# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND FF
MNDC FF

Introduction

This hearing convened on February 3, 2015 for 72 minutes and again on March 20, 2015 for 142 minutes. This Decision must be read in conjunction with my Interim Decision issued February 4, 2015. The hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on August 12, 2014, to obtain a Monetary Order for damage to the unit, site, or property, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on November 28, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her Agent, and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other. Both the Landlord and her Agent submitted evidence on behalf of the Landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was that the Tenant entered into a fixed term tenancy agreement that began February 15, 2013. Rent was initially $1,300.00 per month and

approximately midway through the tenancy the rent was reduced to $1,150.00. On January 23, 2013, the Tenant paid $650.00 as the security deposit. On May 26, 2014, the Tenant served the Landlord notice to end her tenancy which was to be effective on June 30, 2014. The Tenant vacated the property on or before June 30, 2014 and provided the Landlord with her forwarding address on June 24, 2014. The Landlord returned the full $650.00 security deposit to the Tenant on July 12, 2014.
No condition inspection report forms were completed at move in or at move out.

The Landlord described the rental property as being an older single detached home located on a rural piece of property that also had a workshop, storage building, and shed. The house had an addition added to it in 1974 in the area where the kitchen was located. The Landlord purchased the property in 2011 at which time her daughter occupied the property until renovations began just prior to the Tenant taking possession.

The Landlord testified that on June 2, 2014 she sent the Tenant an email stating that the time the Tenant suggested for the move out inspection would not work for them. That email included notice to the Tenant that they would be attending the rental unit on June 22, 2014. The Landlord referenced her email which was in section 3, C, page 4, of her evidence which stated:

> *For reviewing the house for your damage deposit, the time you suggested is too early for [Agent's name]. Is it possible that we come out the day after you move? We had already just planned to come out on June 22 to work on the outside – the rood and patio stones in the back, gutters on the workshop and drainage around the workshop.*
> *[Agent's name] could check for any items he might be concerned about. …*
>
> *… If not, we could look at it ourselves, take pictures and make comments if we have any concerns. Then there is time between Sunday & Thurs to discuss.*

The Landlord submitted that the Tenant replied to her June 2, 2014 email requesting what time they would be there and stated that she had the 22nd off of work. The Landlord pointed to her email on page 5 of her evidence which displayed her response to the Tenant advising that they would be there "from approx. 10AM to 5PM on Sun June 22/14".

The Landlord and the Agent attended the property on June 22, 2014, as previously scheduled, to conduct some yard maintenance and weeding by the side of the house so the Agent could wash his car. The Tenant was not at the rental unit at that time but her father was. The Agent stated that they entered the rental unit on June 22, 2014, did a quick walk through, without touching anything, noting a list of concerns, and then left. They emailed their concerns to the Tenant on June 24, 2014, listing their concerns about items to be removed and damages to: the front door, bathroom cabinet, kitchen cabinet, damaged extension cord, chicken wire behind the fence, chicken coup

cleaning, removal of hay/straw, cleaning behind the appliances, stickers on walls, grass to be cut, and two holes in the living room wall.

The Landlord submitted evidence of the Tenant's June 24, 2014 email in response to their concerns where the Tenant wrote:

> *I will not reply to the concerns, as I feel it has been become unfair to myself to be not given an opportunity to properly finish removing my belongings prior to End of Tenancy and the Conditions Report.*

The Landlords responded to the foregoing email 40 minutes later and stated:

> *We did a walkthrough of the house to see if there was anything that needed to be taken care of so you can get your full damage deposit back. We didn't do anything other than look,* ***you have until the end of the month to take care of all the issues****, this is almost a week which is plenty of time* [my emphasis added with bolding].

The Landlord asserted that they provided the Tenant with three dates and times to attend another inspection after June 22, 2014. They suggested June 28, 29, and June 30, 2014. The Tenant refused to have the move out inspection conducted on any of these dates and refused to have anyone else attend the inspection on her behalf, despite her parents residing in the neighbourhood.

