



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNDS, FF

Introduction

This hearing was convened in response to an application by the landlord filed on February 13, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for unpaid utilities – section 67
3. A monetary Order to keep the security/pet damage deposit(s) – Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to settle their dispute, discuss their dispute, provide *relevant* evidence before and during the hearing, respond to the evidence of the other, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The tenant acknowledged receiving all the evidence of the landlord. They further acknowledged they did not provide any document evidence to this matter. The parties were apprised that only *relevant* evidence would be considered in the Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

A party applying for relief bears the burden of proving their respective claims.

Background and Evidence

The relevant evidence in this matter includes as follows.

The tenancy ended when the tenant vacated January 31, 2014 subsequent to their Notice to End the tenancy in accordance with the Act. The tenancy started October 29, 2011. The hearing had benefit of several written Tenancy Agreements the last of which signed November 30, 2013. During the tenancy the payable rent was in the amount of

\$1250.00 due in advance. At the outset of the tenancy the landlord collected a security deposit in the amount of \$600.00 and an equal amount as a pet damage deposit, all of which the landlord retains in trust in the sum of \$1200.00.

The parties agree there was a *move in* inspection at the start of the tenancy and the ancillary report was recorded and signed. The parties disagree on all particulars and events of the *move out* inspection process, requisite mutual inspection, and the condition inspection report. However, the parties agree there was no mutual determination of how the tenant's deposits should be administered at the end of the tenancy, although the tenant agrees with certain aspects of the landlord's claim for damages.

The landlord and tenant agree that subsequent to the tenant vacating the landlord permitted the tenant's mother to attend the unit on February 05, 2014 and perform an inspection with the landlord; although, according to the landlord, this event was not recorded because they did not consider the mother to be in an "*official*" capacity as the tenant's representative, although the tenant claims they informed the landlord their mother was acting as agent for them. None the less, the mother ultimately performed some cleaning in the unit the following day, although the landlord testified they intentionally did not identify to the mother 4 items the landlord determined required cleaning: behind the stove (landlord did not pull out), the backsplash, the window, and the Venetian blind in the kitchen. As a result, the landlord found these areas were not to their satisfaction. The landlord subsequently completed the *move out* portion of the condition inspection report without input from the tenant, or their agent, and sent the tenant a copy. The landlord relies on this report to support their claim.

It must be noted that the landlord did not provide an organized accounting outlining their entire claim. However, the landlord was afforded the opportunity to present the details of their monetary claim in testimony and the tenant had opportunity to respond. It must further be noted that the landlord provided only *faxed* photographs, which the landlord was apprised are not sufficiently discernible to support the landlord's claims.

In testimony, the parties agreed the landlord is owed compensation for the following items in the sum of \$570.10, whether or not a receipt was provided.

Carpet repairs (\$160.00), 2 window screens (\$76.61), garbage disposal (56.00), light fixture and installation (\$34.83 & 40.00), additional carpet cleaning of pet urine/ stains (\$126.00) and, utilities bill (\$76.66).

The landlord seeks \$35.00 for drywall repairs of chips, small dents, and small holes, with which the tenant disagrees and considers normal wear and tear. The landlord did not provide a receipt for these repairs.

Despite the absence of this claim item within the landlord's application and document evidence, nor a receipt for this portion of their claim, the landlord seeks \$250.00 for ceiling repairs in the laundry room to which the landlord attributes resulted from a

compromised leaking roof for the associated water damage. The landlord determined the tenant ought to have alerted the landlord of the problem. Therefore the landlord argued the tenant should be accountable for the repair. The landlord testified they had inspected the unit a year earlier and found the problem was not apparent. The landlord does not know when the leak first occurred and the tenant testified they were not aware of the problem and never knew of an existing leak of the roof.

Despite the absence of this claim item within the landlord's application and document evidence, the landlord seeks \$200.00 for "*additional cleaning*": the need for which the landlord claims they discovered *after* the tenant's mother had cleaned the unit "*well*" and "*to their satisfaction*". The landlord testified they did additional cleaning of certain discolored walls of the living room and the aforementioned 4 items in the kitchen. The tenant disagrees with this claim. They argued that their mother's cleaning left the unit reasonably clean.

