



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants confirmed receipt of the hearing package and landlord evidence in early May 2014.

The tenants served the landlord with their evidence, sent by mail on August 27, 2014. This evidence is deemed served effective September 1, 2014; only 2 days prior to the hearing. The landlord stated that he had just seen the evidence on the morning of the hearing; however, the landlord said he was willing to allow the tenant's evidence to be considered during the hearing.

The landlord was informed that the portion of the application claiming travel costs in the sum of \$758.68 was a cost that is not contemplated by the Act. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee. The landlord chooses to reside a considerable distance from the rental unit. As a result, this portion of the claim was denied and the landlord is at liberty to write the costs off as a business expense. The application was amended to correct the spelling of the female tenant's surname.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent and loss of rent revenue?

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The month-to-month tenancy commenced on June 14, 2013; rent was \$1,275.00 due on the 1st day of each month. A security deposit in the sum of \$650.00 was paid.

A move-in condition inspection report was not completed.

The parties agreed that just prior to the start of the tenancy the home had been listed for sale.

The landlord said that the tenants did not pay March 2014 rent. A copy of a March 3, 2014 email sent to the landlord by his realtor indicated that the male tenant had returned 2 keys to the home and that the tenant told the realtor he had moved out the month prior. There was no dispute that several days later the landlord met with the tenants and took them a truck load of items from the property. The landlord stated that most of the tenant's belongings had already been removed, but that a number of items of little value had been left behind.

The tenants denied they had vacated the rental unit but confirmed they were staying elsewhere. The tenants said they were not in the unit due to problems with the tenancy; however they did not tell the landlord they wished to return and did not pursue an Order of possession for the unit. The tenants confirmed that written notice ending the tenancy was not provided to the landlord and that they did not pay March 2014 rent.

The tenants confirmed that a written forwarding address has not been given to the landlord.

The landlord has made the following claim:

Maintenance person charges	\$1,455.00
Cleaning	150.00
Cleaning	50.00
Carpet replacement estimate	496.76
Misc. repair costs	308.33
March rent	1,275.00
April rent revenue	1,275.00
TOTAL	\$5,010.09

The landlord supplied a copy of an April 27, 2014 email sent by their maintenance person, outlining the hours of work and charges for repairs and clean-up carried out at the rental unit property. That email included:

Taking personal possessions to the tenants (truck \$125.00; driver \$100.00 helper \$100.00, maintenance person time \$75.00)	\$400.00
Clean garbage up outside, garage cleaning, items from house (dump fee \$40.00, vehicle & gas \$40.00)	80.00

Remove stove (\$75.00) purchase and install used stove (\$250.00)	325.00
Re-do kitchen counter top	350.00
Fill nail holes and paint	100.00
Re-paint stairway and hall	100.00
Restore backyard – remove pant pots, sticks, boards, compost, fence, sweep - 4 to 5 hours	100.00
TOTAL	\$1,455.00

Miscellaneous repair costs claimed, supported by receipts included:

Smoke detector battery	5.49
Toilet wax gasket	3.79
Unidentified item	12.06
Pad lock for exterior laundry room door	4.39
Paint	28.66
Gloves, brushes	5.60
Kitchen counter refinishing product – acrylic	95.76
Paint tape	10.49
Drain auger	12.49
Nails - 1.99 lb.	4.92
TOTAL	\$183.65

This sum differs from that indicated in the total claim of \$308.33.

Photographs supplied as evidence showed:

- the state of the kitchen before the tenancy commenced with a 2nd picture of the kitchen at the end of the tenancy;
- items left in cupboards;
- a dirty fridge;
- 8 small holes in a living room walls;
- an old Bar B Q., shelves and some boxes left outside;
- approximately 30 plant pots around the deck;
- a bag of plastic tie straps;
- some dead plant material and a small wading pool at the front of the house;
- a 2nd view of the deck and garden area with a few sticks and a driftwood stump visible;
- some personal items left in the unit such as pictures, a watch and photos;
- 2 trucks loaded with items such as a bike, garden hose, bags and boxes;
- paint lifted from the kitchen counter that had been previously painted; and
- the backyard, kitchen and living room prior to the tenants moving into the unit.