During the February 3, 2014 hearing a brief discussion about the types of damage or loss the Residential Tenancy Act (the Act) provided took place. As a result, each party amended their application for monetary compensation as follows:

The Landlord withdrew her requests for compensation for travel time, travel expenses, and costs to prepare her application, evidence, and service of documents. She stated was pursuing her claim to recover **$1,175.90** for the following losses:

1) $129.88 ($54.88 + $75.00 labour) Replacement of an existing cabinet and door
2) $28.00 to replace a missing window screen that had been on a brand new window. The Landlord pointed to an invoice provided in evidence that indicated a window had been purchased.
3) $17.56 to repair a "rat" hole located behind the stove
4) $63.30 for materials and labour to repair 2 large holes and some small holes in the living room wall that had been painted just prior to this tenancy
5) $29.77 to replace the weather stripping on the front door frame
6) $78.36 to replace the lock and deadbolt in the mud room that were left damaged and which the Landlord's keys no longer worked on
7) $15.00 to repair the mudroom door frame trim
8) $15.00 labour to repair the wall with touch up paint in the small bedroom
9) $30.00 labor and dump fee to remove the debris left behind. No receipt for the landfill charges was submitted in evidence

10) $19.03 to replace the wood stove door gasket
11) $510.00 ($270.00 + $240.00) for labour to clean the inside of the rental unit on June 28 and June 29, 2014. The actual hours spent cleaning on the two days were not recorded
12) $240.00 to clean up the weeds in the garden and yard, and to remove the chicken coup on June 29, 2014

The Landlord submitted and referenced a large volume of evidence in support of her claims for damages. The evidence consisted of, among other things, copies of: photographs taken in December 2012 or January 2013 prior to the onset of the tenancy; photos taken after the end of the tenancy on June 28, 2014; numerous emails between the Landlord, Tenant, and the Agent; a letter from the current tenant; letters from friends who had seen the rental property prior to this tenancy; receipts for work and items purchased prior to the tenancy; and receipts for repairs and materials dated after the end of this tenancy.

The Tenant submitted that the Landlord informed her that they would be attending the property June 22, 2014, to conduct work outside in the yard and on the exterior buildings. She argued that she was not told that they would be cleaning up the yard, cutting the lawn, or entering inside the rental unit on June 22, 2014. She stated that because the Landlords started to do her clean up and went inside the rental unit, they forced the end of her tenancy to be June 22, 2014, which was prior to her completing her finishing her cleanup.

The Tenant asserted that her sister returned to the property on June 24 or 25th and completed seven (7) hours of cleaning inside the rental unit. She argued that the Landlord's photographs were obviously taken on June 22, 2014, prior to that cleaning, and noted that her photographs show a larger portion of the cleaned rooms while the Landlord's photographs zoomed into small areas not showing a full view of how clean the unit was.

The Tenant testified that she advised the Landlord, in her notice to end tenancy and several emails afterwards, that she would be going on vacation from June 27, 2014 to July 2, 2014. Then on June 2, 2014, she informed the Landlord that she would be vacating the property around June 21, 2014, cleaning on June 22, 2014, and requested to conduct the move out walk through inspection on June 25, 2014, stated that it was previously agreed upon. The Tenant argued that the Landlord decided not to conduct the inspection on June 25th and requested that it be changed to June 28 or June 29, 2014, dates which the Tenant would be away on vacation.

The Tenant disputed the items being claimed by the Landlord as follows:

1) The cabinet door falling off was normal wear and tear. She argued that the door had fallen off previously and the Landlord failed to repair it properly.
2) There was no screen on that kitchen window at the start or during her tenancy.

