



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, OPB, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties had people assisting them at both hearings. Both parties and their assistants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant has vacated the rental unit and therefore an order of possession for the Landlord is not necessary, and this portion of the claim is dismissed.

The Landlord filed their Application on April 2, 2014, initially claiming for a monetary order of \$3,675.00. On June 4, 2014, the Landlord amended the Application to increase the claim to \$10,172.00.

On July 21, 2014, the Landlord attempted to amend the Application to increase the monetary amount claimed once again. The rules of procedure in place at the time of the Landlord initiating the Application were such that the Landlord would have had to amend the Application with the branch no later than seven days before the hearing. As

the hearing began on July 24, 2014, I found the Landlord was unable to amend the Application further and the hearing proceeded based on the amount claimed in the June Application of \$10,172.00. I note that the rules of administrative justice preclude an Applicant to increase a monetary claim without sufficient notice to the Respondent and that is further reason to not allow the Landlord to increase the amount claims by late amendment.

The first hearing was adjourned to allow more time for the parties to present evidence during the hearing. The Landlord was still unable to amend the Application during the adjournment period, and we proceeded on the June Application amount of \$10,172.00

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in May of 2010, with the parties entering into a series of one year fixed term tenancies. The fixed term tenancy agreements required the Tenant to vacate the rental unit, or enter into a new tenancy agreement. Each year during the tenancy the parties entered into a new fixed term tenancy agreement and the rent was increased in each of these contracts. At the outset of the tenancy the Landlord obtained a security deposit, which was increased to \$807.50 in the last tenancy agreement. At the end of the tenancy the monthly rent was \$1,615.00. The last fixed term tenancy agreement was for one year, to run from May 1, 2013 to April 30, 2014.

An incoming condition inspection report was performed on May 1, 2010.

About the middle of February 2014, the Tenant emailed the Landlord and informed her they were vacating the rental unit at the end of March 2014. The Landlord informed the Tenant that this was a fixed term tenancy agreement and they could not break the lease. The Landlord informed the Tenant that they were responsible for the rent until the end of the tenancy in April. Nevertheless, the Tenant and his family vacated the rental unit at the end of March 2014.

The parties met for an outgoing condition inspection report on March 31, 2014. The Tenant and his family vacated the rental unit on March 31, 2014. The Tenant did not agree with the Landlord's comments as to the condition of the rental unit on the outgoing condition inspection report.

In this Application, the Landlord has claimed for rent owed, for loss of rent, and for costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord provided a monetary worksheet and claims as follows:

Item 1: \$50.00 for the filing fee for the original Application. When the Landlord amended the Application the filing fee was increased to the amount now claimed, **\$100.00** for the fee.

Item 2: The Landlord claims **\$378.00** for cleaning the rental unit. The Landlord claimed the Tenant had left the rental unit very dirty and the Landlord and a cleaning company had to clean the entire unit. In evidence the Landlord supplied a letter from the cleaner who provided an invoice. The cleaner explains it took two people 18 hours to clean the rental unit. They write,

“The unit was so dirty and had mold around the windows. The floors were filthy. The bathrooms were very dirty and smelly and we had to disinfect the whole place before we started cleaning. The kitchen area including the cabinets was covered with sticky stuff and dirty layers and it took us a long time to scrub and clean them.

We used two bottles of Easy Off and it took us one hour to clean the oven...

...the elements were really dirty and one of the elements did not belong to the stove and would not fit in...

... we could not clean the inside of the fridge. It was broken and they told us they were going to throw it away...

... the curtains were very dirty and had holes in them...

Window sills were covered with black mold, dirt and cobwebs and we had to scrub them.

The balcony was covered with thick moss and mold and we had to scrub and mop them.”

[Reproduced as written.]

Item 3 and 10: repairs to washroom **\$174.50 & \$111.99**. The Landlord testified that the Tenant had installed a hose on each of the two toilets in the rental unit. The Landlord

alleged that the Tenant and his family used these hoses to wash themselves after using the toilet, similar in effect to using a bidet. The hoses had leaked and caused damage to the washrooms. There was mold in the washroom and the exhaust fan did not work in one of the washrooms. The Landlord purchased an exhaust fan for \$111.99 and it was installed during these repairs.

The Landlord testified that the Tenant did not inform her of any issues with the leaking or with the exhaust fan.

