



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

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, unpaid rent, damage of loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 19, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail. The landlord had to split the evidence into 2 packages; both were mailed on the same day. The landlord supplied copies of the Canada Post tracking numbers and receipts as evidence of service.

The landlord used the tenant's mother's address for service. On January 2, 2015 the tenant signed, accepting the registered mail packages.

These documents are deemed to have been served in accordance with section 89 of the *Act*; however the tenant did not appear at the hearing.

Preliminary Matters

There was only a claim for loss of rent revenue; not unpaid rent.

Issue(s) to be Decided

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

Is the landlord entitled to compensation for unpaid rent?

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

May the landlord retain the security deposit?

Background and Evidence

The 10 month fixed term tenancy commenced on December 1, 2013, ending September 30, 2014. At the end of the tenancy the tenant was required to vacate. Rent was \$1,250.00 per month, due on the 1st day of each month. A security deposit in the sum of \$625.00 was paid. The tenancy agreement supplied as evidence included a 3 page addendum, both signed by the parties.

The addendum required the tenant to pay 60% of utility costs. The backyard was shared with the homeowner; the occupant in the lower unit had no right to use the yard. The landlord retained the right to enter the yard to complete yard work, maintenance and inspections. Clause 10 of the addendum stated the tenant would maintain the front and back yard areas. A lawnmower was provided for the tenant's use. The landlord said that they left a 100 foot extension cord for the weed trimmer. Clause 16 required the tenant to have the carpets professionally cleaned at the end of the tenancy.

An addendum B – Cleaning Rates for Vacating; was supplied as evidence; both parties initialled and signed this 2 page document. The charges included \$50.00 for stove and fridge, \$75.00 for cupboards (inside and out), \$25.00 for tile and countertops, \$36.00 for carpets, \$5.00 for missing keys, \$50.00 for door and trim washing and \$100.00 to wash walls.

The unit was in the upper portion of a house; other occupants lived in the lower level.

A move-in condition inspection report was supplied as evidence. The report was completed on December 1, 2013. The tenant's girlfriend completed the report and the landlord signed it with her. The landlord was present while the report was completed. On December 6 and 13, 2014 respectively, the landlord and tenant signed a document, supplied as evidence, which confirmed a few items that had not been cleaned prior to the start of the tenancy. The tenant was not expected to clean those areas (blinds, windows, closet mirror doors) at the end of the tenancy. The document indicated that the tracks on the glass doors had been cleaned and that there were some black areas in the corner of some windows.

On December 13, 2013 the tenant signed a 2nd document confirming he agreed with a condition inspection report that replaced the original and that a copy of the report and a disc of photographs were given to the tenant. This document was submitted as evidence.

A detailed calculation of the claim was submitted as follows:

Cleaning	
Stove	50.00
Fridge	50.00
Cupboards	75.00
Countertops	25.00
Non-carpeted floors	36.00
Carpet cleaning	197.00
Windows	100.00
Light fixtures	25.00
Blinds	50.00
Doors/trim	50.00
Walls	50.00
TOTAL CLEANING	\$708.00

Miscellaneous	
Unreturned keys	15.00
Remove garbage	40.00
Pesticide to kill maggots and flies	11.19
Cleaning maggots and flies	100.00
Carpet deodorizer	10.07

Repair bedroom door, trim, staircase railing	236.30
Supplies	6.34
Paint supplies (1/2 of receipts)	64.42
Paint bedroom door, trim, staircase railing	90.00
Paint dining room wall, repair and paint damaged stairway, hallway	60.00
Repair damaged screens, materials, 3 hours	104.32
Replace carpet in entry	450.02
Rekey locks	52.38
Replace blinds in nook, dining room, master bedroom	231.93
Cut grass X 3 \$ \$40.00 per	120.00
Bannister replacement - twisted	95.73
TOTAL MISC.	1687.71

Missing Items	
Extension cord	44.79
Stickers from bedrooms	67.63
Shower head	25.00
Garbage can	51.50
Recycling bin	8.94
Lightbulbs	14.29
TOTAL MISSING ITEMS	\$212.15

In addition, the landlord has claimed the loss of June 2014 rent revenue.

I note that the total sum claimed shown on the application reflects a sum deducted for the security deposit. The total claim made is \$3,857.86; less the security deposit.

The landlord submitted a security deposit statement, setting out the costs claimed. The tenant did make a \$400.00 utility payment which exceeded the sum owed by \$139.21. A copy of the utility bills was supplied as evidence. The landlord wants to deduct the utility overpayment from any sum found owed by the tenant.

