



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRUDENTIAL KELOWNA PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MNR MNSD FF
For the tenant: MNDC MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied for the return of all or part of her security deposit, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee. The landlord applied for a monetary order for unpaid rent or utilities, to keep all or part of the tenant’s security deposit, and to recover the filing fee.

An agent for the landlord (the “agent”) and the tenant attended the teleconference hearing, which began on April 11, 2014 and was reconvened to June 6, 2014, to allow for additional hearing time. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the parties confirmed that they received the documentary evidence package from the other party and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were served in accordance with the *Act*. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings are described in this Decision.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement dated March 8, 2013, was originally scheduled to begin on March 16, 2013, however, the parties mutually amended the tenancy agreement start date to March 22, 2013, by signing an amendment to the tenancy agreement, which was signed by the landlord on March 25, 2013, and the tenant on March 27, 2013. The tenancy agreement, an addendum to the tenancy agreement (the "addendum"), and the amendment to the tenancy agreement (the "amendment") were submitted in evidence.

Monthly rent in the amount of \$2,100.00 was due on the first day of each month. The tenant paid a security deposit of \$1,050.00 at the start of the tenancy which the landlord continues to hold.

The landlord has claimed for a monetary order in the amount of \$1,033.55 comprised of the following:

Item 1. Unpaid electric utilities	\$2,017.51
Item 2. Unpaid water utilities	\$66.04
Subtotal	\$2,083.55
<i>Less Security Deposit of Tenant being claimed by landlord</i>	<i>-\$1,050.00</i>
TOTAL	\$1,033.55

The tenant has claimed for a monetary order in the amount of \$8,383.72 comprised of the following:

Item 1. Stress related pain and suffering (calculated at \$1,000.00 per family member X 5 family members)	\$5,000.00
Item 2. Carpet cleaning (upon move in)	\$250.95
Item 3. Time off work (32 hours @ 15.40 per hour)	\$492.80
Item 4. Hotel, food and toiletries/clothing costs (Hotel \$849.96, Food \$289.61 and Toiletries/Clothing \$248.25)	\$1,387.82
Item 5. Mice control (\$81.16 + \$20.99)	\$102.15
Item 6. Filing fee	\$100.00

Item 7. Return of Security Deposit	\$1,050.00
TOTAL	\$8,383.72

Settlement Agreement

During the hearing, the parties mutually agreed to settle on the following items listed above:

Description of item resolved by way of a mutually settled agreement	Amount agreed upon by parties
Item 2 of Landlord's claim – Unpaid water utilities (tenant agrees to pay this amount)	\$66.04
Portion of item 5 of Tenant's claim – Mice control (landlord agrees to pay \$20.99 portion of item 5)	\$20.99

Based on the above, those items described above will not be analyzed further in this Decision. The agreed upon amounts owing described above will be addressed later in this Decision when each claim is summarized.

Evidence related to Landlord's claim

Regarding item 1, the agent presented documentary evidence in which there was conflicting information in the electric utility bills. For example, the address listed on the utility bills did not match the rental unit address. The agent explained that there are two different houses with two separate electrical meters and that there was confusion on the part of the landlord in terms of billing the tenant the correct amount for the correct meter.

The agent presented a total of five billing period amounts, but confirmed there was "confusion" regarding the two separate electrical meters when attempting to explain which meter number was for the rental unit versus the other house, and whether that meter number was changed during the tenancy. The tenancy agreement did not specify a meter number. The tenant confirmed that there was confusion as to the electrical utility invoices as they did not match the rental unit address. The landlord has claimed a total of \$2,017.51 in unpaid electrical utilities.

Evidence related to Tenants' claim

Regarding item 1, the tenant has claimed \$5,000.00 for pain and suffering calculated at \$1,000.00 for each of her five family members. The tenant stated that this amount is calculated based on the stress of getting into the house late and waiting for eight days. The tenant confirmed that she did not submit any medical documents such as a report from a doctor and confirmed that she did not see a doctor regarding "pain and suffering" that is being claimed. The tenant claims that she suffered "undue stress" during the tenancy such as setting up the utilities which was a "hassle" and due to items in the moving truck waiting due to a delay getting into the rental unit.

The tenant referred to several items such as waiting in the moving truck, a corroded tap, a workshop with no power, a front door issue although the tenant confirmed she did not advise the landlord in writing regarding the front door, and a septic tank issue as described in the tenant's evidence. The agent responded by stating that the tenant agreed to the new move-in date of March 22, 2013, and investigated the alleged corroded tap and found nothing broken.