The invoices indicate that among other work, the toilet handles were repaired, the mirror was removed and the walls cleaned, and the exhaust fan was replaced and the ceiling around the fan repaired.

Item 4: plumbing **\$951.76**. The Landlord claimed for a new shower valve, as water was dripping from the faucet. The Landlord alleged the plumber told her it could not be fixed. The Landlord alleges the Tenant should have informed her that the shower faucet was dripping and claims for the cost of replacing the valve, and has provided an invoice from the company that did the repairs. The invoice sets out that some repair was made to a toilet.

Items 5 & 6: **\$88.27**. The Landlord claims for repairs made to the stove. The Landlord explained the Tenant had damaged one of the elements and then replaced it with an element that did not fit into the stove. There were also drip plans missing.

Item 7: **\$521.00**. The Landlord claims for replacing the curtains in the rental unit. The Landlord alleges these were dirty with mold from the windows and had been torn into strips in some areas. The Landlord testified that the drapes were a year old at the start of the tenancy.

Item 8: **\$850.00**. The Landlord claims for painting and repairs made to the walls in the rental unit. The invoice indicates that three doors were sanded and repainted, the master bath ceiling was repaired and painted, the window sills were all sanded, filled and painted, the closet door railing was re-installed, the baseboards were painted, the mirror in the bathroom was reinstalled, the shower door was repaired and the entrance door was painted. The Landlord testified the rental unit had been painted just before the Tenant had moved.

Item 9: **\$745.10**. The Landlord claims for the replacement of the refrigerator. The evidence indicates that the door handle had been damaged and the Tenant tried to

repair this by screwing on a different handle. The Landlord testified the fridge had mold in it and could not be cleaned. The Landlord testified the fridge was seven years old.

Item 10 is described above with item 3.

Item 11: **\$1,821.94**. The Landlord claims for replacing the carpets in the rental unit. The Landlord testified that there was mold underneath the carpets and the floor was wet. The underlay stuck to the floor and had to be scrapped off. The Landlord testified that due to the leaking toilets, not opening the windows, and not using the exhaust fan, there was too much humidity in the rental unit. The Landlord testified that the Tenant should have informed her if the exhaust fan did not work. The Landlord testified the exhaust fan worked when she last inspected the rental unit, before the Tenant moved in. There were also some burns in the carpet and paint on the rug in one of the bedrooms. The Landlord testified that the carpets were six to seven years old.

Item 12: **\$70.36**. The Landlord claims for replacing the bathroom light fixture. The Landlord claims the Tenant did not use the exhaust fan and this caused the light fixture to rust. The Landlord testified that the light fixture was six to seven years old.

Items: 13 and 16: **\$6.52** and **\$20.45**. The Landlord claims for photocopies of her evidence and office supplies. These two claims are dismissed as they are costs associated with proving her claims and are not compensable under the Act.

Item 14: **\$19.34**. The Landlord testified she did some cleaning as well and claims for the cost of cleaning supplies.

Item 15: **\$5.02**. The Landlord claims for light bulbs that the Tenant did not replace.

Item 16 is detailed with item 13 above.

Item 17: **\$1,340.00**. The Landlord claims this amount for extra painting and removing the carpets. The invoice sets out \$150.00 for removing the carpets, \$40.00 for extra painting, and \$1,150.00 for painting items covered by the first painter. The Landlord testified that after the first painter had painted the entire rental left, mold started showing again. The Landlord testified she contacted the first painter and wanted them to come and repair the work, but the first painter was too busy to come back and repair the paint. The Landlord testified she hired the second painter to re-do the painting.

Item 18: **\$400.00**. The Landlord claims \$400.00 for re-grouting the bathroom shower walls, and to re-epoxy paint the enamel in the bathtub. The Landlord testified it would

have been \$3,000.00 for a new bathtub and surround, so she had the tiles re-grouted and the tub repaired. The Landlord testified that the grouting had been done in 2011, when the tiles had been damaged when the Tenant fell in the shower. The Landlord testified that the bathtub was seven years old.

Item 19: **\$120.00**. The Landlord claims \$120.00 for replacing a cabinet end panel in the in the master bathroom. The Landlord testified that the hose hooked up to the toilet was leaking and caused mold and damage to the panel. The Landlord testified this cabinet was new at the start of the tenancy.