3) The rat infestation resulted from the Landlord's negligence of not taking care of the infestation after she told them about it.
4) The 2 large holes were from cable installations during the tenancy and the small holes in the living room wall were from pictures that were hung on the wall during her tenancy. The Tenant confirmed she had not patched or sanded the holes.
5) The Tenant accepted responsibility for the weather stripping replacement on the front door frame as she acknowledged that her dog may have scratched it.
6) The mudroom lock and deadbolt were working fine at the time she left her keys inside the rental unit on June 27, 2014. She noted that she locked the door by turning the inside lock on the handle when she left.
7) The mudroom door frame trim was not damaged when she left June 21, 2014 and when she returned on June 27, 2014 it was damaged. The Tenant's parents were at the rental unit on June 22, 2014 and her sister was at the rental unit on June 24 and 25th cleaning.
8) The Tenant argued that the Landlord's photos were taken prior to her sister repairing the walls with touch up paint in the small bedroom. She acknowledged that there had been drawings on the wall and may have been a toy stuck to the ceiling, but those would have been cleaned up by her sister.
9) The Tenant acknowledged that she had forgotten some things at the rental unit and argued that she was not given an opportunity to pick them up so she should not have to pay to remove the stuff that was left behind.
10) The wood stove gasket had been replaced during the tenancy and subsequently fell off. The Tenant argued that this was normal wear and tear.
11) The Tenant alleged that the Landlords' submissions for cleaning inside the rental unit were false because her sister spent 8 hours cleaning on June 24 and 25th.
12) The Tenant argued that she was not given a final opportunity to conduct the final cleaning because the Landlords accessed the rental unit and yard on June 22, 2014 without proper notice. She argued that she had removed the chicken wire and seeded the grass in areas where it showed long grass in her photographs.

During the February 3, 2015 hearing the Tenant withdrew her requests for compensation for costs to prepare her application, evidence and service costs and sought to recover $946.00 for the following losses:

1) $228.00 for lost wages as the result of attending this hearing. No evidence was submitted to support her rate of pay
2) $268.00 for the forced end of her tenancy. She paid rent until June 30, 2014 and did not have possession of the rental unit from June 22 to June 30, 2014
3) $50.00 for day care costs for her two children, aged 7 and 9, so she could attend this hearing
4) $400.00 for defamation of character which resulted from the false allegations

During the March 20, 2015 hearing the Tenant withdrew her request for compensation for (1) lost wages, for day care costs, (3) day care costs; and (4) for defamation of character, stating that she did not submit evidence to support these claims. She testified

that she was still seeking $268.00 as reimbursement of the last seven days of rent she had prepaid for June 23 – 30, 2014.

The Tenant argued that the Landlord gained entry to the rental property on June 22, 2014, without prior notice, and did property modifications which included yard work and mowing the lawn. She argued that the hydro was in her name until June 30, 2014, and she was supposed to have possession of the unit until June 30, 2014.

In closing the Landlords asserted that their photographs were taken June 28, 2014 and not June 22, 2014. They did attend the property on June 22, 2014, to conduct some outside repairs and used the weed eater to trim some of the weeds. They did wash a car but did not use too much of the hydro. They did not cut the grass because there was no lawn mower at the rental property.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

**7. Liability for not complying with this Act or a tenancy agreement**

7(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.

7(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.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

**Landlord's Application**

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the

state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In absence of a move-in or move-out condition inspection report form, I gave no evidentiary weight to the form letters the Landlord submitted which were signed by her friends. These form letters were written by the Landlord and therefore, cannot be considered an accurate reflection of the signatory's view of the condition of the property. That being said, I did consider the letter that had been written by the person who signed it and the photographs submitted by the Landlords that were taken prior to the start of this tenancy. That evidence supported the Landlords' submission that the rental unit and outer buildings had been well maintained, recently renovated, clean and undamaged at the end of the tenancy.

The Tenant disputed the date the Landlords' end of tenancy photographs had allegedly been taken; arguing that they were taken on June 22d and not on June 28th, 2014, as submitted by the Landlords. The Tenant submitted photographs that were allegedly taken June 27, 2014, two days after her sister allegedly spent 7 or 8 hours cleaning. The Tenant's photographs displayed a much broader view of the interior rather than the close up views shown in the Landlords' photos.