The agent also confirmed that the tenancy agreement lists use of a workshop but did not advertise it as a "powered" workshop and that the tenancy agreement states "use of workshop permitted". Regarding the septic tank issue, the agent confirmed that she received the tenant's August 28, 2013 e-mail regarding a question from the tenant asking when the septic system was pumped out last due to a strong odour, and confirmed that she had not responded to the e-mail regarding the septic system. The tenant confirmed that she did not submit any photos in support of her claims. The tenancy continued for three and a half months before ending without the septic system concern being investigated or addressed by the landlord.

Regarding item 2, the tenant has claimed \$250.95 for carpet cleaning. The tenant stated that she was promised by the landlord that the carpets would be cleaned. The agent stated that the owner is a carpet cleaner and that the carpets were clean at the start of the tenancy. The move-in condition inspection report submitted in evidence and signed by the tenant indicates that bedroom 1 carpets were "clean". The parties agreed that there were no carpets in the master bedroom.

Regarding item 3, the tenant has claimed \$492.80 for time she had to take off work to move-in to the rental unit, which she stated was supposed to be March 15, 2013. The parties agreed that an amendment to the tenancy agreement was signed, which was submitted in evidence, where the parties mutually agreed that the move-in or start date of the tenancy would be adjusted to March 22, 2014. This portion of the tenant's

claimed was **dismissed** during the hearing, as the tenant agreed to amend the move-in or start date of the tenancy by signing the amendment on March 27, 2013, and the tenant failed to prove that the landlord breach the tenancy agreement, *Act*, or regulation.

Regarding item 4, this portion of the tenant's claim was **dismissed** during the hearing as the tenant failed to provide any evidence that the landlord breached the tenancy agreement, *Act*, or regulation regarding this portion of her claim.

Regarding item 5, in addition to the \$20.99 portion agreed to by the landlord by way of a mutual agreement, the tenant is also seeking \$81.16 for mice/pest traps. The tenant stated that she first wrote to the landlord to complain of mice on March 25, 2013, which was included in the tenant's evidence. The agent stated that she attended for an inspection and did not see mice. The tenant did confirm that the agent did attend in a reasonable time to inspect for mice. The tenant installed the mice/pest traps and claim that there were mice in the traps on a daily basis. The tenant did not have any photos to support that there were mice in the rental unit. The tenant submitted a receipt in the amount of \$81.16 dated June 3, 2013.

Regarding item 6, the filing fee, whether either party is entitled to the recovery of their respective filing fees will be determined later in this decision and will be dependent on whether the parties' applications had merit.

Regarding item 7, the tenant is seeking the return of her security deposit, which will also be addressed later in this decision. The parties confirmed that on December 31, 2013, the tenant e-mailed her forwarding address to the landlord and that the landlord received the tenant's forwarding address on December 31, 2013. The landlord submitted their application claiming towards the tenant's security deposit on January 2, 2014.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for item 1 – Regarding item 1, the landlord has claimed a total of \$2,017.51 in unpaid electrical utilities. I find the documentary evidence and testimony of the agent regarding this portion of the landlord's claim to be confusing and conflicting. The address listed on the utility bills did not match the rental unit address and I find there was insufficient evidence presented to prove exactly which electrical utility meter belonged to the rental unit versus the main house. Furthermore, as the tenancy agreement or addendum did not specify which electrical meter was the responsibility of the tenant when there are two electrical meters, I find the landlord has failed to meet the burden of proof to prove this portion of their claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient and conflicting evidence, **without leave to reapply**.

Tenant's claim for item 1 – Regarding item 1 of the tenant's claim, I find that the tenant provided insufficient evidence to prove the \$5,000.00 amount being claimed. In reaching this decision I have considered that the tenant agreed to delaying the move-in/start date of the tenancy to March 22, 2013.

I do, however, find that the landlord breached section 32(1) of the *Act* in relation to the e-mail dated August 28, 2013, regarding the tenant's concerns with the septic system and related odour, which the agent confirmed was never responded to by the landlord or addressed. Section 32(1) of the *Act* states:

Landlord and tenant obligations to repair and maintain

- 32 (1)** A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that by not investigating or addressing the concern raised by the tenant regarding the septic system, the landlord negatively impacted the tenant's enjoyment of the rental unit from August 28, 2013 to end of the tenancy on December 15, 2013. As a result, and in accordance with section 67 of the *Act*, I find that the tenant is entitled to **\$350.00** as compensation from the landlord due to the landlord ignoring a complaint from the tenant regarding the rental unit septic system. The amount of \$350.00 is comprised of \$100.00 for each of the months of September, October and November of 2013, plus \$50.00 for December 2013, as the tenancy ended on December 15, 2013, which I consider to be a reasonable amount for compensation.