The landlord paid the maintenance person cash, for the above services provided. The maintenance person removed items from the home and took items to the tenants at their new unit. There were over 4,000 newspapers left in the garage and a truck load that had to go to the dump. The landlord said these items were not there at the start of the tenancy.

The ceramic stove top was broken; the stove was replaced with a used unit. The landlord estimated the stove provided during the tenancy was approximately 8 years old; it had been previously used before being installed in the rental unit.

The kitchen counters had been painted with melamine and at the end of the tenancy were damaged. The paint had lifted from the counter. The landlord decided to repair the counters by using a different material that could be trowelled on to the counter. An epoxy product was purchased as a final coat for the counter.

One photograph of the walls showed 8 small nail holes. The landlord said there were hundreds of holes made in the walls. The tenants had hung many items on the walls, resulting in the need for repair. The landlord said the previous tenants had painted the unit at some point during their 2 year tenancy. The nail damage resulted in the need for some wall repair and painting.

The tenants supplied a copy of an email sent by the landlord sometime in October 2013 indicating they had permission to do gardening. The landlord also said the tenants could keep the fence up that they had installed without permission, but that they should ask permission for any changes they wanted to make in the future.

The landlord said that the tenants did not clean up the yard at the end of the tenancy. There were hundreds of plant pots left behind and a fence had to be dismantled. Nails were used for this project.

The landlord stated that the smoke detector needed a new battery.

It appeared that the tenants had tried to lift the toilet; leaving it in need of a new gasket.

The landlord could not recall what the item was that cost \$12.06.

The door to the exterior laundry room door was missing the lock.

The septic system experienced problems after the tenants vacated. The landlord purchased the auger but then had to hire a plumber. The landlord determined the tenants had flushed wrappers and other items, causing the problem.

The landlord supplied an undated, handwritten invoice in the sum of \$150.00 issued by 2 women he hired to clean. The invoice indicates that they cleaned the interior of the home, including garbage removal, windows, floors and walls. They were paid by cash.

On May 1, 2014 an email was sent to the landlord indicating a further \$50.00 was charged by a different cleaner for: sweeping, mopping, window sills, sinks, doors and windows. The landlord said further cleaning was completed after an electrician completed work in the home.

The landlord obtained an estimate for carpet replacement for a set of stairs. A photo of the stairs showed the carpet had some dark marks on the steps. The carpet is fifteen to twenty years old. The landlord initially purchased a runner for the stairs, but that did not work. A receipt was supplied for the cost of the runner. The landlord then obtained an estimate to replace the carpet on the stairs. The carpet has yet to be replaced.

The landlord's witness entered the conference call hearing at the mid-point of the hearing. At this point the witness was affirmed and provided testimony. The witness has handled the listing of the house for sale. He was at the home just prior to the tenants moving in to the unit and described the unit as "a good, clean home," that was not extravagant.

After the tenants vacated the witness was at the home and said that if he had been the landlord he would have been very disappointed. There was garbage and debris left on the property and a "huge number" of newspapers left in the garage. He believed it would have been impossible to rent the unit right away, given the amount of cleaning that was required.

The landlord said that they quickly listed the home for rent on a single popular web site. The landlord could not recall the date the ad was listed. The landlord is claiming unpaid rent for March 2014. The landlord said that the unit required so much work that it could not be reasonably rented for April 1, 2014. The landlord is claiming the loss of April 2014 rent revenue. The landlord testified that he was able to re-rent the unit effective April 28, 2014.

Tenant's Submission:

The tenants set out details of conflict that occurred earlier in the tenancy; with allegations of harassment and safety concerns related to electrical deficiencies in the home.

The tenants responded that they had not vacated the unit at the start of March; although they were staying elsewhere. The landlord did bring them belongings that had been left in the rental unit; but some of the items did not belong to them. The tenants said that only 5 boxes and a TV had been left behind at the unit. Plant pots had been left for the other occupant of the home to use. They did not leave garbage or newspapers on the property. The tenants were not staying at the unit as they had felt harassed by an occupant of a RV the landlord had parked on the property.

