photograph of a new remote control and invoice. The tenant disputes the landlord's claim they damaged the remote unit. They testified the remote was not cracked and don't recall it being damaged. The tenant testified they did not use the remote until some months into the tenancy when temperatures cooled and as far as they could ascertain, if damaged, it was damaged before they moved in. The tenant testified that any overheating of the fireplace was likely the result of it being used beyond its capacity as the sole heat source for the entire rental unit – which the parties agreed was approximately 1000 square feet.

The landlord seeks compensation for the devaluation of the outside deck surface. The landlord claims the deck was "spotless and pristine" at the start of the tenancy. The landlord provided photographs which purportedly show the deck as stained and paint-stained after power washing. The tenant testified that at the end of the tenancy they cleaned the deck with a cleaning solution, but despite their best effort it did not render the deck surface *spotless and pristine*. None the less, the tenant testified they are puzzled at the landlord's claim of paint staining as they did not have paint on the deck. The tenant's witness, DS, testified the photographs likely depict cleaner residue. The landlord has determined the markings on the deck are permanent therefore they seek $250.00 for its devaluation.

Tenant's application

The tenant seeks the return of their security deposit.

The tenant further seeks compensation for the landlord's failure to provide them with, "sufficient heat". The parties agree the rental unit contains a sole source for heating: a

gas fireplace reported to be in the middle of the unit, aided by a fan to distribute the heat. The tenant testified the fireplace was deemed ornamental by a technician, and in the least, of insufficient capacity, to provide heat to most areas of the unit during colder temperatures – as in a *cold snap;* and, the distribution fan to be used to distribute the heat to other areas of the unit was old and noisy, and another source of intrusive fan noise in the unit. The parties agree that the fireplace was either compromised for periods of the tenancy or unreliable. The parties also agreed the tenant would purchase a space heater for the kitchen area for which cost they were reimbursed - reportedly $80.00. None the less, the tenant claims that during *cold snaps* other areas of the unit required supplemental heaters, which the parties agreed were periodically or temporarily provided by the landlord. The landlord provided that the rental unit originally contained a forced air furnace heat source but now contains a fireplace of sufficient capacity to provide sufficient heat to the entire unit if the distribution fan is employed. The landlord did not dispute the tenant's claims regarding the condition of the fan.

The tenant seeks compensation totalling $1149.30 for the 4 ½ month period from November 15 2013 to April 01, 2014; and, also seeks recovery of a quantum of gas utility payments for those periods the fireplace was compromised, not working or inefficient.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.rto.gov.bc.ca.

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, I find as follows:

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

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.*

In relevance to the matters before this hearing, the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, an applicant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once that has been established, an applicant must then provide evidence that can verify the actual monetary amount of the loss. Finally, an applicant must show that reasonable steps were taken to address the situation and to *mitigate or minimize* the loss incurred.

Landlord's claim

In respect to the landlord's claim to replace the caulking in the bathroom, I accept the tenant's testimony that they did not always use the humidistat system to ventilate the humidity in the bathroom. I also accept the landlord's testimony that the caulking was up to 5 years old. In the absence of a receipt for the materials used to remedy the caulking and the landlord's failure to account for the age and useful life of the caulking in mitigating and minimizing their claim, I find as follows. **Residential Tenancy Policy Guideline 37** refers to the useful life of: W*aterproofing >Sealer,* as 5 years. I find the

caulking the landlord replaced was, on balance of probabilities, beyond its estimated useful life. Therefore, on mitigating the landlord's claim I find the loss represented by the compromised caulking as $0, and **I dismiss** this portion of the landlord's claim.

In respect to the landlord's claim for the replacement cost of a fireplace remote control, I find that in the absence of a *move in* Condition Inspection Report the landlord is unable to establish the condition of the remote control at the outset of the tenancy and that the claimed loss was the result, *solely of the actions of the tenant* in violation of the *Act* or Tenancy Agreement. As a result, **I dismiss** the landlord's claim for the fireplace remote control.

In respect to the landlord's claim for devaluation of the deck, I find that **Section 37** of the Act, in relevant part states as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Effectively, the tenant is not responsible for reasonable wear and tear. On reflection of all the evidence respecting the condition of the deck, I find the deck was left *reasonably clean*, although permanently marked: damaged beyond reasonable wear and tear. As a result, I find the landlord's claim for devaluation of the deck as reasonable and I grant the landlord their claim of **$250.00.**

Tenant's claim

In respect to the tenant's claim seeking compensation for *insufficient heat*, I find the tenancy agreement states that the tenant is responsible for the cost of *heat*. I have not been provided with evidence that this indicates the tenant is to supply their own heat source. I find it means the tenant is responsible for 35% of the fuel utility to operate the heat source of the (landlord's) rental unit. Effectively, I find the tenant agreed to pay for heat, and the landlord agreed to provide a reasonable heat source capable of *sufficient*

heat. *Sufficient heat* is a relative term, and there was no evidence presented that the tenant's requirement of heat was unreasonable. I accept that the tenant's need of heat would have been relative to various factors including the outside temperature - which neither party controls. The tenant argued that regardless of the surrounding temperatures they sometimes struggled to have enough heat from a gas fireplace as the sole heat source for a handful of contained rooms and 1000 square feet of space; albeit, sporadically augmented during *cold snaps* with a space heater. It is clear the parties did not contemplate that the tenant would not have a reliable or adequate *source* of heating in the appliance provided by the landlord. Despite the parties' competing arguments as to the facts regarding the adequacy and intended or actual efficiency of the heat source for this rental unit, I find the parties' tenancy agreement is rooted in the tenant being provided an adequate and reasonably reliable heat source, and for the tenant to determine the amount of heat – for which they would be responsible. However, the relevant evidence of this matter is that the provided heat source was not always reliable, even when *this* appliance was allowed *to do its work*. I find that had the tenant purchased additional sources for heating, such as additional space heaters, it may have been available to them to claim these costs if the landlord's appliance did not provide the required heat. However, in that absence, I find the tenant experienced a loss in the *value of their tenancy agreement* because of a heat source from which they could not obtain the heat they required, and I find that I have not been provided with evidence that the tenant's requirement was unreasonable. As a result of all the above I grant the tenant rent abatement of $100.00 per month for the 5 month period of November 15, 2013 to April 15, 2014 – in the aggregate of **$500.00.**

I find that the tenant is not entitled to a rebate of gas utility costs, which, on balance of probabilities, were not incurred when the fireplace was not operable, compromised, or inefficient. It must further be noted that the tenant and landlord agreed on all matters concerning utilities in the hearing of May 26, 2014. As a result the subject of utilities is *res judicata: already determined in the appropriate forum.* Effectively, the balance of the tenant's claim is **dismissed** without leave to reapply.

The tenant's security deposit will be offset in the award made herein.

Calculation for Monetary Order:

landlord's interim award	$1297.87
Landlord's filing fee	50.00
landlord's award for deck	250.00
minus tenant's award	*- 500.00*
minus tenant's security deposit	*- 645.00*
Total monetary award for landlord	**$452.87**

Conclusion

The parties' respective applications, in part, have been granted.
The balances of all claims are **dismissed**, without leave to reapply.

I Order that the landlord may retain the tenant's security deposit of $645.00 in partial satisfaction of their claim and **I grant** the landlord a Monetary Order under Section 67 of the Act for the balance of **$452.87.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 07, 2014

Residential Tenancy Branch