



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider the Landlords' Application for Dispute Resolution filed April 25, 2014, seeking a monetary award for unpaid damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and the pet damage deposit towards their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenant with their Notice of Hearing documents and copies of their documentary evidence by registered mail sent to the Tenant's forwarding address on May 2, 2014. The Landlords provided the registered mail receipt and tracking number in evidence.

It was also determined that the Tenant served the Landlords with his documentary evidence on August 11, 2014.

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Landlords' application in this Decision.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for the cost of cleaning the rental unit and yard, repairing a fence, painting the rental unit and replacing carpet and linoleum?

Background and Evidence

This tenancy began on December 1, 2009 and ended on March 31, 2014. Monthly rent was \$1,000.00, due on the first day of each month. The Tenant paid a security deposit

and a pet damage deposit, each in the amount of \$500.00, at the beginning of the tenancy.

The Landlord CK gave the following relevant testimony:

CK stated that she wanted to do a “walk through” on March 1, 2014, but the Tenant denied her entry. She stated that she went to the rental unit on March 31, 2014, but the Tenant wasn’t there. CK testified that the Tenant met with her on April 11, 2014, and asked for return of the security and pet damage deposits. CK stated that she told the Tenant she would be keeping the deposits because the rental unit, yard and fence were damaged and not cleaned at the end of the tenancy to a standard she was “comfortable with renting to a new tenant”. CK stated that there was no Condition Inspection Report completed at the beginning or the end of the tenancy.

CK testified that the rental unit was freshly painted at the beginning of the tenancy and that the carpet was replaced in 2008.

CK testified that the Landlords agreed not to increase the rent if the Tenants did extra maintenance on the rental property. She stated that they agreed that the Tenants could use the pasture for their horse if they maintained the fences. CK stated that there was no written agreement put in place because the Tenants refused to sign one.

CK testified that the Landlords seek a monetary award, calculated as follows:

Cleaning up the yard (33 hours @\$15.00)	\$495.00
Cleaning the rental unit, including getting rid of mould	\$240.00
Cost of cleaning the chimney	\$168.00
Cost of cleaning the drapes	\$100.00
Cost of cleaning the carpet (stains would not come out)	\$63.00
Cost of replacing carpet	\$307.00
Cost of repairing walls (7 sheets of gyprock)	\$180.25
Cost of painting (stain on ceiling, wall damage)	\$205.00
Cost to replace damaged fencing	\$435.00
Landlords’ labour (14 hours @ \$20.00)	<u>\$280.00</u>
TOTAL CLAIM	\$2,525.25 (sic)
[actual sum of the above claim	\$2410.25]

The Landlords provided photographs and copies of invoices in evidence.

The Tenant NR and co-tenant BR gave the following relevant testimony:

BR testified that she was at the rental unit at 6:00 p.m. on March 31, 2014, and was available for the move-out inspection. She stated that she met with CK on April 2, 2014, and CK told her that “everything was fine”, so she was expecting return of the security and pet damage deposits. CK stated that she had cleaned the rental unit, with the exception of the drapes. CK testified that the Landlords changed their minds and told the Tenants that they wanted “\$500 or \$600” for cleaning the drapes, chimney and eaves. CK stated that the Landlords did renovations after the Tenants moved out and that if additional cleaning was necessary, it must have been because of the renos. BR stated that initially she was prepared to pay for the drape cleaning, but that she has changed her mind.

The Tenants testified that they gave their forwarding address in writing to the Landlords on April 11, 2014.

The Tenants stated that they have no recollection of agreeing to provide extra maintenance at the rental property in exchange for no rent increases. NR testified that he cleaned the gutters twice a year. He stated that chimney cleaning was not the Tenants’ responsibility.

The Tenants said that the stain on the ceiling occurred 2 years ago, when a sink overflowed and a couple of litres of water leaked from the sink and onto the ceiling below. Four ceiling tiles were stained and the Tenants stated that they told the Landlords and offered to paint the ceiling, but the Landlords did not require them to do so.

BR said that the yard was left tidy and the Landlords repaired the fence before BR had an opportunity to. The Tenants stated that the rental property is in a rural community and that the fence was damaged by elk and not their horses.

NR testified that there was some mould in the basement because the rental unit was a grow op before he moved in and that the basement was unfinished with a concrete floor and was used as a work shop. He stated that moisture came into the basement every year during spring runoff. NR testified that he didn’t recall any lino in the basement except for one old 5 x 7 patch, which was laid directly on top of the concrete.

