Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

CNC, MND, OPC, MNDC, OLC, RP, PSF, LRE, AS, RR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant withdrew the portions of the application related to ending the tenancy and repairs and is pursuing only the monetary claim; as the tenancy has ended.

The landlord has requested compensation for damage to the rental unit; damage or loss under the Act and to recover the filing fee. The request for an Order of possession has been withdrawn.

Both parties were present at the July 10 and September 15, 2014 hearing. On September 15, 2014 the parties were reminded they continue to provide affirmed testimony.

The witness was affirmed.

Preliminary Matters

At the start of the reconvened hearing the parties confirmed receipt of the others' documents. The landlord made a written rebuttal submission; the tenant received that document. No other submissions were made and the parties confirmed receipt of the balance of the documents.

The tenant made a monetary claim; the sum was indicated on the application. In the tenant's evidence there were 3 "invoices" created by the tenant; setting out a claim that exceeded the sum indicated on the application. I determined that I would consider a claim up to the sum indicated on the application served to the landlord, as set out in invoice #1. The tenant did not number the multiple receipts provided, nor were they

reconciled with the sums indicated on her invoice. The receipts were not referenced during the hearing; other than a reference to the fact they had been supplied.

Neither party submitted a claim in relation to the security deposit. Each party agreed that the deposit may be used to set off against the claims made.

Background and Evidence

The tenancy commenced on October 1, 2013; rent was $800.00 due on the 1st day of each month. A security deposit in the sum of $400.00 was paid. A copy of the tenancy agreement was supplied as evidence.

A condition inspection report was not completed at the start of the tenancy. The condition inspection report presented to the tenant at the end of the tenancy was not signed by the tenant; she wrote on the report that she disagreed with the details.

The tenant has made the following claim, based on invoice #1, plus the claim for cleaning and packing:

Cost of meals February 26 to April 7, 2014	$680.36
Rent abatement February 26 – 29, 2014; 90% loss	74.49
Rent abatement March 1 – 30, 2014; 90% loss	719.10
Rent abatement April 1 – 30, 2014; 50% loss	400.00
Rent abatement May 1 – May 31, 2014; 50% loss	239.70
1 month's rent for last month of tenancy, due to forced move	800.00
Laptop damage – estimate	300.00
Moving expenses	1,240.00
Gas and toll – travel to prepare for hearing	53.74
Photocopying and office supplies – hearing preparation	20.25
Tenant's personal time to prepared for hearing	200.00
Cleaning and packing	326.25
TOTAL	$5,053.89

This sum exceeds that indicated on the application; a claim up to $4,400.64 will be considered. The tenant was informed that the claim related to preparing for a hearing; such as travel, personal time and office supplies would be dismissed. The only "costs" related to the hearing that may be considered is the $50.00 filing fee; which the tenant paid for a claim under $5,000.00.

The landlord made the following claim:

Cleaning- 5 hours@ $15.00	$75.00
Repairs – 4 hours @ $15.00	60.00

Replace smoke detectors	375.00
Replace IKEA chair covers	178.00
Replace broken cabinet	69.00
	$757.00

As explained during the hearing, I have dismissed the landlord's claim for the loss of quiet enjoyment in the sum of $500.00 as a landlord does not have right to quiet enjoyment. If a tenant causes disturbance the landlord is entitled to issue a Notice ending the tenancy for cause; ending the tenancy.

The parties agreed that the tenant paid rent for May 2014 and vacated mid-month. The landlord had issued a 1 month Notice to end tenancy for cause, which the tenant disputed as part of her application. The Notice was issued based on an Order of government. The tenant said the unit was not legal, but that no order had been issued by government. The tenant eventually decided to accept the Notice and vacated.

There was no dispute that on February 26, 2014 a flood occurred; running from the landlord's unit in the upper portion of the home; down, into the rental unit. The parties agreed that the flood was unexpected and not related to any on-going need for repair.