The tenants pointed to photographs supplied by the landlord and said that items shown in the landlord's 2 trucks was not theirs and had been on the property at the time they moved into the unit. The photo of an old cabinet, bar b q and boxes were not theirs and belonged to the other occupant of a 2nd unit in the home.

The stove was a 1997 Maytag model. One burner had never worked. One night they had placed a pot on the stove and then heard an explosion – the stove top had exploded.

The kitchen counter had not been painted with a melamine, as stated by the landlord, but with ordinary house paint. The paint on the counter lifted as the result of a leak from the roof of the home. This leak was referenced in emails contained in the tenant's evidence.

The tenants said there were not more than 7 to 10 nail holes in the living room wall and that perhaps another twenty were made throughout the home.

At the start of the tenancy they were told to paint to the areas that had not been painted by the previous tenants. At the start of the tenancy three of the bedrooms had been

painted and some plaster patching had been completed and primed. The tenants did not cause damage to the walls and dispute the claim for painting.

The tenants did complete yard work; which was complimented by the landlord. They did install the fence and it was eventually removed by the female tenant and the landlord. Photographs supplied by the tenants showed areas they improved in the yard.

The tenants said they were "long gone" when the electrician worked in the home and cleaning was required. They are not responsible for that cleaning cost. The tenants agreed that the 3 upstairs bedroom and bathroom were not cleaned. The windows had mould on them; as shown in the tenants photographs supplied as evidence. The tenants believe that the unit required only several hours of cleaning.

The tenants disputed the claim for carpet replacement and the cost claimed. They did not cause damage to the carpet.

The exterior laundry room door never had a lock; they did not alter it or take a key. The tenants were never given a key to the front door of the unit.

The tenants quoted a licence plate number as that they believe belongs to a tenant who moved into the unit in mid-March 2014. The vehicle was often seen at the unit. The tenants did not give written notice they were vacating and denied that they had vacated the unit.

Analysis

Section 44 of the Act sets out how a tenancy may end; including a notice to end tenancy issued by the landlord in the approved form or properly issued notice given by a tenant. I find, from the evidence before me, in accordance with section 44(f) of the Act that the tenancy ended effective March 3, 2014, when the tenant returned to the rental unit keys to the realtor. At this point the tenants had made a declaration they had vacated the unit.

There was no condition inspection report completed at the start of the tenancy, as required. Therefore, there was no agreement on the state of the home at the start of the tenancy. Residential Tenancy Regulation requires a landlord, in the absence of a condition inspection report to supply a preponderance of evidence when making a claim for damages at the end of a tenancy.

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.

From the evidence before me I find, on the balance of probabilities, that the claim for hauling belongings, cleaning the yard, the stove, the kitchen counter, nail hole repair, repainting and restoring the backyard is dismissed with the exception of a nominal sum for hauling away items left on the property. Based on the witness testimony there was an excessive number of newspapers left in the garage that had not been there at the

start of the tenancy. Therefore, I find the landlord is entitled to nominal compensation in the sum of \$50.00.

There was no evidence before me that before the personal property was returned to the tenants that the landlord made any contact with the tenants in relation to items that were left in the rental unit. The Residential Tenancy Regulation sets out what should happen with property left by a tenant. The landlord chose to load the items and deliver them; without authorization of the tenants. The tenant said items were brought to them that were not even theirs. As the process of handling items did not comply with the legislation I find that the claim related to delivery is dismissed.

I have considered the witness testimony in relation to the state of the yard at the beginning and end of the tenancy and find, on the balance of probabilities, that the tenants did not remove items that resulted in a cost to the landlord. However, in the absence of a move-in condition inspection report that clearly set out the state of the unit at the start of the tenancy I find that the landlord is entitled to a nominal sum of \$50.00.

There was disputed testimony in relation to the age of the stove. Further, the tenant said that the stove, which he said was an aged model, broke when they were not even near the stove. In the absence of evidence showing that the stove was still within its use lifespan of a suggested fifteen years and, in the absence of evidence that the tenants were somehow negligent in its use, I find that the claim for a used stove is dismissed.