The Tenants testified that the carpet was an old second hand carpet which was thread bare. They stated that the Landlords told them that they were going to replace it after the Tenants moved out.

The Tenants acknowledged that there were marks left by their baby's jolly jumper, but that they patched and sanded the damage before they moved out.

The Tenants provided photographs in evidence.

The Tenants stated that the Landlords were late filing their application. The Tenants asked that the Landlords be ordered to return double the amount of the security deposit.

Analysis

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. In this case, the onus is on the Landlords.

The Tenants acknowledged that they did not clean the drapes at the end of the tenancy and therefore I allow this portion of the Landlords' claim in the amount of **\$100.00. I dismiss the remainder of the Landlords' claim** for the following reasons:

- A Condition Inspection Report, completed in accordance with the provisions of Part 3 of the regulations, is evidence of the state of repair and condition of a rental unit on the date of the inspection unless the landlord or tenant has a preponderance of evidence to the contrary. The onus is on a landlord to provide the tenant with two opportunities to complete an inspection and if the tenant does not agree, then the landlord must give the tenant a Notice of Final Inspection Opportunity. If the tenant does not attend for the inspection, the landlord must complete the inspection on his own and provide a copy to the tenant. In this case, the Landlords did not complete condition inspections, contrary to the requirements of Sections 23 and 35 of the Act.
- Section 37 of the Act requires tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. There is no requirement in the Act that a tenant must comply with a higher standard. In this case, I find that there is insufficient evidence that the rental unit required cleaning (except for the drapes) at the end of the tenancy.
- The Residential Tenancy Policy Guidelines (the "Guidelines") set out which party is responsible for cleaning, maintenance and repairs during a tenancy. A copy of Guideline 1 is attached to this Decision. The Landlords are responsible for the maintenance of the chimney. Unless there is a written agreement to the contrary, the Tenant is responsible for watering the grass and mowing the lawn, but not for pruning or weeding of flower beds. I find that the Landlords did not provide sufficient evidence that the Tenant did not leave the yard in reasonable condition at the end of the tenancy.

- The Guidelines also provide the useful life of materials. Interior paint has a useful life of 4 years, and I find that the rental unit was due for new paint at the end of the tenancy. The Tenant provided evidence that they repaired and sanded the wall where the jolly jumper was mounted, and therefore I find that the Tenant is not responsible for wall or ceiling repairs/paint.
- I find that the Landlord provided insufficient evidence that the Tenants damaged fencing on the rental property or that they damaged the carpet.

Further to the provisions of Section 72 of the Act, I order that the Landlords deduct **\$100.00** from the security deposit. The remainder of the security and pet damage deposits in the amount of **\$900.00** must be returned to the Tenants forthwith.

The Tenants submitted that the Landlords were late filing their application against the deposits and therefore the Landlords should return double the amount of the deposits, pursuant to the provisions of Section 38(6) of the Act. However, I find that the Landlords filed their application within 15 days of receipt of the Tenant's forwarding address and therefore the Tenants are not entitled to double the amount.

The Landlords have been largely unsuccessful in their claim and I find that they are not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$900.00** for service upon the Landlords, representing return of the security and pet damage deposit after deducting the Landlords' monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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: September 23, 2014

Residential Tenancy Branch

RESIDENTIAL TENANCY POLICY GUIDELINE

1. Landlord & Tenant – Responsibility for Residential Premises Page1-1 Jan-04 **Updated March 6, 2012**

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities¹.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

2. The section in these guidelines on "Property Maintenance" and "Septic, Water and Oil Tanks" is applicable to both Manufactured Home Park tenancies and traditional residential premises tenancies.

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

INTERNAL WINDOW COVERINGS

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.
4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.
5. The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

WINDOWS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.
2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

MAJOR APPLIANCES

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.
3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

BASEBOARDS AND BASEBOARD HEATERS

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

SMOKE DETECTORS

1. If there are smoke detectors, or if they are required by law, the landlord must install and keep smoke alarms in good working condition. Regular maintenance includes:

- ☐ annual inspection of the system
- ☐ annual cleaning and testing of the alarm
- ☐ replacing batteries at least annually and according to the manufacturer's instructions.