The tenant said that the rental unit was not useable and she could only sleep there. The tenant worked away from the home but when she was at home the dehumidifiers and repair work reduced the value of the unit. Construction workers were present in the unit constantly and notice for entry was not given as required.

The landlord said that they did give notice and that on multiple occasions the tenant denied workers access. A copy of a notice issued by the tenant and placed on her door was supplied as evidence. The notice indicated that entry was only allowed in accordance with the Residential Tenancy Act. The landlord supplied copies of notices issued to the tenant, for multiple dates of entry. The landlord agreed that on one 1 occasion entry did occur without proper notice.

Written submissions provided showed notice of entry was issued, in writing to the tenant, for multiple dates of entry.

The landlord supplied a March 25, 2014 note from the company completing plaster work which indicated the tenant would not allow workers access into the unit on that date. The tenant had been told the workers needed access for 2 weeks, beginning March 24th.

On May 27, 2014 the restoration company issued a typed note, a copy of which was supplied as evidence. The note confirmed a call received on February 27, 2014 from an insurance adjuster; asking they complete the emergency repairs. The note indicated that as the tenant did not have insurance she was told she must remove the contents of the unit; she did not want the restoration company to move them. The tenant's

belongings were not being moved so drying equipment had to be installed with contents in the unit. As the repair work continued the tenant began to make access difficult. The restoration company agreed to give her prior notice; a date and time given, a day or 2 in advance; but then the tenant began turning workers away. As a result the mitigation and repair took substantially longer all due to the "refusal of access and a general uncooperative manner of the tenant."

The tenant denied receiving adequate notice of entry and that despite her cooperation the work repairing the unit was not fully completed until April 14, 2014.

The tenant could not cook in the unit and has claimed the cost of meals purchased during this time.

As the unit was not habitable the tenant has claimed compensation for the loss of value of the unit during the time repairs occurred. The tenant has requested return of 90% of rent paid from the time the flood occurred to March 30, 2014 and 50% of rent paid from April 1 to May 31, 2014. The tenant has also requested additional $800.00 compensation as she was essentially forced to locate a new rental unit.

The landlord said that the unit was not uninhabitable and that the kitchen was not useable for 1 week only. After that time the tenant only had to unplug a dehumidifier to use counter plugs. There were 4 dehumidifiers in the unit present for 10 days.

The tenant said that there were initially 6 dehumidifiers; at another point during the hearing the tenant said there were 8 dehumidifiers. From photographs supplied by the tenant there were a number of dehumidifiers present; perhaps 6, although the positioning is difficult to discern. The photos show the level of disruption that was caused; the flooring was removed and items were damaged by water. A photograph of a water damaged book was supplied.

The tenant submitted an undated estimate for repair of a computer keyboard and screen in the sum of $300.00. The estimate did not include any details, such as the make of the computer. The tenant said she eventually replaced the computer.

Receipts for meals claimed were supplied. The tenant stated she did what she could to mitigate the amount spent on food during the time the kitchen could not be used.

An April 27, 2014 quote for moving costs was supplied; no evidence of payment for moving costs was supplied.

The tenant stated that repairs were not fully completed until April 14, 2014, when the new flooring was installed; this was not disputed.

The landlord said that they made several offers to settle with the tenant in March 2014. On March 9, 2014 they left a notice on the tenant's door providing a discount for March rent until the repairs were completed; or that the tenant could have a reduction in rent

and vacate by the end of that month. On March 25 the landlord made another offer to the tenant, as the tenant was frustrated and blocking access to the unit. The landlord said the tenant never gave them anything in writing to complain about the dates and times of entry that had been given to her; yet the tenant blocked access by workers.

The landlord supplied eighty-six photographs taken of the unit prior to the tenancy commencing and after the tenant vacated.