Item 20: **\$50.00**. The Landlord claims \$50.00 for having to clean the vanity area and mold around the windows.

Item 21: **\$60.00**. The Landlord claims the Tenant did not return two security cards for entry to the building, and these were worth \$30.00 each.

Item 22: **\$30.55**. The Landlord claims for a mirror that had to be replaced in the master bathroom and for cleaning supplies.

Items 23, 28: **\$76.65, \$15.90, \$10.71**. The Landlord claims for the photographs submitted in evidence and for the cost of two registered mail deliveries to the Tenant. These claims are not compensable under the Act as they are a cost to prepare and conduct the evidence for the hearing.

Item 24: **\$644.14**. The Landlord claims for a new stove for the rental unit. The Landlord claims the stove in the rental unit during the tenancy was four years old. The Landlord claims the Tenant damaged a heating element on the stove top. The Landlord testified that after the element was replaced the elements were not getting hot enough to cook food. The Landlord testified that she spoke with the repair person who went to the rental unit to repair the dishwasher. The Landlord testified she asked the dishwasher repair person if they could repair the stove. This repair person informed the Landlord to try to replace the parts not working, but he could not do the repairs himself. The Landlord purchased a new stove for the new renters.

Item 25: estimate for carpet cleaning. The Landlord withdrew this claim during the hearing.

Item 26: **<\$807.50>** Security Deposit. The Landlord is still holding the security deposit and claims against this amount in partial satisfaction of the claims.

Item 27: **\$1,610.00**. The Landlord claims this amount for April rent owed by the Tenant. The Tenant had provided the Landlord a rent cheque for April, although the Tenant put a stop payment on the cheque.

The Landlord also testified that due to the condition the Tenant left the rental unit in and the time it took to clean and make repair she was unable to rent it until June 1, 2014. The Landlord claims for this loss of rent in the amount of **\$1,610.00**.

In support of the above claims the Landlord provided correspondence, documentary evidence, invoices and photographs.

Tenant's Reply

There were very few portions of the Landlord's claims that the Tenant agreed to and those are set out below.

The Tenant alleged the Landlord is trying to charge him for renovating the rental unit.

The Tenant testified that they did not clean the rental unit before they vacated. He testified that when he first moved into the rental unit the Landlord informed him that when the previous renter had moved out the Landlord had to charge that renter \$25.00 an hour for cleaning. The Tenant testified he thought that was a reasonable amount for cleaning and so they did not clean before they left the rental unit. The Tenant testified he did not expect the Landlord would want so much for cleaning the rental unit after he saw what the Landlord was claiming for.

The Tenant then testified that he and his family did try to clean the rental unit before they moved out.

The Tenant denied they damaged the shower. The Tenant denies there is anything wrong with the bathroom, although he agrees they did install hoses to the toilet as alleged by the Landlord. He testified that once he found out it was not legal to do this he changed it back.

The Tenant testified that any leaking in the bathroom came from the ceiling, and that the ceiling had leaked for four years. He testified that between him and his family there was four people living in the rental unit during the tenancy. The Tenant alleged that the exhaust fan in the bathroom did not work or did not work properly. He testified they did not damage the fan, and the moisture was captured just in the bathroom.

The Tenant again testified that they did not touch the faucets or damage the shower faucet.

The Tenant testified that the toilets were used correctly and anything wrong with the handles was simply wear and tear.

The Tenant disputes that the stove did not work. He alleges that the stove was not just four years old, but was eight or 10 years old. He testified that the timer on the stove did not work at all during the tenancy. The Tenant testified he tried to change one of the elements and bought one from a hardware store, but it did not fit and he had no time to find the correct size. He testified he had melted some plastic on the element and agreed this was his fault. He testified that otherwise the stove was working and they used this many times. He testified that he did not clean the inside of the stove as there was no tray inside of it.

The Tenant denies the Landlord's claims for the drapes. He testified that the Landlord bought the drapes into the rental unit during the tenancy and told the Tenant she had purchased these at the Salvation Army for \$10.00.

The Tenant denies the Landlord claim for painting. He testified there were small marks on the walls when they moved in and these are shown on the incoming condition inspection report. He testified that the walls would not look the same after four years because they had been living in the rental unit for four years and this was normal wear and tear. He denied the rental unit had been painted just before he moved in. He pointed out that the Landlord was charging for painting twice.