2. The tenant must not prevent the smoke alarm from working by taking out batteries and leaving them out, or by replacing them with batteries that are dead or the wrong size. For his or her own safety and the safety of others, the tenant must tell the landlord when a smoke alarm needs new batteries, or that it seems to need to be repaired or replaced.

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

2. The tenant is responsible for cleaning floor and wall vents as necessary.

FIREPLACE, CHIMNEY, VENTS AND FANS

1. The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.

2. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

3. The tenant is required to clean the screen of a vent or fan at the end of the end of the tenancy.

4. The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

LIGHT BULBS AND FUSES

1. The landlord is responsible for:

- ☐ making sure all light bulbs and fuses are working when the tenant moves in.

☐ replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and

☐ repairing light fixtures in hallways and other common areas like laundry and recreational rooms.

2. The tenant is responsible for:

☐ Replacing light bulbs in his or her premises during the tenancy,

☐ Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and

☐ Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

TELEPHONES

1. Where provided under the tenancy agreement, the cost of repairing telephones, jacks and wiring, are the responsibility of the landlord.

2. If the tenant wants to install extra jacks or change jacks, he or she must get written permission from the landlord. If the landlord allows the installation, the tenant must pay for it, unless otherwise agreed. The tenant must leave the changes / additions at the end of the tenancy, unless there is an agreement to the contrary, in which case the tenant must repair the damaged wall etc.

3. The tenant is responsible for problems with his or her own telephone and cord and any wiring and/or jacks provided by him or her.

4. The landlord shall not unreasonably withhold consent for extra jacks or change of jacks where these are reasonably required by the tenant.

SECURITY

1. The tenant must get the landlord's approval, in writing, before installing a security system or alarm.

2. The tenant who has installed an alarm system, and then moves out, must either:

☐ leave the system in the unit; or

☐ remove the system and repair any damage caused to the unit during installation or removal.

3. Unless an arbitrator has ordered otherwise³, the tenant must give the landlord the access code to his or her alarm.

4. If a security system is provided in the premises when the tenant moves in, the landlord is responsible for maintaining and repairing the security system unless the security system is damaged by the tenant or a person permitted in the premises by the tenant, in which case the tenant shall be responsible for the cost of repair.

5. If the tenant requests that the locks be changed at the beginning of a new tenancy, the landlord is responsible for re-keying or otherwise changing the locks so that the keys issued

to previous tenants do not give access to the residential premises. The landlord is required to pay for any costs associated with changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental premises.

6. The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

7. In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

KEYS

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

GARBAGE REMOVAL AND PET WASTE

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

SEPTIC, WATER AND OIL TANKS

1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.
2. The landlord is responsible for winterizing tanks and fields if necessary.
3. The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.

FENCES AND FIXTURES

A fixture is defined as a "thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land"

For the purposes of determining whether chattels annexed to realty remain personal property or become realty, chattels are divided into two classes:

1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.
2. Other personal property, that does not lose its original character after attachment may continue to be personal property, if the owner of the personal property and the landowner agree.

Fixtures that have been considered tenant's fixtures are:

☐ Trade fixtures - where the tenant has attached them for the purposes of his trade or business.

☐ Ornamental and domestic fixtures which are whole and complete in themselves and which can be removed without substantial injury to the building. Examples of a chattel which can be moved intact and are more likely to be considered a tenant's fixture are blinds and a gas stove.

3. The landlord is responsible for maintaining fences or other fixtures erected by him or her.
4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.
5. Where a fence, or other fixture, is erected by the tenant for his or her benefit, unless there is an agreement to the contrary, the tenant is responsible for the maintenance of the fence or other fixture.

6. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.
7. If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary.
8. If the tenant leaves a fixture on the residential premises or property that the landlord did not agree the tenant could erect, and the landlord wishes the fixture removed, the tenant is responsible for the cost of removal.
9. If the tenant leaves a fixture on the residential premises or property at the end of the tenancy, and the landlord does not remove it prior to the commencement of the following tenancy, the landlord is responsible for future repairs, unless the fixture only remains because the in-coming tenant agreed to maintain it, in which case it may be found that the ownership of the fixture passes to the in-coming tenant.
10. Where a fence or fixture is placed on the premises or property by the tenant, at the request of the landlord, the landlord may be held responsible for its repair and maintenance.

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

SERVICES AND FACILITIES

1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