On May 7, 2014 the tenant emailed the landlord asking to end the fixed term at the end of the month. The landlord received payment for rent and utilities and on May 8, 2014 agreed to allow the tenant to end the fixed term at the end of May, if hydro was paid. On May 9 2014 the condition inspection report was scheduled. On May 9, 2014 the landlord received a note from the tenant regarding damage to the unit door and carpet and a promise the unit would not be left damaged. The landlord replied on the same day, telling the tenant all damage must be repaired.

The landlord supplied evidence of their concerns on the state of the home; sent to the tenant via email on May 9, 2014. The landlord had given notice of entry for an inspection and found "a lot of damage and unbelievable mess." The landlord told the tenant the carpets were substantially damaged dog marks and smells were everywhere, damage had occurred to the door, trim and frame in the bedroom; the door required replacement. There was writing on a mirror and the grass was very long. The landlord explained these were just some of the items they had found needing attention. The landlord warned the tenant he was required to leave the home undamaged and clean. He was provided with the name of a carpenter who could do proper repairs.

The tenancy ended on June 1, 2014. A copy of a May 29, 2014 email from the tenant indicated he would not be available and that he would appreciate it if the landlord gave his girlfriend until June 1, 2014 to be out. The tenant told the landlord, as part of the email, to keep the deposit. The landlord arranged a move-out condition inspection report at 2 p.m. on June 1, 2014; the tenant could not attend so the landlord sent an email asking the tenant if he could meet at 2 p.m. on June 2, 2014. A Notice of Final Opportunity to Schedule a Condition Inspection was included with the email. The tenant did not respond. The landlord called the tenant and did not receive a response.

The sums claimed include a charge for the landlord's time spent, at a rate of \$30.00 for painting and \$25.00 for cleaning. The quote received for painting was too high so the landlord opted to complete the required painting.

The landlord submitted forty coloured photographs taken of the unit after the tenant vacated. The pictures show areas of the kitchen that needed cleaning, stickers on a cabinet door, a dirty sink, stove-top; food left in the fridge and dirty floors and countertops. Other photographs showed carpeting that appears filthy and stained; broken blinds; dirt on doors; cigarette burns on the bathroom floor, butts on the deck and bags of garbage on the deck; stains on the outer covered deck; garbage on the floors, chalk marks on the exterior of the home and patio screen; stains on the stairway carpeting; the hallway handrail twisted in shape; the outside deck with burn marks, urine stains; maggots on the deck carpeting and a garbage bag; master bedroom carpet stains believed to be mascara; dirty toilet; broken door jam in master bedroom; broken master bedroom door; dark touch-up paint on a wall; a damaged bi-fold door; damaged stairway floor trim; a SUV filled with garbage and a carpet cleaning truck at the home.

The landlord created an invoice in the sum of \$280.00 for fourteen hours of cleaning completed in the rental unit by an independent cleaner. The carpet cleaning invoice is missing; but the photo of the carpet company truck at the unit is meant to demonstrate that they did complete the cleaning at the cost claimed. The balance of the cleaning costs, in the sum of \$281.00, was performed by the landlord. The landlord said the home was left in a filthy state.

The landlord then re-keyed the home and bought new keys. An invoice in the sum of \$27.38 was supplied. A further 3 keys were cut on June 23, 2014. An invoice in the sum of \$6.69 was supplied. The keys were not returned by the tenant.

The landlord said that garbage left on the deck was infested with maggots; time for removal was charged and pesticide to kill the maggots and flies. A further \$100.00 as charged for cleaning of the maggots and flies from the deck. Maggots were embedded in the carpeting, the door tracks and complete deck area of 400 sq. feet had to be scrubbed.

The landlord had to use carpet deodorizer, which was purchased on June 14, 2014.

The landlord supplied a hand-written invoice dated June 7, 2014 for repair of the hall railing and door. The cost was \$236.30; paid by cheque. The railing was loose; likely caused by a baby gate.

The landlord had to purchase new postal key. The sum charged slightly exceeded that claimed. The key was not returned.

The unit was painted just prior to the tenant moving in. Areas of the home required painting after the tenant vacated. Brackets had been removed from a wall in the dining room and it was

patched and painted with a different colour. A photograph of the area was submitted as evidence. The landlord supplied invoices for paint purchased and has claimed one-half of those costs, to reflect the fact that not all of the paint was required. The landlord painted a closet door, a railing, dining room wall, stairway, hall and 3 of 4 walls in the master bedroom. The landlord charged for the time spent completing the work.

A screen kit was purchased to repair the bent patio door to the deck. The landlord claimed materials and labour for the time spent.