The Tenant agreed to pay for the repair to the fridge handle, but denies he should be responsible for replacing the fridge. He testified that the fridge was over 10 years old and not four years old as the Landlord claims.

The Tenant agreed that they caused a burn to the carpet inside a closet, and that he would pay for the carpet cleaning.

The Tenant agreed he would pay for the light bulbs, the end panel in the vanity, and to replace the security entry cards.

The Tenant alleged that the Landlord illegally increased the rent. He testified that each year the Landlord wanted to enter into a new tenancy agreement because the old one was expiring. He testified that the Landlord increased the rent with each new tenancy agreement.

Analysis

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find that the Tenant breached the fixed term tenancy agreement and the *Act*, without authority to do so. The tenancy agreement is a binding legal contract which both parties must abide by. In British Columbia a tenancy may only end if done so in accordance with the *Act*.

Under section 45(3) of the *Act* the Tenant could not end the tenancy earlier than the fixed term date of April 30, 2014, unless there was some authority under the *Act* for them to do so. For example, if the Tenant felt the Landlord was in breach of a material term of the tenancy agreement, he could have written to the Landlord with a request to

correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that time, then the Tenant might have ended the tenancy by giving notice earlier than the end of the fixed term. Here the Tenant did not do this.

I find the Tenant had no authority under the Act to end the tenancy. Therefore, as the Tenant breached the Tenancy Agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation for one month of rent in the amount of **\$1,610.00** for April rent.

I explained to the Tenant at the end of the hearing that the Landlord was able to have a new tenancy agreement each year due to the fact that each tenancy agreement the parties signed was a fixed term agreement and required the Tenant to vacate the rental unit at the end of the year. In the alternative to moving out, the Landlord and the Tenant entered into a new tenancy agreement each year and this enabled the parties to agree to a different amount of rent in each year. If the Tenant did not agree to the increased rent, the Tenant could have vacated the rental unit at the end of the fixed term.

I also find the Tenant breached the Act and the tenancy agreement by failing to clean and make repairs to the rental unit before he vacated.

Under section 37 of the Act the Tenant was required to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. One indicator of whether or not a rental unit is reasonably clean is if the next renter can move in without have to do much cleaning.

Based on the incoming and outgoing condition inspection reports and the testimony of both parties, and the photographic evidence supplied by the Landlord I find the Tenant did not clean the unit, or make necessary repairs, and this has caused losses to the Landlord.

In fact, I find that due to the deplorable condition the rental unit was left in by the Tenant, the Landlord has suffered a loss of rent for one month as they had to significantly clean and make substantial repairs due to the breach of the Tenant.

Therefore, in addition to the cleaning and repairs described below, I grant the Landlord an additional month of rent to compensate for the loss of rent for one month in the amount of **\$1,610.00**.

As to the cleaning and repair costs, I am guided by the following sections and guidelines to the Act. Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, **the non-complying landlord or tenant must compensate the other for damage or loss that results.**

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added.]

Policy guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on all of the above, I allow the claim for Item 2: **\$378.00** for cleaning the rental unit. I find the Tenant had left the rental unit very dirty and the Landlord and a cleaning company had to clean most of the unit.

I allow the claims for Item 3 and 10: repairs to washroom **\$174.50 & \$111.99**. I find the Tenant acted negligently when they attached hoses to the toilets to fashion bidets. I find on a balance of probabilities that these caused leaks and caused damage to the washrooms. I also accept the testimony of the Landlord that the exhaust fan worked before the Tenant moved in. I accept the testimony of the Landlord that the Tenant did not inform her of any issues with the leaking or with the exhaust fan. The Tenant should

have informed the Landlord in writing if the fan was not working or that leaks were occurring.

I dismiss item 4: for plumbing the shower. I find the Landlord had insufficient evidence to prove the Tenant had damaged the shower valve or faucet. A dripping faucet may also be normal wear and tear, and in any event, the Landlord failed to prove the Tenant damaged these parts.

I allow items 5 & 6: **\$88.27** for repairs made to the stove. The Tenant agreed he had damaged an element and this is a reasonable amount to compensate the Landlord for.