The landlord chose to repair the counter by a completely different and more costly method than re-painting. Therefore, as the landlord chose to complete an improvement and, as painting a counter is a method of maintenance that can be expected to have a very short life span I find that the claim for the counter repair is dismissed.

The one photo of nail holes in the wall showed 8 small holes. There was no evidence before me of hundreds of holes having been made in the walls. A tenant is allowed to place a reasonable number of holes in walls in order to hang art. Therefore, in the absence of evidence of an excessive number of holes I find that the claim for repair of holes and re-painting is dismissed.

From the evidence before me, on the balance of probabilities, I find that the rental unit was not left reasonably clean, as required by section 37 of the Act. I found the witness testimony reliable and consistent. The tenants also confirmed that not all cleaning was completed; although I have rejected their suggestion of the need for only 2 hours of cleaning. The witness saw the unit and found it to be in a less than favourable condition. Supported by verification of the claim for cleaning, I find that the landlord is entitled to compensation in the sum of \$150.00.

The 2nd claim for cleaning is dismissed. That charge included some of the same items that were included in the other invoice. I find it is likely that the 2nd cleaning was completed after the initial cleaners were in the house and may well have been required as the result of work that had been completed in the house.

RTB policy suggests carpeting has a useful lifespan of fifteen years. The carpet in the home was approximately fifteen years old, by the landlord's estimate. Therefore, I find that the carpeting costs cannot be borne by the tenants.

RTB policy suggests that when there are smoke detectors in a unit the landlord is responsible for ensuring they are in working order and that batteries are replaced. Therefore the claim for batteries is dismissed.

There was no evidence before me that the tenant had lifted the toilet resulting in the need for a new gasket. The landlord replaced the gasket, assuming the tenant must have tampered with the toilet. That claim is dismissed.

In the absence of a condition inspection report I find that the claim for a lock is dismissed; the tenants said the door never had a lock and no evidence of such a lock was supplied by the landlord.

The cost of items for painting supplies and nails are dismissed, as are the painting costs. Policy suggests a landlord is required to paint a rental unit every 4 years. From the evidence before me part of the home had been painted some time during the previous 2 year tenancy. There was no evidence to convince me that the tenants caused any damage to the areas the landlord had painted and I find it is just as likely that those areas had not been painted in the past 4 years.

The landlord has possession of the auger he has purchased, for future use. Therefore, I find that the claim for that tool is dismissed.

Section 52 of the Act required the tenants to provide the landlord with written, signed notice ending the tenancy and they failed to do so. Written notice given after March 1, 2014 would have been effective on April 30, 2014.

The landlord is also required to mitigate; as set out in section 7 of the Act, by doing whatever he can to minimize a loss claimed. There was no evidence of any advertising having taken place; although one web site was used. There was no evidence before me that supports a claim that the unit could not have been fully prepared for a new occupant by the end of March. I find any delay in cleaning was solely at the discretion of the landlord, who lives a considerable distance from the rental unit.

The landlord also chose to advertise the unit at a rent that was \$100.00 higher than what he had been receiving from the tenants. By increasing the rent the landlord actually moved in the opposite direction of mitigation. The landlord could have lowered the rent sought and then sued the tenants for the difference in rent revenue. When the landlord increased the rent he essentially increased the possibility that locating a new tenant would be less likely.

Therefore, in the absence of evidence of mitigation I find that the landlord is entitled to compensation for unpaid March 2014 rent and that the claim for loss of April 2014 rent revenue is dismissed.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Maintenance person charges	\$1,455.00	100.00
Cleaning	150.00	150.00
Cleaning	50.00	0
Carpet replacement estimate	496.76	0
Misc. repair costs	308.33	0

March rent	1,275.00	1,275.00
April rent revenue	1,275.00	0
TOTAL	\$5,010.09	\$1,525.00

The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover a \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the security deposit in the sum of \$650.00 in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$925.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$1,525.00; the balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to a \$50.00 filing fee.

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 12, 2014

Residential Tenancy Branch