The house was purchased in 2010 and the carpet was new. The entry carpet had urine stain; shown in a photograph. The landlord replaced the carpet with lino; which was a less expensive option than carpeting. The invoice for flooring and time for installation was claimed. The landlord did not have an invoice for the labour portion of this cost.

The kitchen, master bedroom and dining room blinds had to be replaced. A photograph of damaged blinds that appeared to be in like-new condition was supplied as evidence. An invoice for the replacement blinds was supplied.

The tenancy addendum required the tenant to maintain the yard. At the end of the tenancy the landlord had to first use a weed-eater and then mow the lawn several times. The landlord has charged for his time at \$40.00 per hour.

The landlord replaced a bannister handrail that was damaged; time and the cost of the railing was claimed. The landlord could not locate the railing invoice.

When the tenant vacated the stickers that had been installed in the bedrooms prior to the start of the tenancy were removed. The shower head was missing, the garbage can and recycling bin were also taken. The landlord had to replace light bulbs that were burned out.

The landlord could not prepare the unit for renting effective June 1, 2014. The tenant over-held for 1 day, but the main issue was the state of the home. The repairs and cleaning required resulted in a loss of June 2014 rent revenue.

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.

Section 37(2) of the Act provides:

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

From the evidence before me I find that the tenant failed to comply with section 37 of the Act.

In the absence of the tenant, who was served with Notice of this hearing I find that the landlord is entitled to cleaning costs, as claimed, with the exception of the claim for cleaning of the windows and blinds. Those items were identified at the start of the tenancy as not requiring cleaning at the end of the tenancy. The costs claimed are supported by verification through photographs, an estimate of time and potential charges given at the start of the tenancy and the move-out condition inspection report.

Cleaning	Claimed	Accepted
Stove	50.00	50.00
Fridge	50.00	50.00
Cupboards	75.00	75.00
Countertops	25.00	25.00
Non-carpeted floors	36.00	36.00
Carpet cleaning	197.00	197.00
Windows	100.00	0
Light fixtures	25.00	25.00
Blinds	50.00	0
Doors/trim	50.00	50.00
Walls	50.00	50.00
TOTAL CLEANING	\$708.00	\$558.00

Based on the evidence before me and verification of costs claimed I find that the landlord is entitled to the following costs claimed. The sum for keys has been reduced to reflect the actual cost of replacement. I have accepted the portion of the claim for lino installation and railing as I have no doubt that the flooring was installed at a cost to the landlord and that the railing was damaged. The tenant was at liberty to attend the hearing and dispute the costs claimed; however he did not do so.

Miscellaneous	Claimed	Accepted
Unreturned keys	15.00	6.69
Remove garbage	40.00	40.00
Pesticide to kill maggots and flies	11.19	11.19
Cleaning maggots and flies	100.00	100.00
Carpet deodorizer	10.07	10.07
Repair bedroom door, trim, staircase railing	236.30	236.30
Supplies	6.34	6.34
Paint supplies (1/2 of receipts)	64.42	64.42
Paint bedroom door, trim, staircase railing	90.00	90.00
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Replace carpet in entry	450.02	450.02
Rekey locks	52.38	27.38
Replace blinds in nook, dining room, master bedroom	231.93	231.93
Cut grass X 3 @ \$40.00 per	120.00	120.00
Bannister replacement - twisted	95.73	95.73
TOTAL MISC.	\$1687.71	\$1654.39

I find, on the balance of probabilities, that the items claimed were removed from the property and had to be replaced. The landlord provided verification of the following costs; with the

exception of the shower head. I have accepted the sum claimed for the shower head as a nominal cost.

Missing Items	Claimed	Accepted
Extension cord	44.79	44.79
Stickers from bedrooms	67.63	67.63
Shower head	25.00	25.00
Garbage can	51.50	51.50
Recycling bin	8.94	8.94
Lightbulbs	14.29	14.29
TOTAL MISSING ITEMS	\$212.15	\$212.15

From the evidence before me, I find, on the balance of probabilities, that the landlord was prevented from being able to secure new tenants for the unit as a result of the state of the home on June 2, 2014. The tenant had been warned on May 9, 2014 that the home must be cleaned and repaired; that did not occur. As a result of the tenant's failure to comply with the requirements of the Act, I find that the landlord did suffer a loss of rent revenue in the sum of \$1,250.00 for June 2014.

Therefore, I find that the landlord is entitled to compensation in the sum of \$3,674.54; less the \$139.21 utility over-payment made by the tenant, for a total of \$3,353.33.

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

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$625.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,960.33. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to costs claimed as set out above. The balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: March 17, 2015

Residential Tenancy Branch