I dismiss the claim for item 7: \$521.00. I find the Landlord had insufficient evidence that the drapes were a year old at the start of the tenancy, and I find the Landlord had not overcome the testimony of the Tenant that the damaged drapes had cost \$10.00 and had come from the Salvation Army.

I allow Item 8: **\$850.00** for painting and repairs made to the walls in the rental unit. I find that the mold in the rental unit and the damages to the walls and other items were beyond normal wear and tear.

I do not allow all of Item 9 for the fridge in the amount of \$745.10. I accept that the Tenant damaged the door handle and made a poor repair. However, I find the Landlord had insufficient evidence that the fridge no longer functioned and needed to be replaced due to the Tenant. I do allow the Landlord the nominal amount of **\$100.00** for the damage to the handle admitted to by the Tenant and what it would have cost to clean it. The invoice indicates the cleaner was informed the fridge was going to be replaced, so they did not clean it.

I allow the Landlord a prorated amount for carpets claimed in item 11. I find the Tenant caused the mold under the carpets to occur, as they did not adequately ventilate the rental unit nor did the Tenant have any evidence they informed the Landlord in writing that the exhaust fan was not working. As the Landlord testified the carpets were seven years old and policy guideline 40 sets out the useful life expectancy of carpets are 10 years, I allow the Landlord 30% of the cost of replacing the carpets, in the amount of **\$546.60**. This amount reflects the carpets had 30% of their useful life expectancy left.

I dismiss the claim for item 12: \$70.36. I find the Landlord had insufficient evidence to prove the damage to this fixture was caused by the Tenant, or that the fixture had to be replaced.

I allow the claim for item 14: **\$19.34** for some cleaning as well and claims for the cost of cleaning supplies.

I allow the claim for Item 15: **\$5.02**, as the Tenant agreed he did not replace these bulbs.

As for item 17, I allow the Landlord **\$150.00** for removing the carpets, and I dismiss the \$40.00 for extra painting and the \$1,150.00 for re-painting items covered by the first painter. I find the Landlord should have had the original painter make repairs to their work. It is not the Tenant's fault if the first painter did a poor job which had to be re-done, as this painter was hired by the Landlord. The Tenant was not at fault for the poor job of the first painter.

I dismiss item 18 for re-grouting the bathroom shower walls, and to re-epoxy paint the enamel in the bathtub. The incoming inspection notes there is enamel removed from the tub at the start of the tenancy. I find these and the other repairs are part of the normal wear and tear allowable under the Act.

I allow item 19: **\$120.00**, as the Tenant agreed to replacing a cabinet end panel in the in the master bathroom.

I allow item 20: **\$50.00** for having to clean the vanity area and mold around the windows. I find the Tenant failed to do this.

I allow item 21: **\$60.00**, as the Tenant agreed he did not return two security cards for entry to the building.

I dismiss item 22, as I find the Landlord had insufficient evidence to prove the mirror had to be replaced due to anything the Tenant did to it.

I dismiss the claim for item 24 for a new stove for the rental unit. I find the Landlord had insufficient evidence to prove the Tenant caused the stove to cease functioning altogether. I find the Tenant has been ordered to compensate the Landlord for the damage to the element above and this is sufficient compensation, as there is insufficient evidence the stove was not useable, once the element was replaced.

Therefore, I find that the Landlord has established a total monetary claim of **\$5,973.72**, comprised of the above described amounts and the \$100.00 fee paid for this application.

It is clear from the evidence that the Landlord intended to claim against the security deposit; however, the Landlord did not tick off this box in the Application. Pursuant to section 72 of the Act, I may also offset the security deposit against any amount owed by the Tenant. Therefore, I amend the Application to offset against the security deposit.

I order that the Landlord retain the deposit of **\$807.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$5,166.22**.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I find the Tenant breached the Act and tenancy by ending a fixed term tenancy agreement without authority to do so, by failing to pay rent to the Landlord when due, by failing to clean and make repairs to the rental unit which caused the Landlord to suffer a further loss of rent, and by failing to clean and make repairs to the rental unit as required by section 37 of the Act.

The Landlord has proven many elements of her claim, although some claims were dismissed due to insufficient evidence. The Landlord has proven a total loss of **\$5,973.72**, may keep the security deposit of **\$807.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$5,166.22**.

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: October 31, 2014

Residential Tenancy Branch