The landlord said that the tenant did not leave the unit reasonably clean. Dog hair was on the stairs, on a couch that was in the unit for the tenant's use. Garbage was left outside of the home; some of which had been torn open. The witness stated that she assisted with the cleaning at the end of the tenancy. The witness said the home was messy, the new floor was covered in dog hair, debris was left in cupboards; there were holes in the walls, some made by screws. The witness assisted with garbage clean-up outside of the unit. A broken bread-maker and mirror were left in the unit by the tenant. The witness was present for 3 hours of cleaning time.

The landlord said he spent time repairing the holes left in the walls. The dog dug holes in the yard and several had to be filled in. A cabinet was removed from the wall and will need to be replaced. A wall in the stairwell was repaired incorrectly by the tenant and had to be replaced.

The landlord supplied photographs taken of the unit prior to the tenancy starting and at the end of the tenancy.

A photograph taken on an unknown date prior to the tenancy showed a smoke detector in the ceiling of the rental unit. At the end of the tenancy the detector was missing. The landlord said the detectors in the home are all wired into the same system. As the system is older all of the detectors in the home had to be replaced. The landlord has the smoke detector invoice but inadvertently left it out of his written submission.

The laundry room had an IKEA chair and stool left for use of the tenant. At the end of the tenancy the covers to those items were removed and missing. The landlord provided an estimate from an on-line catalogue, indicating replacement costs.

The cabinet was removed from the wall by the tenant's movers; it was then returned, wrapped in plastic. The back of the cabinet was damaged when it was taken from the wall. An estimate for replacement cost was supplied.

The tenant said she did clean the unit but she had been blocked from accessing the yard and her garbage could not be placed in bins. The tenant agreed her dog may have dug several holes that she missed filling in. The tenant did not take the covers from the furniture, nor did she or her movers take the cabinet off of the wall. The tenant said she did not make any repair in the stairway; she does not even own a hammer. The tenant said that she did make some holes in the walls, to hang art. The tenant said that the dog hair was cleaned and that the unit was clean at the end of the tenancy.

The tenant said that the smoke detector was not in the home at the start of the tenancy and that the previous tenant must have removed it.

The cabinet was removed from the wall by the landlord's contractor and they had wrapped it in plastic. The tenant said it was not her movers who removed the cabinet from the wall.

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.

In relation to the claim made by the tenant, if I were to accept the tenant's submission, that the rental unit was uninhabitable, I would then find that the tenancy was frustrated. In that case the flood; which the parties agreed was an accident, would have brought the tenancy to an end on February 26, 2014. However, I have rejected the possibility of frustration, as the tenant chose to remain in the home; what I find is an indication the unit was habitable. Further, if the unit had been rendered uninhabitable the tenant was at liberty to vacate and submit an application for dispute resolution requesting return of the several days rent paid for the balance of February and the deposit; based on frustration.

There is no dispute that the unit went through a period of repair and that, certainly early on while the dehumidifiers were in the unit, the disruptions were not insignificant. Beyond the 10 days after the flood I find, on the balance of probabilities that the tenant had full use of the unit. The kitchen was useable after 1 week and the dehumidifiers were removed after 10 days. The tenant provided no evidence in support of her claim that the kitchen could not used and I have accepted the landlord's submission that the kitchen was unusable for 1 week.

The tenant stated she was disturbed, but at the same time said she was at work most days. I found those statements contradictory. If the tenant was at work much of the time the disturbance to her would have been greatly reduced.

I find, on the balance of probabilities, that the tenant did receive notice of entry and that, at least on several occasions; she chose to block the entry of workers to the unit. I based this finding on the 2 notes provided to the landlord by workers, who were not allowed entry and copies of notices posted to the door by the tenant. Even if a notice of entry had been missed for those days, I find that the tenant cannot make a claim for a loss of quiet enjoyment based on extended repair, when she had the ability to give verbal permission for entry. If the tenant had chosen to allow easy entry to the unit I find that repairs would have been completed earlier.

The tenant did not have tenant's insurance, which is meant to address any loss that a tenant may suffer when there has been no negligence on the landlord's part. Residential Tenancy Branch policy suggests that the person making the claim has a legal obligation to do whatever is reasonable to minimize the damage or loss. The tenant was required to take whatever steps she could to keep the loss as low as reasonably possible; such as purchasing her own insurance policy. The tenant could then be in a position to claim compensation for a loss that could not be avoided.