Each party submitted printed photographs and each party submitted a CD which indicated that they had taken electronic versions of the photographs. Upon review of the CD submitted by the Landlord that CD was blank and did not include any electronic information. The Tenant's CD included all of the same photographs that were submitted as printed photographs. Dates of electronically saved photographs or documents can be altered and change when they are copied onto different CD's; therefore, I give very little weight to electronic evidence file dates as proof of the date the file was originally created or the date the photograph was taken.

I relied solely on the printed photographs submitted by each party. After carefully comparing all the photographs, I accept the Tenant's submission that the Landlord's photographs were taken on June 22, 2014 and not on June 28th, after the Tenant left the keys inside. I found that the Landlords' photographs were taken June 22, 2014, in part due to the Agent's June 2, 2014 email where he informed the Tenant what they would do during their June 22, 2014 visit when he wrote:

> *… If not, we could look at it ourselves,* ***take pictures*** *and make comments if we have any concerns. Then there is time between Sunday & Thurs to discuss* [my bolding added].

I also considered that the Agent's June 24, 2014 email, listing concerns of issues that required attention, was suspiciously absent of any mention that the inside of the rental unit still required extensive cleaning. The only mention of cleaning in that email referred to cleaning out the chicken coop and behind the kitchen appliances. Furthermore, the Landlords would have had to move the appliances, in order to have known that they had

not already been cleaned behind to list it in their June 24, 2014 email as a concern. The June 22, 2014, was also a perfect opportunity for the Landlords to take the photographs behind the appliances. As per the foregoing, I accept the Tenant's submission that additional cleaning had been completed after the Landlord's photographs were taken and prior to her returning possession of the rental unit to the Landlords on June 27, 2014.

In the presence of disputed documentary and oral evidence, and in the absence of a condition inspection report form, I find the Landlords submitted insufficient evidence to prove the actual state of cleanliness the rental unit was in on June 27, 2014. Therefore, the Landlords' claim for cleaning costs for inside the rental unit, are dismissed without leave to reapply.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the interior of the rental unit with some damage and the exterior property requiring some cleaning and maintenance.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40 [*Policy Guideline 40]*.*

The kitchen cabinet was existing at the time the Landlord purchased the property in 2011 and was likely installed in 1974 when the addition was created, making the cabinet approximately 40 years old. The undisputed evidence was that the cabinet had previously been repaired.

Policy Guideline 40 provides the normal useful life of cabinets to be 25 years. Accordingly, I find the kitchen cabinet had passed its normal useful life and had a depreciated value of zero. Accordingly, I find the Landlord's claim for loss of $129.88 to be unsubstantiated, as the value was zero. Therefore, the claim for $129.88 is dismissed without leave to reapply.

Upon review of the invoice submitted in support of the claim for a window screen, there is no indication that a screen was provided with the purchase of the new window. Therefore, in absence of a condition inspection report form or any photographic

evidence proving the existence of a screen in that window at the start of the tenancy, I find the Landlords submitted insufficient evidence to prove the claim of $28.00 for the window screen and it is dismissed, without leave to reapply.

Residential Tenancy Policy Guideline # 1 (Policy Guideline # 1) provides that a landlord is generally responsible for tree cutting, pruning, insect and pest control. Claims for damage or loss are intended to compensate the party for losses which have occurred as the result of the other party's intentional actions or neglect. The presence of rodents inside a building is not uncommon in rural areas.

In this case there is no evidence that the presence of rodents or a rodent hole behind the stove was the result of the Tenant's actions or neglect. Rather, I find the existence of rodents or a rodent hole to be nothing more than a fact that the house was located in rural area. Accordingly, I do not find the Tenant to be responsible for the costs to repair the rodent hole, and the claim is dismissed, without leave to reapply.

The only evidence submitted in support of the Landlords' claim for a new deadbolt and door handle lock was a receipt dated June 29, 2014. If the deadbolt and door handle were damaged, as alleged by the Landlords, it is reasonable to concluded the Landlords would have seen that damage when they attended the rental unit on June 28, 2014. Furthermore, if the Landlord's had taken their photographs on June 28, 2014, as alleged, it is reasonable to conclude that they would have taken a picture of the damaged door handle. There were no pictures submitted of the door handle or deadbolt.