The landlord seeks an amount for repainting of the stippled ceiling in the living room due to discoloration from alleged candles burning / smoking. The tenant agrees they periodically burned candles in the living room and agrees that a quantum of discoloration or *greying* of the ceiling above likely occurred. The landlord provided a receipt for painting, which they mitigated to \$300.00.

Analysis

A copy of the Residential Tenancy Act, Regulations, and other publications are available at: www.rto.gov.bc.ca. On preponderance of all the evidence submitted, I find as follows.

I find the parties agree the landlord is owed **\$570.10**, and I therefore grant the landlord this amount.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the 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 this matter, 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 (the tenant)* 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 (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

It must be noted that the purpose of a mutual condition inspection, and the requisite Condition Inspection Report, at the start and end of a tenancy, when conducted in concert with the Act and Regulations, is to assist the parties, and if further required an Arbitrator, to establish how a deposit should be administered at the end of a tenancy in relation to alleged circumstances *beyond* reasonable wear and tear – or damage. The mutual inspections and accompanying reports are intended to avoid the situation the parties find themselves: in dispute as to the facts. **Section 21** of the Residential Tenancy *Regulations* states (**emphasis added**);

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report **completed in accordance with this Part** is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this matter, I find that the landlord did not provide the tenant with 2 opportunities for inspections at the end of the tenancy, in accordance with **Section 17** of the Residential Tenancy *Regulations*, which state as follows (**emphasis added**):

Two opportunities for inspection

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant **by providing the tenant with a notice in the approved form**.

As well, the following must be noted. **Sections 32 and 37** of the *Act* state, in relevant part:

Landlord and tenant obligations to repair and maintain

- 32** (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

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

I find that had the landlord followed the prescribed procedure of Regulation 17 toward accomplishing a mutual inspection, their Condition Inspection Report may have had the input and possible agreement on facts of the tenant. As it stands, the Report lacks evidentiary weight requiring other evidence to support some of the landlord's claims.

As a result of all the above, I find the landlord has not provided sufficient evidence in respect to their claim for drywall repairs. I find the landlord has not proven the tenant *damaged* the drywall: that is, that the deficiencies of the drywall are beyond the scope of *reasonable wear and tear* – for which a tenant is not responsible. Therefore, I **dismiss** the landlord's claim in respect to drywall repairs, without leave to reapply.

I find that the landlord has not met the test established by Section 7 for damage and loss in respect to their claim for a ceiling repair in the laundry room. As a result I **dismiss** this portion of the landlord's claim, without leave to reapply.

I find that the landlord and tenant have provided sufficient evidence supporting the conduct of the tenant caused discoloration of the ceiling in the living room by the practice of burning candles. As a result, I grant the landlord their mitigated claim of **\$300.00** for painting.

In respect to the additional wall cleaning and the 4 items the landlord determined required cleaning: *behind the stove (landlord did not pull out), the backsplash, the window, and the Venetian blind in the kitchen*. I find that *Residential Tenancy Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises – major appliances*, states that the tenant is not responsible to clean behind a stove that is not on rollers and has not been pulled out. For the other 3 items, the landlord's evidence is they intentionally did not request they be cleaned, and intentionally did not identify them to *the mother* cleaning the unit as required cleaning, although it was available to the landlord to do so and mitigate their claim. As a result I find the tenant is not responsible for cleaning of the aforementioned 4 items. However, as I have found the tenant responsible for a discoloration of the living room ceiling, I find it reasonable to accept that the discoloration would extend to the walls of the living room. As a result, I accept the landlord's claim for their additional cleaning, which I set at **\$100.00**.

The landlord is further entitled to recover their filing fee. The tenant's deposits will be offset from the award made herein.

Calculation for Monetary Order:

Landlord's sum of awards	\$970.10
Landlord's filing fee	\$50.00
Landlord's total award	\$1020.10
<i>less Tenant's original security and pet damage deposits: in trust</i>	<i>- \$1200.00</i>
Monetary Order for tenant	(\$179.90)

Conclusion

I Order that the landlord may retain \$1020.10 of the tenant's deposits of \$1200.00, in full satisfaction of their claims and must return the balance. **I grant** the tenant a Monetary Order under Section 67 of the Act for the remaining amount of **\$179.90**. 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: June 04, 2014

Residential Tenancy Branch