In the absence of tenant insurance I find that the tenant failed to mitigate for a loss resulting from a flood for costs such as moving, computer repair and inconvenience. Even if the tenant had remained as another unit was too difficult to locate, insurance would have provided the tenant with some relief; less a deductible cost.

There is no dispute that for at least the first 7 days after the flood the tenant could not use the kitchen and I find, on the a balance of probabilities, a loss of use occurred. There is no doubt that the tenant, if she had had insurance, could have expected to remain out of the unit for at least several weeks while the dehumidifiers were in place and initial repairs were occurring.

Residential Tenancy Branch policy suggests if a tenant is deprived of the use of part of a rental unit, even where there has been no negligence on the part of the landlord, compensation may be made in the form of a monetary award. Therefore, I find, that as the use of the kitchen occurred and the disruptions caused by repair, that the tenant is entitled to nominal compensation in the sum of $300.00.

The balance of the tenant's claim is dismissed based on a failure to mitigate by the tenant.

In relation to the landlord's claim, I find, on the balance of probabilities that the rental unit was not left in a reasonably clean state. Photographs taken at the end of the tenancy showed dog hair and garbage left inside and out. Even if the tenant could not access the garbage cans she knew her garbage was spread around the yard. Therefore, I find that the landlord has made a reasonable claim for cleaning and is entitled to the sum claimed.

There was no evidence before me of an excessive number of holes left in the walls; a tenant is allowed to make a reasonable number of holes so that art may be hung. I have accepted the tenant's testimony that she did not complete a repair that had to be redone. The tenant's testimony that she does not even own a hammer had the ring of truth. The tenant did agree a hole may have been left by the dog; therefore, I find that the landlord is entitled nominal compensation for filling in the hole in the sum of $5.00. I find that balance of the claim for repairs is dismissed.

The tenant said that the smoke detector was not in the unit at the start of the tenancy. A photograph supplied by the landlord showed the detector present at what the landlord said was the start of the tenancy. In the absence of a move-in condition inspection

report I have no confidence as to the date the photographs were taken. Therefore, I find that the claim for smoke detector replacement is dismissed. Further; the landlord failed to supply verification of the cost claimed.

The tenant said she did not take the chair covers and in the absence of anything but a suspicion the tenant took the covers, I find that claim is dismissed.

I find it is just as likely that the landlord's contactor removed the cabinet from the wall; rather that the tenant having removed it. The rental unit was in a state of disarray, with workers completing repairs, and on the balance of probabilities I find that damage caused by the tenant to the cabinet is not proven and that the claim is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning- 5 hours@ $15.00	$75.00	$75.00
Repairs – 4 hours @ $15.00	60.00	5.00
Replace smoke detectors	375.00	0
Replace IKEA chair covers	178.00	0
Replace broken cabinet	69.00	
	$757.00	80.00

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

The tenant is entitled to compensation in the sum of $300.00; the landlord to $80.00.

By the mutual agreement of the parties, that the deposit should be disbursed, I find, pursuant to sect 63(2) of the Act, that the landlord may deduct $80.00 from the security deposit. The balance of the deposit in the sum of $320.00 is Ordered returned to the tenant.

Based on these determinations I grant the tenant a monetary Order in the sum of $620.00 ($320.00 deposit; $300.00 compensation)**.** 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 $300.00; the balance of the claim is dismissed.

The landlord is entitled to compensation in the sum of $80.00 which may be deducted from the security deposit. The balance of the claim is dismissed.

The balance of the security deposit in the sum of $320.00 is ordered returned to the tenant; based on the mutual agreement of the parties.

Filing fees are set off against the other.

This final decision should be read in conjunction with the interim decision issued on July 10, 2014.

This decision is final and binding 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: September 19, 2014

Residential Tenancy Branch