Regarding item 2, the tenant has claimed \$250.95 for carpet cleaning. The tenant stated that she was promised by the landlord that the carpets would be cleaned, and the agent stated that the owner is a carpet cleaner and that the carpets were clean at the start of the tenancy. As the move-in condition inspection report submitted in evidence and signed by the tenant indicates that bedroom 1 carpets were "clean" and the parties agreed that there were no carpets in the master bedroom, I find the tenant has failed to provide sufficient evidence to prove this portion of her claim. As a result, **I dismiss** this portion of the tenant's claim due to insufficient evidence, **without leave to reapply**.

Regarding item 3, the tenant has claimed \$492.80 for time she had to take off work to move-in to the rental unit, which she stated was supposed to be March 15, 2013. The parties agreed that an amendment to the tenancy agreement was signed, which was submitted in evidence, where the parties mutually agreed that the move-in or start date of the tenancy would be adjusted to March 22, 2014. This portion of the tenant's claimed was **dismissed** during the hearing, as the tenant agreed to amend the move-in or start date of the tenancy by signing the amendment on March 27, 2013, and the tenant failed to prove that the landlord breach the tenancy agreement, *Act*, or regulation. I find the tenant failed to meet part one of the four-part test described above and as a result, dismiss this portion of the tenant's application due to insufficient evidence, without leave to reapply.

Regarding item 4, this portion of the tenant's claim was **dismissed** during the hearing as the tenant failed to provide any evidence that the landlord breached the tenancy agreement, *Act*, or regulation regarding this portion of her claim. I find the tenant failed

to meet part one of the four-part test described above and as a result, dismiss this portion of the tenant's application due to insufficient evidence, without leave to reapply.

Regarding item 5, in addition to the \$20.99 portion agreed to by the landlord by way of a mutual agreement, the tenant is also seeking \$81.16 for mice/pest traps. The tenant stated that she first wrote to the landlord to complain of mice on March 25, 2013, which was included in the tenant's evidence. The agent stated that she attended for an inspection and did not see mice. The tenant confirmed that the agent did attend in a reasonable time to inspect for mice. The tenant installed the mice/pest traps and claims that there were mice in the traps on a daily basis. The tenant did not have any photos to support that there were mice in the rental unit. The tenant submitted a receipt in the amount of \$81.16 dated June 3, 2013. I find the tenant failed to meet part one of the four-part test described above and as a result, dismiss this portion of the tenant's application due to insufficient evidence, without leave to reapply.

The landlord continues to hold the tenant's security deposit of \$1,050.00, which has accrued \$0.00 in interest since the start of the tenancy. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

Based on the above, **I find** the landlord complied with section 38 of the *Act* by claiming towards the tenant's security deposit within 15 days of date the landlord confirmed receiving the tenants' written forwarding address, December 31, 2013, which was later than the end of tenancy date on December 15, 2013.

As a small portion of the tenants' application had merit, **I grant** the tenant the recovery of half of her \$100.00 filing fee, in the amount of **\$50.00**.

As a small portion of the landlord's application had merit, **I grant** the landlord half of their filing fee in the amount of \$25.00.

Based on the above, **I find** that the parties have established monetary claims as follows, which include the portions agreed to pursuant to section 63 of the *Act*, by mutual agreement as follows:

LANDLORD'S MONETARY CLAIM	AMOUNT
Mutual agreement - Item 2 of Landlord's claim – Unpaid water utilities	\$66.04
Landlord's recovery of half of the \$50.00 filing fee	\$25.00
TOTAL AMOUNT OF LANDLORD'S CLAIM	\$91.04

TENANT'S MONETARY CLAIM	AMOUNT
Mutual agreement - Portion of item 5 of Tenant's claim – Mice control	\$20.99
Tenant's claim item 1	\$350.00
Tenant's recovery of half of the \$100.00 filing fee	\$50.00
TOTAL AMOUNT OF TENANT'S CLAIM	\$420.99

Based on the above, as the tenant's monetary claim is greater than that of the landlord's, and in accordance with section 72 of the *Act*, I will offset the amount owing to the landlord from the tenant's monetary claim and have incorporated the return of the tenant's security deposit as follows:

DESCRIPTION	AMOUNT
Tenant's total monetary claim	\$420.99
<i>Less landlord's total monetary claim</i>	<i>-\$91.04</i>
Subtotal of amount owing by the landlord to the tenant	\$329.95
Plus the return of tenant's security deposit	\$1,050.00
TOTAL BALANCE OWING BY LANDLORD TO TENANT	\$1,379.95

Given the above, I **grant** the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$1,379.95**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The parties were successful with a small portion of their applications.

As described above, the tenant has been granted a monetary order for the balance owing by the landlord to the tenant in the amount of \$1,379.95. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 25, 2014

Residential Tenancy Branch