Based on the above, in absence of a condition inspection report form, and in the presence of the Tenant's disputed verbal testimony, I find there to be insufficient evidence to prove the deadbolt and door handle and lock were damaged. Rather, it is reasonable to conclude that because the property was located in a rural area, it would be cheaper for the Landlords to change the deadbolt and door handle instead of hiring a lock smith to rekey the locks. Accordingly, I dismiss the claim for a new deadbolt and door handle set, without leave to reapply.

The remaining items claimed by the Landlord were for materials and labour to repair: holes in the walls, the weather stripping, front door and mudroom door frames, wall and ceiling touch ups, debris removal, fireplace gasket, and exterior yard, chicken coop, and shed clean up.

In the presence of undisputed testimony that the undisputed damages did occur to the door frames and walls; that the fireplace gasket was missing and there were articles left behind, I award the Landlord the amounts claimed for those items. I do not accept the Tenant's submission that she was prevented from cleaning up the exterior yard, chicken coop, or the shed simply because the Landlords were doing some other work in the yard and on the exterior of buildings on June 22, 2014. Rather, I find there was ample opportunity for the Tenant or anyone else that was assisting the Tenant to conduct that work. Accordingly, I find the Landlords provided sufficient evidence for those remaining

items claimed and I award the Landlord the total amount of **$412.03** ($63.30 + $29.77 + $15.00 + $15.00 +$30.00 + $19.03 + $240.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$25.00**, pursuant to section 72(1) of the Act.

**Tenant's Application**

Section 44 (1)(a) of the Act provides that a tenancy ends when the tenant or landlord gives notice to end the tenancy in accordance with the Act. Section 44 (1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit.

In this case the Tenant gave notice to end her tenancy effective June 30, 2014 and in her notice she suggested that the inspection be conducted on June 25, 2014, prior to her leaving on vacation on June 27, 2014. That being said, there was no evidence that both parties agreed upon that date. Rather, the Landlord's email of June 2, 2014, clearly indicates "*the time you suggested is too early for [Agent's name]".*

The evidence further supports that on June 2, 2014, the Landlord suggested that the Landlords attend the property on June 22 to work on the outside, the Agent could check for any items he might be concerned about and they could look at the rental unit themselves, take pictures and make comments if they had any concerns. This email is evidence that the Tenant was given ample notice of the Landlords' intention to inspect the unit on June 22, 2014.

There was no evidence that the Tenant refused the Landlord access on June 22, 2014. On June 24, 2014, the Landlord emailed the Tenant a list of their concerns which the Tenant refused to respond to and when the Tenant argued she had not been given an opportunity to "properly finish removing my belongings prior to End of Tenancy and the Condition Report". The Landlord responded forty (40) minutes later reminding the Tenant "*you have until the end of the month to take care of all the issues, this is almost a week which is plenty of time".* The Tenant remained in possession of the rental unit until June 27, 2014.

Based on the above, I find that this tenancy initially ended June 30, 2014, based on the Tenant's notice to end tenancy, pursuant to section 44(1)(a). After service of her notice to end tenancy, the Tenant made a choice to return possession of the unit to the Landlords on June 27, 2014, when she fully vacated the unit and left the keys inside the rental unit, effectively ending the tenancy on June 27, 2014, pursuant to Section 41(1)(d) of the Act. The Tenant could have chosen to remain in possession of the rental

unit until June 30, 2014, by leaving the keys with her parents, sister, or any other agent, to finish the repairs and yard cleanup.

Based on the foregoing, there is no evidence that would suggest the tenancy ended prior to June 30, 2014, based on the Landlords' actions. Rather, the undisputed evidence was that it was the Tenant's actions of returning the keys which ended the tenancy on June 27, 2014. Accordingly, I find there to be insufficient evidence to proof the Tenant's claim for forced end of tenancy, and it is dismissed, without leave to reapply.

The Tenant has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

The Landlord has been awarded a Monetary Order for **$437.03** ($412.03 + $25.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.
The Tenant's application is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 23, 2015

Residential Tenancy Branch